

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 14, 2015.

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1 Wednesday Morning Session,  
2 October 14, 2015.

3 - - -

4 EXAMINER PRICE: Let's go on the record.

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

13 My name is Gregory Price. With me are  
14 Mandy Willey Chiles and Megan Addison, and we are the  
15 Attorney Examiners to preside over today's hearing.  
16 I believe this is Day 28 of our hearing.

17 Before we take our first witness, a  
18 motion for pro hac vice was filed on behalf of  
19 Kristin Henry. Is there any opposition to that  
20 motion?

21 Seeing none, the motion will be granted  
22 at this time.

23 Any further business before we take our  
24 first witness?

25 Mr. Petricoff, call your next witness.

1 MR. PETRICOFF: Thank you, your Honor.  
2 At this time we would like to call Dr. Joseph Kalt to  
3 the stand.

4 (Witness sworn.)

5 EXAMINER PRICE: Please be seated and  
6 turn on your microphone which will require hitting  
7 the button three times. One more. Not yet. Keep  
8 trying.

9 THE WITNESS: Keep trying?

10 EXAMINER PRICE: Yes. There we go.

11 State your name and business address for  
12 the record.

13 THE WITNESS: Joseph P. Kalt, 4280 North  
14 Campbell Avenue, No. 2, Tucson, Arizona 85718.

15 EXAMINER PRICE: Please proceed,  
16 Mr. Petricoff.

17 MR. PETRICOFF: Thank you, your Honor.

18 - - -

19 JOSEPH P. KALT

20 being first duly sworn, as prescribed by law, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Petricoff:

24 Q. Dr. Kalt, on whose behalf do you appear  
25 today?

1           A.    The Electric Power Supply Association,  
2    EPSA, and the P3 Group.

3           Q.    And the P3 acronym stands for?  I  
4    withdraw the question.

5           A.    I know it as P3.  I apologize.

6           Q.    That's fine.  Thank you.

7           MR. PETRICOFF:  Your Honor, at this time  
8    we would like to get six documents marked for the  
9    record, and we can call them P3/E-P-S-A, P3/EPSA.

10          EXAMINER PRICE:  Okay.

11          MR. PETRICOFF:  The first one will be the  
12    public version of Dr. Kalt's testimony.  We would  
13    mark that as P3/EPSA 1.

14          EXAMINER PRICE:  So marked.

15          (EXHIBIT MARKED FOR IDENTIFICATION.)

16          MR. KUTIK:  That's of his direct  
17    testimony?

18          MR. PETRICOFF:  That's his direct  
19    testimony, correct.  And then confidential of his  
20    direct testimony, and we would ask that be marked  
21    PJM/EPSA 2.

22          EXAMINER PRICE:  2 Confidential?

23          MR. PETRICOFF:  That's the confidential,  
24    right.

25          EXAMINER PRICE:  It will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. PETRICOFF: And then PJM/EP SA 3 will  
3 be the public version of the errata sheet for the  
4 direct testimony.

5 EXAMINER PRICE: Can we go off the record  
6 for one minute?

7 (Discussion off the record.)

8 EXAMINER PRICE: Let's go back on the  
9 record. P3/EP SA will be so marked. EP SA 3, I'm  
10 sorry.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. PETRICOFF: And then P3/EP SA 4 will  
13 be the confidential version of the errata sheet.

14 EXAMINER PRICE: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. PETRICOFF: And P3/EP SA 5 will be the  
17 public version of Dr. Kalt's supplemental testimony.

18 EXAMINER PRICE: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. PETRICOFF: And finally we have  
21 P3/EP SA 6 which will be the confidential version of  
22 the supplemental testimony.

23 EXAMINER PRICE: That will also be so  
24 marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. PETRICOFF: And we will provide the  
2 court reporters with copies of all six.

3 EXAMINER PRICE: Thank you.

4 Q. (By Mr. Petricoff) Dr. Kalt, do you have  
5 with you the documents that have now been marked  
6 P3/EPISA 1 through 6?

7 A. Yes.

8 Q. Did you prepare these documents, or were  
9 they prepared under your direction?

10 A. I prepared them and had them prepared  
11 under my direction, yes.

12 Q. And do you have any changes or updates,  
13 and we will start with the -- your direct testimony?

14 A. A couple of changes or updates. On page  
15 32, line 16 of my direct testimony. That's page 32,  
16 line 16, the word "this" should be inserted before  
17 the word "generation" in that line.

18 Page 33, an update, again, in direct  
19 testimony, page 33, line 8, the word "one" O-N-E,  
20 should be changed to "three."

21 And one more correction. In my  
22 supplemental testimony, page 4, line 13, after --  
23 after "AEP," it should say Ohio, "AEP Ohio."

24 MR. PETRICOFF: Your Honor, I would like  
25 to say for the record that the pagination is the same



1 in the confidential versions of the testimony as well  
2 as in the public versions, so these changes would be  
3 carried over to the confidential versions as well.

4 EXAMINER PRICE: Thank you.

5 Q. (By Mr. Petricoff) With those changes,  
6 Dr. Kalt, if I were to ask you the same questions  
7 that were asked in both your direct and supplemental  
8 testimony, would your answers be the same?

9 A. Yes.

10 MR. PETRICOFF: Your Honor, the witness  
11 is available for cross-examination.

12 EXAMINER PRICE: Mr. Hays?

13 MR. KUTIK: Your Honor, we have some  
14 motions to strike.

15 EXAMINER PRICE: Okay. Mr. Hays, you  
16 will have to wait one minute.

17 MR. KUTIK: Or a few minutes.

18 EXAMINER PRICE: Mr. Kutik.

19 MR. KUTIK: Your Honor, we have an even  
20 dozen motions to strike. Our first motion to strike  
21 relates to the direct testimony on page 14, directed  
22 to footnote 20. And I guess we would also move to  
23 strike lines 10 through 12 which were based upon  
24 footnote 20. This appears to be an article or a  
25 report from the Brattle group and as such, it's

1 hearsay.

2 MR. PETRICOFF: Well, your Honor,  
3 addressing the lines 10 through 12, he is making a  
4 statement on his own, and the doctor is here for  
5 cross-examination. The fact that he has footnoted  
6 where the -- where he attributes the concept to is  
7 probably an academic nicety and may be instructive,  
8 and so both the statement should stay, because it's  
9 his statement, and the footnote should stay because  
10 it is of assistance.

11 EXAMINER PRICE: Okay. We will grant in  
12 part and deny in part the motion to strike. We will  
13 deny with respect to the lines 10 through 12, but we  
14 will strike the footnote and its contents.

15 MR. KUTIK: Our next motion to strike,  
16 your Honor, is directed to page 16, and lines 1  
17 through 6, particularly the sentence that begins on  
18 line 1 and all the way to the end of the paragraph on  
19 line 6, as well as footnotes 26 and 27.

20 Footnote 26 particularly, your Honor, has  
21 a number of hearsay items, including a 10-Q from a  
22 party -- from a party that is not a party to this  
23 case as well as some type of news article or press  
24 release from yet another entity.

25 Footnote 27 refers to a newspaper

1 article, which in our past discussions we have  
2 established is hearsay and should be excluded.

3 MR. PETRICOFF: Well, your Honor, as to  
4 the -- I'm sorry. Could I get the lines again that  
5 you --

6 MR. KUTIK: Sure. The sentence beginning  
7 on line 1, "Moreover," through the rest of that  
8 paragraph, ending on line 6.

9 MR. PETRICOFF: Okay. Your Honor, first  
10 in terms of the footnote for 26, these are based  
11 on -- on the 10-Q. The 10-Q is a -- is a public  
12 document. It is kept and required to be kept as a  
13 regular business record. Therefore, it should fit  
14 into the exception to the hearsay rule, and as for  
15 the statement, the statement is basically his  
16 knowledge, having done research on the subject as to  
17 whether these plants are going to be kept in service.  
18 So both the statement and the footnote should remain  
19 in the record.

20 MR. KUTIK: Your Honor, a public --

21 EXAMINER PRICE: One second. Are you  
22 defending at all the footnote 27 and the second half  
23 of footnote 26? There is a "C" also that's not part  
24 of the public record.

25 MR. PETRICOFF: Okay. Given -- given the

1 earlier rulings, we will -- we will accept the ruling  
2 on the "C" also. And as for the newspaper articles,  
3 in line with the decisions thus far by the Bench, we  
4 will not object to striking that.

5 EXAMINER PRICE: Now, Mr. Kutik.

6 MR. KUTIK: Yes, your Honor. To be  
7 clear, a public record isn't -- under the hearsay  
8 rules isn't a document that's filed in a public  
9 setting. A public record is a record that's created  
10 by a government agency with a duty to report the  
11 facts in that record. The 10-Q does not satisfy that  
12 criteria.

13 MR. PETRICOFF: I guess we disagree, your  
14 Honor, because a regularly kept business record does  
15 not have to be a governmental record to fit into the  
16 hearsay exception, and 10-Qs are required for public  
17 companies, and they must be public, and they must be  
18 filed, and they must contain certain information on a  
19 regular basis. So it fits the public -- it fits the  
20 record exception.

21 EXAMINER PRICE: Would you care to speak  
22 to the business record exception, Mr. Kutik?

23 MR. KUTIK: Your Honor, there is no basis  
24 other than Mr. Petricoff's statements as to what the  
25 requirements are with respect to what Duke was

1 required to do and what Duke did do with NRG with  
2 respect to its 10-Q. I don't have the ability to  
3 cross-examine anyone from NRG about what they said in  
4 their 10-Q. It's hearsay.

5 MR. PETRICOFF: Your Honor, I will note  
6 that if we are talking about the footnote, it starts  
7 with -- for example, it just -- it's just there to  
8 illustrate and backstop the statement. And the  
9 record, I might add that there is a business record  
10 exception to the hearsay rule.

11 EXAMINER PRICE: Okay. We are going to  
12 grant in part and deny in part again the motion to  
13 strike. We will strike all of footnote 26 and all of  
14 footnote 27, but we will leave in the text of his  
15 testimony, and you can cross-examine him on his basis  
16 for knowledge.

17 MR. KUTIK: Your Honor, our next motion  
18 to strike starts on the same page, the sentence that  
19 begins on line 11 and goes to page 17, ending on line  
20 2. And we would also move to strike the footnote.  
21 Again, another article from some trade publication.  
22 It's hearsay.

23 MR. PETRICOFF: Well, as to the statement  
24 that begins on 16, on line 11, and ends on 17, line  
25 2, that's a declaratory statement by the witness

1 based on his knowledge and, therefore, is entitled to  
2 be in the record. In terms of the -- of the article  
3 that is -- that is cited, though once again this  
4 is -- this is more in the academic style of  
5 footnoting your sources, he can be asked about that.  
6 I think there is no harm in allowing it in. And,  
7 therefore, would ask that it stay in as well.

8 EXAMINER PRICE: We are going to strike  
9 the footnote, and we are going to allow the  
10 testimony.

11 MR. KUTIK: Your Honor, our next motion  
12 relates to page 21, lines 15 and 16, the sentence  
13 that begins on 15 and ends on 16, and the footnote.  
14 The footnote is testimony of the former OCC and  
15 obviously that's hearsay. And the statement based on  
16 it is -- should also be stricken.

17 EXAMINER PRICE: Mr. Petricoff?

18 MR. PETRICOFF: Yes, your Honor. Your  
19 Honor, at this point we would -- we would accept  
20 striking the -- I guess it would be the words "of  
21 more than 8 billion." That is the only part of the  
22 statement that's from the testimony of Janine Migden  
23 that is being asserted for the truth of the  
24 statement. The rest of the statement, if you take  
25 that out, "FirstEnergy's transition plans provided

1 for the recovery of such costs," he can be asked how  
2 he knows that, and the fact that he knew it by  
3 reading sworn testimony is probably acceptable, and  
4 we will not object to removing the footnote.

5 EXAMINER PRICE: Mr. Kutik?

6 MR. KUTIK: Your Honor, the source of the  
7 testimony is hearsay. It should be stricken.

8 MR. PETRICOFF: I guess --

9 EXAMINER PRICE: One second. Dr. Kalt,  
10 do you have any independent knowledge of whether or  
11 not Ohio's Senate Bill 3 authorized the recovery of  
12 transition plans, authorized recovery of transition  
13 costs?

14 THE WITNESS: Yes.

15 EXAMINER PRICE: Although I will caveat  
16 that with you are not a lawyer and that's not a legal  
17 conclusion, that is your understanding of Ohio law?

18 THE WITNESS: Not a legal conclusion,  
19 that's correct, that's correct.

20 EXAMINER PRICE: We will strike the words  
21 "of more than 8 billion," and we will strike footnote  
22 39. The rest of the language will stay in place.

23 Mr. Kutik.

24 MR. KUTIK: Your Honor, our next motion  
25 is directed to page 22, the sentence that begins at

1 the end of line 12 and carries on to the middle of  
2 line 17, as well as the footnote. The source of that  
3 is comments from FES. FES is not a party to this  
4 case and, therefore, this is hearsay.

5 EXAMINER PRICE: Mr. Petricoff?

6 MR. PETRICOFF: Yes, your Honor. These  
7 are -- this is based on filings that were made at  
8 the -- at the Public Utilities Commission, and it's  
9 just quoted verbatim out of the -- out of the filings  
10 that were -- that were made. He is certainly allowed  
11 to read what's been filed with the Commission and  
12 gain an understanding from it.

13 I might also add that this is probably on  
14 the borderline, as well admission against interests.  
15 Although FES is not a party, they certainly are an  
16 affiliate of the -- of the applicant in this case,  
17 and this probably could be viewed as an admission  
18 against interest.

19 MR. KUTIK: Your Honor.

20 EXAMINER PRICE: Mr. Kutik.

21 MR. KUTIK: First, on that second point,  
22 the statements of an affiliate don't count as a  
23 statement of a party. That's pretty basic law. And  
24 with respect to the fact that it's quoted verbatim,  
25 that's of no weight. In fact, it shows the point



1 even more clearly because what this is is a statement  
2 of declarant. It's not here asserted for the truth  
3 of the matter. It's basic hearsay.

4 EXAMINER PRICE: I understand that, as to  
5 your first point, this is not -- we don't need to get  
6 into this question, but it is not really a simple  
7 matter of an affiliate or not. It's an affiliate  
8 that's a part of a transaction that's not subject to  
9 Commission review but for which the company is  
10 seeking recovery. It's not a simple matter of this  
11 is an ATSI statement in some other unrelated  
12 proceeding.

13 My question to you is, what would be the  
14 issue if we took administrative notice of FES's  
15 comments in 3151 and if we were to take FES's  
16 comments in 3151, take administrative notice, are  
17 there other provisions that you would want to balance  
18 out the record?

19 MR. KUTIK: Well, I guess if you are  
20 going to take administrative notice of the comments,  
21 then I assume it would be of all the comments.

22 EXAMINER PRICE: I am willing to do that.  
23 Okay. At this time we will take administrative  
24 notice of all the comments filed by various parties  
25 in 12-3151-EL-COI.

1 Mr. Kutik.

2 MR. KUTIK: Your Honor, our next motion  
3 deals with page 25, and the sentence that begins at  
4 the end of line 2 and goes to the middle of line 5,  
5 along with footnote 45. It's a statement based upon  
6 an academic economics journal article and hearsay.

7 MR. PETRICOFF: Once again, your Honor,  
8 the statement itself where Dr. Kalt talks about  
9 widely-recognized economics of rate of return is  
10 certainly within his level of expertise to make the  
11 declaration. In terms of his footnoting, once again,  
12 this is the academic style of basically attributing  
13 the -- your sources or influences. So we would ask  
14 certainly that the statement stays and there's no  
15 harm in having the footnote, but we wouldn't object  
16 to its being struck either.

17 EXAMINER PRICE: You don't object to the  
18 footnote being struck? Okay. I was going to try to  
19 work it under the learned treatise.

20 MR. PETRICOFF: The learned treatise,  
21 your Honor.

22 EXAMINER PRICE: No takebacks.

23 MR. PETRICOFF: I don't want to snatch  
24 victory from the jaws of defeat.

25 EXAMINER PRICE: I think you just did.

1 MR. PETRICOFF: Okay, your Honor. Thank  
2 you, though.

3 EXAMINER PRICE: We will strike the  
4 footnote, but we will go ahead and let the testimony  
5 stand. He does, in fact, have a Ph.D. in economics;  
6 is that correct?

7 THE WITNESS: Yes.

8 EXAMINER PRICE: So I think he is  
9 perfectly capable of making the statement. The  
10 footnote, however, Mr. Petricoff has too quickly  
11 conceded and we will strike.

12 MR. KUTIK: Your Honor, our next motion  
13 deals with page 34, question and answer to No. 30  
14 that begins on line 5 and ends on line 13, as well as  
15 the footnote, footnote 59. Obviously, it's a  
16 statement of staff and another party. Dr. Choueiki  
17 will be here to be cross-examined to present his own  
18 testimony. Mr. Kalt doesn't need to bombard the  
19 record with what he said in a different case. What  
20 he said in a different case might be relevant in  
21 terms of impeachment of Dr. Choueiki but not in  
22 support of Dr. Choueiki's position in this case.

23 EXAMINER PRICE: Mr. Petricoff.

24 MR. PETRICOFF: Well, your Honor, two  
25 things: One, we will start with the last point,

1 Dr. Choueiki will be here, so if there is anything  
2 that has to be clarified, this witness would be  
3 available for -- for cross-examination. In fact, we  
4 will be here on Friday.

5 In terms of the comments, basically the  
6 comment is there so he can comment on the comment,  
7 and I think that is -- that's fair game. That's  
8 testimony that's been presented to the record or will  
9 be presented to the record.

10 EXAMINER PRICE: Well, I mean, it's  
11 not -- he is referring back to the AEP testimony, not  
12 what Dr. Choueiki said in this proceeding.

13 MR. PETRICOFF: That's correct, your  
14 Honor. And I guess in that regard, we would not  
15 object if we want to take administrative notice of  
16 the staff's testimony there as well. I might add  
17 that we have supplemental testimony in this case  
18 based on the ruling in the AEP ESP III case.

19 EXAMINER PRICE: We have been allowing  
20 testimony from AEP, has come in en masse in this  
21 proceeding, so we will take administrative notice of  
22 Dr. Choueiki's testimony, unless Mr. McNamee has an  
23 objection. Do you have an objection?

24 MR. McNAMEE: Not at all.

25 EXAMINER PRICE: We will take

1 administrative notice of Dr. Choueiki's testimony  
2 found in AEP -- I think we've -- AEP Ohio Case No.  
3 13-2385-EL-SSO. I think we have already taken  
4 administrative notice of various parts of that  
5 testimony filed in this case or we granted admission,  
6 one or the other.

7 Okay. Mr. Kutik.

8 MR. KUTIK: Your Honor, our next motion  
9 deals with page 45, the sentence that begins on line  
10 9 and goes to the beginning of line 12 and footnote  
11 85. Again, this is a trade article reference. It's  
12 hearsay.

13 EXAMINER PRICE: Mr. Petricoff.

14 MR. PETRICOFF: Your Honor, could I have  
15 those line -- Mr. Kutik, those line numbers again?

16 EXAMINER PRICE: I believe it's line 9  
17 through line 12 and footnote 85 inclusive; is that  
18 correct?

19 MR. KUTIK: Yes, your Honor.

20 MR. PETRICOFF: Well, your Honor, his  
21 knowledge comes from basically trade documents that  
22 he has -- that he has read, and basically this is  
23 the -- he's incorporating these -- these developments  
24 into his theories and his testimony here. He is here  
25 for -- for cross-examination. The -- at this point,

1 he can be tested as to his specific knowledge on  
2 these plants, and unless and until that is done and  
3 he is shown to have none, the statement should stay.

4 EXAMINER PRICE: No. I think Mr. Kutik  
5 is exactly right on this one. This is straight up  
6 offered for -- statement offered for the truth of the  
7 matter asserted and is a newspaper article. We will  
8 grant the motion to strike in its entirety.

9 MR. KUTIK: Your Honor, now we will turn  
10 to the supplemental testimony.

11 EXAMINER PRICE: Okay.

12 MR. KUTIK: Our first motion, your Honor,  
13 in the supplemental testimony deals with page 12,  
14 line 16 through 21 or the sentence that ends on line  
15 21, that ends with the word "plants," as well as the  
16 footnote, footnote No. 32. These are observations,  
17 your Honor, based upon a newspaper article, and even  
18 worse, your Honor, it's an opinion article that  
19 quotes yet another witness in this case. So it's  
20 multiple levels of hearsay.

21 MR. PETRICOFF: Well, your Honor, I am  
22 going to have to disagree with that. First of all,  
23 the footnote itself is different than the statement  
24 in the statute. I will take the footnote first. It  
25 starts with, "For example." If, in fact, we have

1       been striking references to newspaper articles, then  
2       the newspaper article can go.

3               As for the statement itself on lines 16  
4       through 21, basically, he is inferring from the  
5       actions that FirstEnergy has taken of basically what  
6       the motives and what -- what the outcomes are. He's  
7       allowed to do that as an expert witness. This is his  
8       statement, and he is available for cross-examination.

9               EXAMINER PRICE: Mr. Kutik.

10              MR. KUTIK: Your Honor, may I approach  
11       and show you the article?

12              EXAMINER PRICE: No. The article is out.  
13       The article is out for sure.

14              MR. KUTIK: But I think you will see,  
15       your Honor, if you read the article, this is based  
16       upon the article.

17              EXAMINER PRICE: Okay. It's worth a  
18       shot. You may approach.

19              We are going to go ahead and grant the  
20       motion to strike.

21              MR. KUTIK: Your Honor, our next motion  
22       relates to page 26 of the supplemental testimony, and  
23       it's the sentence that begins on line 17 and ends on  
24       line 20, as well as footnotes 62 and 63 quoting from  
25       a -- or information from a website of a nonparty.

1 It's hearsay.

2 EXAMINER PRICE: Beginning on line 17; is  
3 that right?

4 MR. KUTIK: Yes, your Honor.

5 EXAMINER PRICE: Mr. Petricoff?

6 MR. PETRICOFF: Just a moment, your  
7 Honor. I am still reading through it.

8 Your Honor, I think these are -- these  
9 are positions that he holds irregardless of the -- of  
10 the cited newspaper articles or, in this case, trade  
11 press articles. We will not object to striking the  
12 references, but I think his knowledge of what the  
13 CRES providers are doing will support the statements  
14 without the footnotes. Once again, the footnotes are  
15 just attributing or citing facts to back up his  
16 observations.

17 MR. KUTIK: Well, your Honor, he is  
18 specifically quoting phrases apparently from this  
19 website.

20 EXAMINER PRICE: I guess the question  
21 from the Bench that we are kicking around, is this  
22 being offered for the truth of the matter asserted?  
23 I will let you address that question without  
24 further --

25 MR. KUTIK: Your Honor, it is -- this is



1       asserting what is being said in these websites in  
2       terms of the marketing that's being done.

3               MR. PETRICOFF: Well, I think that's -- I  
4       think that's right. This is what's going on in the  
5       market, and those are his observations. I guess in  
6       terms of the voir dire question, we would like to ask  
7       at this point is whether or not the -- whether these  
8       are the only sources. If these are not only the  
9       sources of his coming to these conclusions, then it  
10      is not just a quote, it's a concept. And I believe  
11      it's a concept in reading it, but obviously that  
12      question can be asked of the witness.

13              MR. KUTIK: Well, your Honor, again,  
14      there are quotes on line 19 and line 20 that  
15      obviously come from the website. Those aren't  
16      concepts, those are quotes.

17              EXAMINER PRICE: I understand that. Do  
18      you have independent knowledge of this beyond the two  
19      websites that you cite?

20              THE WITNESS: I do have independent  
21      knowledge that this kind of marketing goes on.  
22      These -- Mr. Petricoff didn't say it correctly.  
23      These are not trade press articles. These are  
24      advertisements on the websites that I, as a consumer,  
25      went to. I am not a consumer in Ohio, but I went to

1 them. It's like saying I saw a commercial on Monday  
2 night football. So these are not trade press  
3 articles. These were actually marketing to consumers  
4 that I went and looked at myself.

5 EXAMINER PRICE: Okay. We are going to  
6 grant in part and deny in part the motion to strike.  
7 We are going to strike the comma -- strike that. We  
8 are not going to strike the comma. We are going to  
9 grant the motion to strike beginning with the word  
10 "and" and continuing through the rest of line 18, 19,  
11 and 20, including the footnote 62 and 63, but I think  
12 that the witness is capable of testifying that CRES  
13 providers make elimination of retail volatility a  
14 central selling point in acknowledging that it goes  
15 on in marketing.

16 MR. KUTIK: Are you striking the words  
17 with "explicit marketing" as well?

18 EXAMINER PRICE: I was not, but we are  
19 striking the examples.

20 MR. KUTIK: Your Honor, our next motion  
21 deals with page 32 --

22 EXAMINER PRICE: Could you hold that  
23 thought for one moment?

24 MS. BOJKO: You trail of when you're  
25 making the end of your ruling. You're striking the?

1 EXAMINER PRICE: Sorry. Again, we are  
2 striking everything beginning with the word "and" on  
3 line 18 and ending with line 20, including both  
4 footnotes, but the sentence will now read, "In fact,  
5 CRES providers make elimination of retail rate  
6 volatility a central selling point with explicit  
7 marketing."

8 MS. BOJKO: Thank you.

9 EXAMINER PRICE: Thank you, Mr. Kutik.

10 MR. KUTIK: Your Honor, our next to last  
11 motion deals with page 32, particularly footnote 69  
12 and the text that accompanies it which begins on line  
13 10 and ends on line 11, the sentence that starts with  
14 the word "thus."

15 Again, your Honor, it's -- I can't even  
16 identify what the source is. It appears to be from  
17 an academic article or some kind of trade press or  
18 some consultant's report, but whatever it is doesn't  
19 fit with any hearsay exception. Certainly has no  
20 foundation. That it is for all those reasons we  
21 would move to strike.

22 EXAMINER PRICE: Dr. Kalt, what is this  
23 article?

24 THE WITNESS: It is what you would call a  
25 learned treatise. Weisbrod & Weisbrod are a

1 well-known volume on the use of the kind of modeling  
2 that's been discussed in the paragraph there.

3 EXAMINER PRICE: You believe that this  
4 volume is widely accepted for its reliability?

5 THE WITNESS: I believe so. I may have  
6 even used it in my own teachings.

7 EXAMINER PRICE: We are going to deny the  
8 motion to strike.

9 MR. KUTIK: Our last motion, your Honor,  
10 relates to attachment JPKS-1, and in the table itself  
11 under the PJM natural gas plants currently under  
12 construction, we believe that all the information  
13 that's shown there is hearsay. But recognizing the  
14 Bench's prior rulings with respect to material that's  
15 based upon filings, we would move to strike  
16 everything but the references to and the lines  
17 relating to the Oregon Energy Center and the Carroll  
18 County Energy project. Everything else is based upon  
19 either a newspaper article or some other periodical  
20 or press release related to parties that are not here  
21 and, therefore, your Honor, all this is hearsay.

22 EXAMINER PRICE: Mr. Petricoff.

23 MR. PETRICOFF: Well, your Honor, the  
24 source appears to be from the -- from PJM, their --  
25 their queue information, which I believe is -- is on

1 a website, so it is published. We have several  
2 versions and copies of the PJM publications on the  
3 queue line already into evidence. This is just a  
4 chart that he has made summing up this -- this  
5 information and, therefore, it should be allowed.

6 EXAMINER PRICE: Okay. Dr. Kalt, the  
7 plant names, owners, capacity state and technology,  
8 did you pull that from the PJM queue or did you pull  
9 that from the media sources that you relate?

10 THE WITNESS: I believe I pulled those  
11 from the PJM data on the queue and the raw data from  
12 the Ventyx data that is routinely used in this  
13 industry. I believe that's where that information is  
14 pulled from.

15 EXAMINER PRICE: And what was the purpose  
16 of -- would you relate to sources in the chart?

17 THE WITNESS: I believe I was providing  
18 there information on the dates in which construction  
19 began. For example, you see the very first one, "CPB  
20 breaks ground"? I am providing information there as  
21 to timing, as to when construction began.

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

23 EXAMINER PRICE: Uh-huh.

24 MR. KUTIK: What this witness said is  
25 patently false. The information with respect to the

1 name and owner of the plant does not appear on the  
2 PJM queue. And we've shown you those documents and  
3 we could show it to you again. What it shows is the  
4 transmission line and it's related to and it also  
5 shows the capacity. You can also find out whether  
6 it's gas fired or coal fired and whether it's under  
7 construction or not. But the name and owner does not  
8 come from that information.

9 EXAMINER PRICE: He also mentioned the  
10 Ventyx Velocity Suite, though. Can you show me that  
11 this information does not appear in the Ventyx  
12 Velocity --

13 MR. KUTIK: No, but it does not come from  
14 PJM.

15 EXAMINER PRICE: But he mentioned both.  
16 He did mention both. Which raw data did you pull  
17 from Ventyx velocity data?

18 THE WITNESS: I believe the raw data here  
19 includes data on capacity. I would have to go back  
20 and check and see whether it contains the names. I  
21 can't be sure as I sit here now. I just have to go  
22 back and check. I believe it does tell me the  
23 technology as well. It does tell me the state. I  
24 would have to go back and check on the names.

25 EXAMINER PRICE: Mr. Kutik, you said you

1 could show the Bench the queue doesn't have the plant  
2 name. Can you show us now?

3 MR. KUTIK: Sure, your Honor.

4 MS. BOJKO: Your Honor, could you ask the  
5 witness to turn his microphone back on?

6 EXAMINER PRICE: Could you turn your  
7 microphone back on?

8 THE WITNESS: Is it back on?

9 EXAMINER PRICE: Or you can point me to  
10 the exhibit.

11 MR. KUTIK: Sure. May I have a moment?

12 EXAMINER PRICE: You may. Mr. Kutik, we  
13 are going to defer this issue while you look at that.  
14 We will proceed with cross-examination. We will take  
15 this up again at the admission, when we admit the  
16 document.

17 MR. PETRICOFF: Your Honor, along that  
18 line, when we are taking it up again, could we also  
19 take a look at the Ventyx to see what is -- what is  
20 available? I think it's important here that we allow  
21 our experts to basically look at all of the available  
22 data. Most of these -- Most of this type of  
23 information has links that go on to the -- one to the  
24 other.

25 We want the experts to be able to

1 basically aggregate and bring the information into  
2 usable form, such as this chart, so we would also  
3 like to present the information on Ventyx as well.

4 EXAMINER PRICE: That would be fine.

5 MR. PETRICOFF: Thank you.

6 MR. KUTIK: Well, your Honor, I believe  
7 that if he wants to establish a foundation, the time  
8 to do that is before cross-examination. He can't do  
9 it after the fact.

10 EXAMINER PRICE: I understand. But he is  
11 doing it in response to the motion to strike and  
12 so...

13 MR. KUTIK: Now is the time to do it,  
14 your Honor.

15 EXAMINER PRICE: Well, I am giving you a  
16 chance to find the document. We are going to give  
17 them a chance, the same courtesy, so.

18 Okay. Mr. Hays?

19 MR. HAYS: No questions. Thank you, your  
20 Honor.

21 EXAMINER PRICE: I'm sorry, were you  
22 done?

23 MR. KUTIK: Yes, I am. Thank you, your  
24 Honor.

25 EXAMINER PRICE: Ms. Bojko?



1 MS. BOJKO: No questions. Thank you.

2 EXAMINER PRICE: Mr. Sahli?

3 MR. SAHLI: No questions.

4 EXAMINER PRICE: Mr. Kurtz -- I'm sorry,  
5 Mr. Sauer?

6 MR. SAUER: No questions, your Honor.

7 EXAMINER PRICE: Mr. Kurtz?

8 MR. KURTZ: I do have a few questions.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Kurtz:

12 Q. Good morning, Dr. Kalt. Good morning,  
13 sir.

14 A. Good morning.

15 Q. Will you turn to your direct testimony,  
16 page 8, please. Are you there?

17 A. Yes.

18 Q. I want to read just very briefly from  
19 line 9. "In fact, this market-driven process of  
20 weeding in the efficient and weeding out the  
21 inefficient is the cornerstone of the restructuring  
22 of the nation's electric power supply and regulation  
23 over the last two decades. We understock this  
24 restructuring..." Who was "we"?

25 A. It was referring to the United States.

1 Q. Did you review Senate Bill 221 in Ohio  
2 before you filed your testimony?

3 A. I believe I had seen it, yes.

4 Q. Did you review the ESP statute?

5 A. I believe -- I believe I saw it, yes.

6 Q. What do you recall of that statute?

7 A. I recall that Ohio -- I don't have a  
8 legal opinion, but I recall that Ohio went through a  
9 process of restructuring that ended up in a so-called  
10 hybrid system in which there was what we economists  
11 would refer to as restructuring or bundling,  
12 separation of generation from regulated portions of  
13 the electric power sector into unregulated -- with  
14 the generation going into an unregulated sector  
15 that -- I don't recall exactly which Ohio law. I  
16 don't have a legal opinion, but I understood that the  
17 Ohio system provided for the filings of these ESP  
18 plans. That's what I understood.

19 Q. Do you understand, under the ESP statute,  
20 utilities are allowed to, with Commission approval,  
21 build new generation and receive a cost-of-service  
22 surcharge for the cost of that generation over its  
23 life on a nonbypassable basis?

24 A. I haven't formed an opinion on that one  
25 way or the other. I don't have a legal opinion on

1 that.

2 Q. Do you know if that's true, if the ESP  
3 statute gives the Commission that authority?

4 A. That calls for a legal opinion. I don't  
5 have an opinion on that.

6 Q. Were you aware of that before you filed  
7 your testimony?

8 A. I was aware of the things I just  
9 mentioned to you.

10 EXAMINER PRICE: Hold on a second,  
11 Mr. Kutik -- Mr. Kurtz, I'm sorry. Wrong person.  
12 It's early.

13 MR. KUTIK: Wrong K. Wrong K-U.

14 EXAMINER PRICE: You know, I am not going  
15 to let you evade Mr. Kurtz's question about what 221  
16 does and doesn't allow. I don't believe he was  
17 asking you as a legal conclusion. I think he was  
18 asking you in terms of your regulatory understanding,  
19 which is consistent with your discussion of Senate  
20 Bill 3, so I am going to direct you to answer that  
21 question.

22 THE WITNESS: Okay. What was your  
23 question again?

24 MR. KURTZ: Well, your Honor, if you have  
25 a question you would like the witness to answer, I

1 don't exactly --

2 EXAMINER PRICE: The question before you  
3 is are you aware that under 4928.143 the Commission  
4 can authorize a utility to impose a nonbypassable  
5 surcharge to pay for the construction of a generating  
6 facility for the life of the facility?

7 THE WITNESS: All I can say is I don't --  
8 I don't know for sure. I have heard discussion of  
9 that and assertions to that. That's all I know.

10 EXAMINER PRICE: Thank you.

11 MR. KURTZ: Thank you, your Honor.

12 Q. (By Mr. Kurtz) Dr. Kalt, it's true, isn't  
13 it, that there is nothing in the PJM rules that would  
14 prohibit the purchase power agreement transaction  
15 between FES and the three utility operating  
16 companies?

17 MR. PETRICOFF: Excuse me. Could I have  
18 that question read back?

19 EXAMINER PRICE: You may.

20 Q. I can rephrase it. It's true, isn't it,  
21 that the sale between FES to the three operating  
22 companies, that wholesale, sale, and interstate  
23 commerce on a cost-of-service basis, there is nothing  
24 in the PJM rules that prohibits that, correct?

25 MR. PETRICOFF: I am going to object.

1 There is nothing in the record this is on -- that the  
2 PPA is on a cost-of-service basis.

3 MR. KURTZ: The whole nature of the  
4 transaction is, but let's strike the words "cost of  
5 service."

6 Q. (By Mr. Kurtz) Is there anything in the  
7 PJM rules that prohibits the sale between FES and the  
8 operating companies under the PPA, as you understand  
9 it?

10 A. I'm concerned you are going to think I am  
11 evading the answer, so I will try to answer it. I am  
12 aware that there have been legal cases. I am not  
13 testifying to the law, but there have been legal  
14 cases in which that kind of transaction has been  
15 found to be inconsistent with the FERC regulations,  
16 which I interpret to mean the rules under which PJM  
17 operates.

18 Q. You are referring to the New Jersey and  
19 Maryland situation?

20 A. New Jersey and Maryland cases.

21 Q. My question is, is there anything in the  
22 PJM rules, that you are aware of, that prohibits this  
23 transaction?

24 A. What I don't know is, from a legal  
25 matter, does that count as PJM rule if I understand

1 those legal cases to be telling us what the rules for  
2 FERC were and FERC sets the rules for PJM. That's my  
3 understanding.

4 Q. Okay. Do you know what the minimum offer  
5 price rule is in PJM?

6 A. Yes.

7 Q. What does it do and what is it intended  
8 to do?

9 A. Well, under certain circumstances, it  
10 sets exactly as the phrase says, it sets standards  
11 for minimum offers that can be brought into various  
12 of the PJM auctions.

13 Q. Why is that -- what is the purpose of the  
14 rule?

15 A. Well, I can't give you a legal opinion,  
16 but I can say from an economic perspective, it serves  
17 as a function of, for example, preventing actually  
18 what we will call monopsony market power, downward  
19 suppression of prices.

20 Q. On the buyer's side?

21 A. On the buyer's side, yes.

22 Q. It's true, isn't it, that the MOPR,  
23 minimum offer price rule, only refers to new  
24 generation?

25 A. I'm not sure. I can't recall.

1 Q. Do you know if it only applies to new  
2 gas-fired generation?

3 A. I would have to check.

4 Q. Do you know if it explicitly does not  
5 apply to existing coal or nuclear generation?

6 A. I would have to check.

7 Q. Okay. Without a legal opinion, do you  
8 understand that the transaction between FES, the sale  
9 from FES to the three operating companies is governed  
10 by the Federal Power Act, as a wholesale sale and  
11 interstate commerce?

12 MR. PETRICOFF: I am going to object,  
13 your Honor. That is a legal question.

14 MR. KURTZ: I am asking for his basic  
15 economic understanding of the transaction.

16 EXAMINER PRICE: He can answer if he  
17 knows.

18 A. I have heard it said by lawyers that the  
19 transaction is a federal regulated -- is under  
20 federal jurisdiction.

21 Q. Under -- do you understand --

22 A. Whether that's under the Federal Power  
23 Act or something else, I don't have a legal opinion  
24 for you.

25 Q. You understand that the basic standard

1 for that transaction is it needs to be just and  
2 reasonable?

3 A. My understanding, again, as a participant  
4 in these discussions but not as a lawyer or legal  
5 expert is that there are multiple standards from kind  
6 of Mobile-Sierra standards and other things.

7 Q. That wouldn't apply. Not -- just and  
8 reasonable and nondiscriminatory, let's put it that  
9 way.

10 MR. PETRICOFF: Your Honor, I move to  
11 strike that comment that doesn't apply. That's a  
12 declaratory statement.

13 MR. KURTZ: Mobile-Sierra's doctrine  
14 deals with the standard -- the public interest  
15 standard for changing a FERC-approved rate.

16 EXAMINER PRICE: I understand Mobile  
17 Sierra.

18 Q. Let me start again.

19 EXAMINER PRICE: We will grant  
20 Mr. Petricoff's motion to strike.

21 Q. You understand that the basic standard  
22 for FERC judging this transaction is that it needs to  
23 be -- meet the just and reasonable and  
24 nondiscriminatory standard?

25 A. I do understand that as a general matter.



1 I don't know what you mean by "basic." Those laws  
2 are always very complicated once you guys, lawyers,  
3 get arguing, but I do understand the federal policy  
4 does invoke criteria of just and reasonableness and  
5 nondiscrimination.

6 Q. Does the Federal Power Act require a  
7 market-based transaction or would a cost-of-service  
8 transaction satisfy that standard, if you know? Does  
9 the Federal Power Act require market-based  
10 transactions or would a cost-of-service wholesale  
11 sale satisfy the criteria as well, if you know?

12 A. It would depend on the facts and  
13 circumstances of the individual transaction, whether  
14 they were just and reasonable or discriminatory.

15 Q. Okay. But it could be either cost of  
16 service or market based and still be just and  
17 reasonable, correct?

18 A. I'm not sure.

19 Q. Okay. Do you know how many states are in  
20 PJM?

21 A. I want to say something like 13. I have  
22 recently worked on that, something like that.

23 Q. 13 plus the District of Columbia?

24 A. I believe that's right.

25 Q. Okay. Do you understand that within

1 those 13 states there are various state regulatory  
2 schemes?

3 A. Yes.

4 Q. Okay. Do you understand that there are  
5 state regulatory schemes within the PJM footprint  
6 that would -- would require transactions other than  
7 on a pure market basis?

8 Let me be more specific. Do you know how  
9 many PJM states have renewable portfolio standards?

10 A. I know a number of them do. I have never  
11 tried to count them.

12 Q. Would a state that requires certain types  
13 of generation to be purchased, would that distort the  
14 wholesale market?

15 A. As a general matter, those can be  
16 distorted, yes.

17 Q. Okay. Do you know how many states --

18 A. It depends on the terms and conditions  
19 under which that's mandated, but as a general matter,  
20 it can distort.

21 Q. Well, if a state requires an X percent of  
22 the generation supply be a particular type, wouldn't  
23 that be distortive?

24 A. Not necessarily. It would depend on the  
25 procurement regulations and so forth and whether the

1 procured supplies met a market test.

2 Q. Well, give me an example where an RPS  
3 standard would be distortive, would, in fact,  
4 distort.

5 A. In those situations where -- when we say  
6 distortive, we mean distortive efficient market  
7 prices, just so we know. If, for example, a  
8 renewable standard had the effect or explicitly  
9 require that certain kinds of renewables be purchased  
10 when those renewables were not available at a cost,  
11 that was reflective of the full economic cost of  
12 those -- the price that was not reflective of the  
13 full economic cost of those renewables.

14 In other words, if people were forced to  
15 buy them at above market prices, for example, they  
16 couldn't pass a market test, or could not pass a  
17 cost/benefit test where you would be including  
18 certain environmental benefits of those renewables.

19 Q. Do you know if that distortive standard  
20 does, in fact, apply anywhere in PJM?

21 A. I form the general impression that it  
22 does, but never had occasion to specifically  
23 investigate all the details of that.

24 Q. Do you know if there are any states  
25 within PJM that require -- that have government

1 programs to force consumers to use less of the  
2 product, less electricity through energy efficiency  
3 mandates?

4 A. By "force," you mean --

5 Q. Well, spend ratepayer money on -- to give  
6 other ratepayers new appliances, new windows, energy  
7 efficiencies so those consumers use less of the  
8 product.

9 A. That's what you mean by "force"?

10 Q. Yes.

11 A. There may be such programs where energy  
12 efficiency was subsidized in that way, yes.

13 Q. Would that distort the wholesale market  
14 by reducing the demand for the product?

15 A. That would depend on the nature of the  
16 facts and circumstances of the particular programs  
17 involved, whether the energy efficiencies were, in  
18 fact, passing or not passing a social cost/benefit  
19 test. You would have to go and look and see  
20 whether -- in each case whether they pass the social  
21 cost/benefit test.

22 Q. Even if they did, why wouldn't that be  
23 distortive, if you are taking money from one group of  
24 consumers and using it to reduce the energy  
25 consumption of another group? Why wouldn't that be

1 just a flat out subsidization that distorts the  
2 market?

3 A. Because in the presence of what  
4 economists refer to externalities or imperfect  
5 information or information asymmetries, the market  
6 itself could be distorted, and that's why we  
7 sometimes have regulation. The markets themselves  
8 can be distorted. So we intervene often in those  
9 instances to try to market distortion to make the  
10 market behave in a nondistortive way.

11 Q. So if there was a positive societal  
12 externality, that might overcome the market's  
13 distortive effects?

14 A. That's possible, yes.

15 Q. Have you looked to see whether this  
16 transaction has any positive social externalities in  
17 terms of property tax, maintaining property taxes for  
18 the schools in Ohio and jobs in Ohio, et cetera?

19 A. Those are actually not externalities.  
20 Those are not sources of distortion, but I have  
21 looked at that issue, but you are mis -- with all due  
22 respect, those are not the kinds of distortions that  
23 we would term externalities. They are not  
24 distortions to the market process. They are actually  
25 a market process working to reallocate sources.

1           Q.    Well, would a state have a valid policy  
2           reason for wanting to maintain employment and the tax  
3           base within its state?

4           A.    It might have an interest, but, for  
5           example, in the context of what we have here, for  
6           example, not giving a legal opinion, but I testified  
7           as an economist on the matter many times, the  
8           interstate commerce clause in the United States  
9           Constitution recognizes that it is not in the  
10          national interest for states to have the range to go  
11          pursue narrow state interests when they are  
12          distortive of interstate commerce, in this case  
13          electric power markets.

14          Q.    Would that apply to a state renewable  
15          portfolio standard that mandated certain types of  
16          renewable generation?  Would that be a violation of  
17          the commerce clause by distorting the wholesale --

18          A.    I don't have a legal opinion on that.  
19          There may be state-level externalities, for example,  
20          departmental externalities that might, in fact, not  
21          go awry of the interstate commerce clause.

22                   EXAMINER PRICE:  Do those have to be  
23                   local externalities?

24                   THE WITNESS:  Local, I mean within state.

25                   EXAMINER PRICE:  I understand that, but

1 what I'm saying is when you say, well, the state may  
2 have -- I am trying to use your words properly and I  
3 am going to fail, but does it have to respond to a  
4 local condition or can a state simply have an  
5 interest in promoting renewable energy?

6 THE WITNESS: From an economic  
7 perspective, if the state has an ability -- he is  
8 asking me about the presence of a state interest. To  
9 an economist, that would arise as a result of a state  
10 having impacts in its jurisdiction. Not improving  
11 environmental conditions in Arizona, that's not a  
12 state interest. Now, they might say that, but that  
13 wouldn't be -- I wouldn't think that is a state  
14 interest. In other words, global warming or  
15 something like that.

16 EXAMINER PRICE: You would say generally  
17 global warming or reducing the import of power from  
18 other countries is not a valid state interest  
19 economically?

20 THE WITNESS: It would be -- it would be  
21 to the extent such conduct by a state could have a  
22 positive impact within the state. They could have an  
23 interest in changing global climate, in other words,  
24 if it improved the state. If the state is trying to  
25 be altruistic, it could be a state interest, I guess,

1 but in the formal way an economist would think about  
2 it, I wouldn't think that is a state interest.

3 EXAMINER PRICE: Thank you.

4 Thank you, Mr. Kurtz.

5 Q. (By Mr. Kurtz) Dr. Kalt, within the  
6 13-state PJM footprint, do you know if there are  
7 municipal electric utilities that participate in the  
8 PJM energy and capacity markets?

9 A. I believe there are some, yes.

10 Q. Do you know how many of those have  
11 cost-of-service recovery for the generation that they  
12 own?

13 A. I have never tried to do a count. I know  
14 states like West Virginia, Virginia, for example, I  
15 believe do that.

16 Q. Are they violating any PJM policy or rule  
17 by allowing generation that's in the rate base of the  
18 municipal utility to participate in the PJM markets?

19 A. Again, I don't have a legal opinion. I  
20 am not aware of any rules being violated. Again, the  
21 Maryland and New Jersey cases teach that it would  
22 depend on how they do it.

23 Q. Do you know if there are customer-owned  
24 electric cooperatives that own generation recovered  
25 from their member owners, the ratepayers, on a



1 cost-of-service basis?

2 A. I believe there are, yes.

3 Q. Do you know if those cooperative  
4 utilities participate in the PJM energy and capacity  
5 markets?

6 A. I believe they do.

7 Q. Is there any prohibition against that  
8 that you are aware of?

9 A. I don't have a legal opinion, but I am  
10 not aware of one. Although, again, the Maryland and  
11 New Jersey case would teach that it would depend on  
12 how they do.

13 Q. Do you understand that there are  
14 investor-owned utilities that have cost-of-service  
15 generation within the PJM footprint?

16 A. "Investor-owned utilities"?

17 Q. Yes.

18 A. Oh, certainly.

19 Q. And that generation routinely  
20 participates in the PJM energy and capacity markets,  
21 correct?

22 A. If I understand your question correctly,  
23 sure.

24 Q. And, again, you are not aware of any  
25 prohibition against that within --

1           A.    Not a legal opinion, but if they  
2 participate or any of these parties as you have just  
3 mentioned, if they participate in ways that, for  
4 example, exercise either -- exercise either monopoly  
5 or monopsony market power, then they are not allowed  
6 to participate. PJM rules have all kinds of market  
7 power mitigation and so forth.

8           Q.    Okay. Do you understand that in the PJM  
9 base residual auctions, that imported generation is  
10 allowed to participate if it meets certain  
11 requirements? It's got firm transmission, it's  
12 telemeter, it's acting as if it's in the control zone  
13 of PJM? Are you aware of that?

14          A.    I'm aware that there are requirements  
15 under the new so-called CP or capacity performance  
16 regulation. Those have been tightened, if you will.  
17 There is a must-offer requirement, and under that  
18 requirement, there are various criteria that I  
19 understand must be met.

20          Q.    Do you understand that a significant  
21 amount of generation gets imported from MISO, the  
22 Mid-Continent Independent System Operator?

23          A.    Oh, recently I looked at that data. I  
24 don't know what you mean by "significant." As I  
25 recall, it was under 10 percent, something like that.

1 Q. So 10 percent of PJM's 180,000 megawatts  
2 or something like that?

3 A. It was under 10 percent, as I recall,  
4 yeah.

5 Q. Do you understand that some of that  
6 generation from MISO is in the rate base of  
7 investor-owned utilities on a cost-of-service basis?

8 A. No, I don't.

9 Q. Okay. If that were true, would that be a  
10 violation of any PJM rule that you are aware of?

11 A. It doesn't sound like, if it were true,  
12 it's going on, PJM hasn't knocked it down.

13 MR. KURTZ: Thank you, your Honor.

14 Thank you, Doctor. No more questions.

15 EXAMINER PRICE: Mr. Kutik.

16 MR. KUTIK: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kutik:

20 Q. Good morning.

21 A. Good morning.

22 Q. Would it be fair to say, sir, that over  
23 the last 20 years, your main interest is or has been  
24 in the affairs of Native Americans or American  
25 Indians?

1           A.    No, I don't think that's right.  I would  
2   say in my academic research, I probably published  
3   more in that area than in any other areas, but in my  
4   consulting activities, almost none of that activity  
5   has been from an Indian nation.

6           Q.    So if we look at your resume, for  
7   example, would it be fair to say that certainly  
8   within the last 20 years, over half of your  
9   publications and presentations have been on issues  
10  relating to Native Americans?

11          A.    I have never tried to count, but I  
12  wouldn't be surprised, yeah.  Well, I take it back.  
13  My academic presentations.

14          Q.    Yes.

15          A.    But, again, my -- I am making a  
16  presentation right now.  My expert witness doctor --

17          Q.    My question to you is in terms of your  
18  publications, sir.

19          A.    And, again, presentations, you said that.  
20  That's all I was qualifying.

21          Q.    Now, sir, from time to time, at least on  
22  two occasions that I am aware of, at least, you have  
23  participated in filing amicus briefs at the U.S.

24  Supreme Court, correct?

25          A.    Yes, yes.

1 MR. KUTIK: Your Honor, may I approach?

2 EXAMINER PRICE: You may.

3 MR. KUTIK: Your Honor, at this point we  
4 would like to have marked as Company Exhibit 116 a  
5 document from NRG Power Marketing versus Maine PUC.

6 EXAMINER PRICE: It will be so marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Mr. Kutik) Dr. Kalt, I just handed  
9 you what has been marked for identification as  
10 Company Exhibit 116. Do you recognize this as a  
11 printout of an amicus brief that you and others filed  
12 in NRG Power Marketing versus Maine PUC at the U.S.  
13 Supreme Court on July 14, 2009?

14 A. Yes, I and a number of other professors  
15 filed this amicus brief.

16 Q. Now, you haven't testified in Ohio  
17 before, have you?

18 A. I don't believe so.

19 Q. And would it be fair to say that prior to  
20 this case you hadn't done any research or provided  
21 any testimony on SB3?

22 A. I don't recall studying SB3. I do recall  
23 studying, at various times in my work, the  
24 restructuring of the electric power sector in Ohio.

25 Q. So the answer to the question is yes, you

1 haven't done any research on SB3 or provided any  
2 testimony on SB3 before you began involvement in this  
3 case; is that correct?

4 MR. PETRICOFF: Objection, your Honor.  
5 That is not a fair summary of the answer.

6 EXAMINER PRICE: Well, he can answer  
7 however he thinks that's not correct.

8 Q. Is that correct, sir?

9 A. It is correct I have not provided  
10 testimony on SB3. My understanding was SB3 was a  
11 centerpiece of Ohio's restructuring, so I didn't -- I  
12 wasn't doing legal research on SB3, but I was looking  
13 at the economics that flowed, what I understand of  
14 the SB3.

15 MR. KUTIK: Your Honor, may I approach,  
16 please?

17 EXAMINER PRICE: You may.

18 Q. Dr. Kalt, I would like to give you  
19 transcripts from the depositions that you took in  
20 this case, and I will give you just the public  
21 versions of those transcripts. Dr. Kalt, you recall  
22 being deposed in this case, correct?

23 A. Sure.

24 Q. At one time you were deposed by my  
25 colleague, Mr. Lang, and one time I had the pleasure

1 of asking you questions. Do you remember that?

2 A. Yes, yes.

3 Q. You took an oath to tell the truth at  
4 both times?

5 A. Of course.

6 Q. And of course, you did tell the truth,  
7 correct?

8 A. Of course.

9 Q. And you knew that, when we were going to  
10 talk with you in your deposition and ask you  
11 questions in your deposition, you knew we were going  
12 to ask you questions about the issues in this case,  
13 correct?

14 A. Yes.

15 Q. Now, sir, I would like to have you refer  
16 to your first deposition. That is the deposition  
17 transcript that's dated February 2, 2015. And  
18 specifically, sir, I want to refer you to page 95 of  
19 your deposition. Tell me when you are there.

20 A. Okay.

21 Q. And starting at page 95, line 23, did you  
22 not give the following answer to the following  
23 question: "Question: Prior to your participation in  
24 this case, have you done research or provided  
25 testimony related to Ohio involving Senate Bill 3?

1 "Answer: No."

2 A. That's correct.

3 Q. That was your testimony.

4 A. That's what I said.

5 Q. Okay. Now, isn't it true also that you  
6 haven't read SB 3 in its entirety?

7 A. I think I answered that before. I don't  
8 believe I have.

9 Q. Okay. And you don't remember if SB 221  
10 authorized ESPs for electric distribution utilities,  
11 correct?

12 A. Well, I am aware now that SB 221 has done  
13 that. As I understand it, that's what we talked  
14 about earlier.

15 Q. Okay. Let me refer you to your  
16 deposition testimony, sir.

17 A. As I said, I am now aware.

18 Q. You were not aware at your deposition,  
19 correct?

20 A. I don't recall being aware at that time.  
21 I didn't know -- I don't know -- I knew there were  
22 ESPs authorized. I don't recall if I knew they were  
23 authorized by SB 221 as opposed to something else.

24 Q. Well, let me refer you again to your  
25 testimony in your deposition. Line 9 -- at page 96,



1 starting at line 24, did you not answer the following  
2 question the following way: "Question: Okay. Thank  
3 you. Then with regard to Senate Bill 221, do you  
4 understand it was Senate Bill 221 that authorized  
5 electric security plans for electric distribution  
6 utilities in Ohio?

7 "Answer: I don't recall."

8 That was your testimony.

9 A. That was true.

10 Q. Right. And it was also true that you  
11 didn't remember reading any statute that authorized  
12 ESPs, correct?

13 A. Well, I don't know. When you look right  
14 above that -- or right below it, I'm sorry, I told  
15 you that I recall looking at these, but I didn't try  
16 to narrate a statute number or something to a  
17 particular provision. That's all I could remember at  
18 that time.

19 Q. So let's refer again to your deposition,  
20 sir. Starting on page 97, line 16, did you got give  
21 the following answer to the following question:

22 "Question: Okay. That's fine. I'm trying -- I was  
23 just trying to understand with regard to the statute  
24 that authorized an electric utility plan, I'm just  
25 trying to find out whether any language in that

1 statute that says what an Electric Security Plan can  
2 do, whether you have read that." There was an  
3 objection.

4 "Answer: I may have. I don't recall.  
5 It wasn't pertinent to my analysis. I wasn't trying  
6 to draw any legal opinions as to what ESPs could or  
7 could not do or what the legislation said ESPs could  
8 or could not do. I wasn't trying to draw any legal  
9 opinion."

10 That was your testimony, correct?

11 A. That's correct.

12 Q. Correct. Now, you understand, do you  
13 not, that the companies in this case -- let me back  
14 up. When I say companies, you understand that to be  
15 Ohio Edison, CEI, and Toledo Edison, correct?

16 A. Yes.

17 Q. So you understand that the companies have  
18 riders that provide for cost recovery of various  
19 different types of costs, correct?

20 A. Yes.

21 Q. And you also understand that as part of  
22 the process for those riders, those riders may get  
23 audited from time to time by the staff and the  
24 Commission, correct?

25 A. I'm not sure exactly who in the

1 organization does the auditing, but I understand they  
2 can be audited.

3 Q. And there's a proceeding potentially  
4 regarding that audit process, correct?

5 A. I seem -- I have seen the existence of  
6 such proceedings, so I guess so, yes.

7 Q. And you haven't been part of any of those  
8 processes here in Ohio with respect to the companies  
9 at least, correct?

10 A. Other than this one.

11 Q. Okay. And you haven't reviewed any of  
12 the companies' cases involving their cost recovery  
13 rider audit proceedings, correct?

14 A. I don't believe I have reviewed the  
15 cases. You mean go look at the testimony and so  
16 forth? I have not done that, yes.

17 Q. Now, for purposes of your testimony,  
18 would it be fair to say you haven't analyzed any  
19 transmission costs that might be necessary if  
20 Davis-Besse or Samsis were to retire?

21 A. I did not calculate transmission costs.  
22 I analyzed the issue.

23 Q. But you didn't analyze the costs,  
24 correct?

25 A. I analyzed the issue with whether the

1 costs would matter to my testimony, but I didn't try  
2 to do cost calculations in footnote 18 in my report,  
3 my supplemental report.

4 Q. And you didn't determine whether the  
5 retirements of Davis-Besse -- Davis-Besse or Sammis  
6 would cause any constraints within ATSI, correct?

7 A. I did not find that necessary in the  
8 course of my work, no.

9 Q. So you did not do it, correct?

10 A. That's correct. It was not relevant.

11 Q. So you didn't do it, correct?

12 A. That's correct.

13 Q. And you also, for purposes of this case,  
14 didn't determine whether additional transmission  
15 upgrades would be necessary if either Sammis or  
16 Davis-Besse were to retire, correct?

17 A. I analyzed the issue, but I determined I  
18 did not need to do a separate analysis of that, so I  
19 did not do it.

20 EXAMINER PRICE: Dr. Kalt, if you can try  
21 to turn your microphone back off and on again.

22 THE WITNESS: They told me about this.  
23 Is that better?

24 EXAMINER PRICE: Yes.

25 Q. Would it also be fair to say for purposes

1 of your testimony you didn't determine the size of  
2 FirstEnergy Solutions' generation portfolio, correct?

3 A. No, I did not.

4 Q. And you also, for purposes of your  
5 testimony, didn't look at the balance sheet of  
6 FirstEnergy Solutions, correct?

7 EXAMINER PRICE: Dr. Kalt, are you  
8 reading your deposition?

9 THE WITNESS: No.

10 EXAMINER PRICE: Making sure.

11 A. I think, as I told you at my deposition,  
12 I believe I had seen information on balance sheets,  
13 so I had considered some of that information as I  
14 recall.

15 Q. Okay. Well, isn't it true in your  
16 deposition you said you didn't recall seeing FES's  
17 balance sheet?

18 A. Well, I think what I told you is I may  
19 have. I had some recollection, but that was the best  
20 of my recollection.

21 Q. Okay. Is it also true you did not  
22 determine for purposes of your testimony whether the  
23 plants had issued any debt?

24 A. Whether the plants or the companies?

25 Q. The plants.

1           A.    The plants, I believe that's correct. I  
2           didn't draw a distinction between the companies and  
3           the plants for that purpose.

4           Q.    And you also did not determine whether  
5           FES had issued any debt on the investments referred  
6           to in your testimony.

7           A.    I'm sorry, could you say that again, sir?

8           Q.    Sure.

9           MR. KUTIK: May it be read, your Honor,  
10          please?

11          EXAMINER PRICE: Please.

12          (Record read.)

13          A.    On those investments?

14          Q.    Yes.

15          A.    I didn't find it necessary to link debt  
16          to particular investments.

17          Q.    And would it also be true for purposes of  
18          your testimony you didn't determine the percent of  
19          the companies' customers who shop?

20          A.    I believe at the time I did the report, I  
21          had some information on that, but I didn't recall it.

22          Q.    At your deposition, you didn't recall  
23          that, correct?

24          A.    That's correct. I believe it's actually,  
25          though, in one of my workpapers because after the

1 deposition, I went and looked at it.

2 Q. Isn't it also true that you didn't  
3 remember whether a majority of the customers of the  
4 companies shopped?

5 A. I didn't recall at the time of the  
6 deposition. I have since gone back and looked. I  
7 believe it's in my workpapers.

8 Q. Isn't it true a majority of the customers  
9 of the company shop?

10 A. Yes. It's usually around 75 to  
11 80 percent.

12 Q. And you also did not determine which of  
13 the companies' riders relate to retail electric  
14 service that the companies offer?

15 A. As I said, at the time of my deposition,  
16 I don't think I recall. I have since looked at it.  
17 I understand what they are.

18 Q. You didn't in your deposition, correct?

19 A. I didn't at that time.

20 Q. Okay. And isn't it also true to say you  
21 didn't determine which of the companies' riders  
22 reflect the costs of the companies for the power that  
23 the companies purchase?

24 A. I believe I told you I didn't recall, but  
25 I have information on that.

1 Q. Okay. Now, with regard to the companies'  
2 proposal, you understand that the companies will be  
3 selling various products that they buy from FES and  
4 they will -- and the companies will sell that into  
5 the PJM markets, correct?

6 A. That's generally my understanding from  
7 the term sheet, yes.

8 Q. And you also understand that the  
9 companies will not be selling the output of the  
10 plants to SSO customers, correct?

11 A. I believe that's the case.

12 Q. And you have read the term sheet, as I  
13 think you just mentioned.

14 A. Yes.

15 Q. So you are aware that the term sheet  
16 contemplates a generating unit contingent power  
17 arrangement, correct?

18 A. Yes.

19 Q. And you are also aware that FES's  
20 required under the arrangement to use good utility  
21 practice, correct?

22 A. I believe there is some phrasing like  
23 that in the term sheet, yes.

24 Q. And the companies have the right to audit  
25 FES's books, correct?



1           A.    As affiliates, yes.

2           Q.    And FES also has the right to review --  
3   excuse me, the companies have the right to review  
4   FES's capital expenditure plans every year under the  
5   agreement, correct?

6           A.    They have some power of review as  
7   affiliates, yes.

8           Q.    And -- well, not necessarily as affiliate  
9   but basically as the buyer under the term sheet,  
10   correct?

11          A.    But they are affiliates. The buyer is an  
12   affiliate. These buyers have an affiliate.

13          Q.    It is a buyer, correct?

14          A.    Buyers, yes.

15          Q.    And is it also true to say that under the  
16   term sheet, FES is not allowed to use accelerated  
17   depreciation unless the companies agree?

18          A.    I believe that's the case. I would have  
19   to go back and check, but I believe that's the case,  
20   yes.

21          Q.    And would it be fair to say that it's not  
22   your testimony that the proposed PPA and the fact  
23   that it's cost based would result in having -- in FES  
24   having no incentive to control its costs?

25          A.    I'm sorry, say that -- not. You had a

1 double negative.

2 Q. I understand, sir. It's not your  
3 testimony that the proposed PPA being cost based  
4 would result in FES having no incentive to control  
5 its cost?

6 A. Absolutely no incentive?

7 Q. Yes.

8 A. I've never said that.

9 Q. So what I said was true?

10 A. That's correct, yes.

11 Q. Now, would it be fair to say that your  
12 experience in public utility style regulation is that  
13 it is not as effective in generating efficient  
14 performance on the part of a plant owner or operator?

15 A. As effective as what?

16 Q. As other means.

17 A. Well, overall what the research  
18 literature says, and indeed one of the learned  
19 treatises that got struck by Mr. Petricoff talks  
20 about it, peer review literature is that what you  
21 find is that relative to, for example, public  
22 ownership, generally process service regulation  
23 operated better. But relative to the use of  
24 competitive market discipline, cost-of-service  
25 regulation operated more poorly.

1 Q. Would it be fair to say that you don't  
2 remember how often rider RRS would be adjusted?

3 A. RRS?

4 Q. RRS.

5 A. I believe on -- upon review, I think at  
6 the time of my deposition, I didn't recall, but so I  
7 understand it's a one-year adjustment and not later  
8 than April and implemented by June of each year is  
9 the proposal as I understand it.

10 Q. And that's information you didn't have at  
11 your deposition, right?

12 A. Well, I did have it in the sense that I  
13 had cited Ms. Savage, but I didn't recall it orally  
14 at the deposition at that time.

15 Q. You didn't recall it?

16 A. But I believe I cited it actually.

17 Q. But you didn't recall it, correct?

18 MR. PETRICOFF: Your Honor, he should be  
19 able to finish his answer.

20 A. I did have the information; I just didn't  
21 recall it, and I had cited it for you.

22 EXAMINER PRICE: Mr. -- Dr. Kalt, your  
23 counsel had posed an objection, so when he poses an  
24 objection, you probably don't want to continue  
25 answering. We are going to let things stand.

1                   Mr. Kutik, please allow the witness to  
2 finish his answers.

3                   MR. KUTIK: As long as he answers, your  
4 Honor.

5                   EXAMINER PRICE: And then we will go from  
6 there.

7                   MR. KUTIK: Very good, your Honor.

8                   Q. (By Mr. Kutik) And so you are aware of  
9 another rider that you weren't able to name in your  
10 deposition called rider GEN, correct?

11                  A. Yes.

12                  Q. And rider GEN reflects the retail  
13 electric prices that the company is going to charge  
14 customers that don't shop, correct?

15                  A. I think rider GEN, as I understand it, to  
16 be the mechanism in the regulatory sense by which  
17 power procured by the companies for SSO service then  
18 gets, if you will, turned into rates for retail  
19 customers.

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

21                  A. I am not quite sure I understood your  
22 question, but my understanding of what rider GEN was.

23                  Q. And would it be fair to say as proposed,  
24 rider RRS would be adjusted when rider GEN is  
25 adjusted.

1           A.    I don't -- I don't know I can say that's  
2 the case.

3           Q.    Okay.

4           A.    My understanding was rider RRS would get  
5 adjusted and implemented in June of each year with  
6 information no -- provided no later than April. I  
7 have not tried to match up the timing of rider GEN to  
8 rider RRS. So when you say when, I am thinking the  
9 same time. I am not sure of that.

10          Q.    So the answer is you don't know, correct?

11          A.    I am not sure they occur at the same  
12 time.

13          Q.    So you don't know whether they do or they  
14 don't, correct?

15          A.    When they occur at the same time?

16          Q.    Yes.

17          A.    I don't know -- that's what I am saying,  
18 I don't know.

19          Q.    Okay. Is it also true, sir, that you  
20 don't know how the companies would offer the output  
21 from the plants into the PJM markets?

22          A.    Well, I understand that the companies  
23 would offer -- that Mr. Ruberto, I think it was,  
24 would be in charge of that. Do you mean -- But if  
25 you mean what their numerical offers would be, none

1 of us know that.

2 Q. Well, you are aware -- so you're aware  
3 Mr. Ruberto would be in charge of offering the output  
4 from the plants, correct?

5 A. I believe there is testimony to that  
6 affect. Somebody from the company, I believe it was  
7 Mr. Ruberto.

8 Q. So the answer to my question is "yes,"  
9 correct?

10 A. I gave you the best of my recollection.  
11 My understanding was someone would, and I thought it  
12 was Mr. Ruberto.

13 Q. Okay. So my question to you, sir, is  
14 simply is it your understanding that Mr. Ruberto  
15 would be in charge of offering the outputs from the  
16 plants into the PJM markets?

17 MR. PETRICOFF: Objection. Asked and  
18 answered.

19 EXAMINER PRICE: He has not answered the  
20 question yet. I am going to ask the witness to  
21 please respond "yes" or "no" or explain why you  
22 cannot in response to counsel's question.

23 A. I believe what you said is the state of  
24 my understanding.

25 Q. Thank you. And Mr. Ruberto, he works for

1 FirstEnergy Service Company?

2 A. I'm not sure. I don't recall his exact  
3 employer.

4 Q. And would it be fair to say that  
5 Mr. Ruberto works in a department called the  
6 regulated generation department?

7 A. I don't recall his department.

8 Q. And you are aware, are you not, that  
9 there are FirstEnergy affiliates outside of Ohio that  
10 own regulated generation, correct?

11 A. I'm not sure right now.

12 Q. You are aware, are you not, that FERC has  
13 rules that preclude a participant in the marketplace  
14 from telling other participants about what their  
15 offer strategy might be?

16 A. I think that's generally true, yes.

17 Q. Okay. Now, you also understand, do you  
18 not, that the companies have proposed that the  
19 Commission would have a right to audit the cost and  
20 the revenues that would be netted under rider RRS,  
21 correct?

22 A. I understand there is some proposal of  
23 that nature. I don't have any legal opinion on it,  
24 how it would be done or anything like that.

25 Q. You understand there is an audit process

1 that has been proposed, correct?

2 A. I understand some kind of process has  
3 been proposed.

4 Q. Okay. And you don't understand it to be  
5 an audit process?

6 A. It may be. I don't know what the legal  
7 term in that context would mean.

8 Q. All right. So you don't know, for  
9 example, whether the companies have proposed that if  
10 the Commission believes that there are certain costs  
11 that are sought to be recovered as part of the  
12 netting process that rider RRS would entail, that the  
13 Commission could disallow recovery of those costs?

14 A. I believe that's -- that's possible, yes.

15 Q. And you believe that such a process  
16 presents a risk to ratepayers to some extent,  
17 correct?

18 A. Certainly.

19 Q. And that's because historically such  
20 processes have not been particularly effective?

21 A. That's correct. I told you earlier that  
22 we found public utility costs of service regulation  
23 with oversight for prudence and so forth by public  
24 utilities commissions to be less effective than the  
25 use of competitive market forces because there are



1 real human beings involved.

2 Q. So the answer to my question is "yes"?

3 A. I believe that's correct, yes.

4 Q. Now, I want to ask you a slightly  
5 different question on a different subject. You  
6 believe that a subsidy arises when a public policy is  
7 used to depress costs below a level they would  
8 otherwise obtain in an open and competitive market,  
9 correct?

10 A. That can be one of the sources for price  
11 suppression. Not the only source but one of them,  
12 yes.

13 Q. Yes. And there would be a subsidy in  
14 such a case even if the seller is receiving less than  
15 the seller otherwise would receive in a -- under  
16 general market pricing, correct?

17 A. I'm sorry, could you say that again? I  
18 apologize.

19 MR. KUTIK: Sure. Could it be read,  
20 please, your Honor?

21 EXAMINER PRICE: Yes, please.

22 (Record read.)

23 A. If I understand your question correctly,  
24 there is -- I need to ask you, there is a subsidy and  
25 you are saying that after the subsidy, the seller is

1 receiving less than it would if it were just selling  
2 open on the market; is that what you are asking?

3 Q. What I am saying, sir, is I think you  
4 said earlier to me that a subsidy exists where there  
5 is a public policy that the prices cost below a level  
6 they would otherwise obtain in an open, competitive  
7 market.

8 A. Yes.

9 Q. And in that situation, even if the seller  
10 is getting a price that is less than the market  
11 price, a subsidy would nevertheless still exist,  
12 correct?

13 A. Yes. The subsidies to cost would still  
14 exist, yes.

15 Q. And in that case, it was the buyer that's  
16 receiving the subsidy, correct?

17 A. No. We would say that there is  
18 passthrough of the subsidy to a buyer, but the seller  
19 in your hypothetical receives a subsidy.

20 Q. So -- well, let me refer to your  
21 deposition, sir, page 70 -- the February deposition,  
22 page 74, and let me have you go back to page 72 so  
23 you can see this in context. You were asked on line  
24 13, I am not going to read the question and answer,  
25 what a subsidy was, correct?

1           A.    I'm sorry.  I am in the wrong depo.

2           Q.    The February deposition.  So let me ask  
3 my question again.

4           A.    One second.  Page 72.

5           Q.    I just want -- I am not going to read  
6 this to you, but I want to put the next couple of  
7 pages in context.  Page 72, line 13, you were asked  
8 to give a definition of subsidy and you did.  And you  
9 are still talking about subsidy as we are talking  
10 on -- or as you are talking on line 74.

11          A.    Line?

12          Q.    Page 74, excuse me.  And on page 74 --

13          A.    Hang on one second.

14          Q.    And on page 74 --

15          A.    Hang on one second.

16          Q.    Let me read it, sir.

17               MR. PETRICOFF:  No, your Honor.  He  
18 should be given some time to take a look at the part  
19 of the deposition he has been directed to and be able  
20 to read it, and then we can have the question.  He  
21 just needs some time to read it.

22               EXAMINER PRICE:  Take a minute.

23          Q.    Are you ready?

24          A.    One second.

25          Q.    How about now?

1           A.     Okay.  Where are you now?

2           Q.     Page 74, do you not give the following  
3 answer to the following question starting at line 3:  
4 "Question:  If it's -- you said if there is  
5 government intervention, it's a subsidy even if the  
6 seller is receiving less than the seller otherwise  
7 would from general market pricing, right?

8                     "Answer:  Sure.  The buyer would be  
9 getting a subsidy in that case."  That was your  
10 deposition testimony, correct?

11          A.     That's right.

12          Q.     Thank you.

13          A.     But it's a different subsidy than you are  
14 talking about on page 72.

15                   MR. KUTIK:  I move to strike everything  
16 after the word "yes."

17                   MR. PETRICOFF:  Your Honor, he should be  
18 able to finish first, and then we can line up what  
19 should be struck.

20                   MR. KUTIK:  He did finish.

21                   EXAMINER PRICE:  I am not sure that he  
22 finished.  Did you finish your answer?

23                   THE WITNESS:  I don't know if it was  
24 heard, but I think I said my answer.

25                   EXAMINER PRICE:  Let's have the witness's

1 answer back, and then we will go from there on the  
2 motion to strike.

3 (Record read.)

4 MR. KUTIK: So I would move to strike  
5 everything from the word "but" to the end of the  
6 answer.

7 EXAMINER PRICE: We will grant the motion  
8 to strike at this time.

9 Doctor, please listen carefully to  
10 counsel's questions and answer his question, only his  
11 question. If you think there is additional context  
12 or information that would benefit the Commission,  
13 Mr. Petricoff will be happy to ask you that on  
14 redirect.

15 THE WITNESS: Sure.

16 EXAMINER PRICE: So you will have a  
17 chance.

18 Q. Dr. Kalt, I want to ask you some  
19 questions about PJM. Would you agree that PJM is  
20 working efficiently today in certain respects?

21 A. Yes.

22 Q. And to the extent that the PJM capacity  
23 markets have provided certain disincentives for the  
24 entry of new capacity into the marketplace, PJM has  
25 been working on that.

1           A.    To the extent the capacity markets were  
2 providing disincentives?

3           Q.    Yes.

4           A.    Well, I think PJM has been working on the  
5 incentives for new entry into the marketplace through  
6 the capacity markets.

7           Q.    So the answer to my question is "yes"?

8           A.    I believe so, yes.

9           Q.    PJM is a net importer of power, correct?

10          A.    Over a year, as we discussed earlier,  
11 that does tend to be the case but not necessarily at  
12 all times.

13          Q.    Yeah. But over a year --

14          A.    Typically, yes.

15          Q.    And in the PJM market, there are baseload  
16 units, there are cycling units, and there are peaking  
17 units, correct?

18          A.    Yes.

19          Q.    And would it be fair to say that the  
20 predominant share of baseload units are coal fired  
21 within PJM?

22          A.    I believe that's probably right.

23          Q.    And the predominant share of cycling  
24 units are natural gas fired?

25          A.    Probably, yes. It depends on gas and

1 coal prices and time of year and so forth but  
2 probably overall.

3 Q. And you would agree with me that  
4 wholesale energy prices in PJM are at certain times  
5 driven at the margin by natural gas prices, correct?

6 A. Wholesale?

7 Q. Energy prices.

8 A. Yes, that can happen, yes.

9 Q. And when markets are functioning  
10 competitively, the higher marginal cost units tend to  
11 be the ones at the margin at market clearing prices.

12 A. Yes.

13 Q. Right?

14 A. Yes.

15 Q. Now, I think, as you discussed in your  
16 conversation with Mr. Kurtz, you are aware that there  
17 are generating plants within PJM that are subject to  
18 cost-of-service rate-of-return regulation, correct?

19 A. I believe that's right, yes.

20 Q. And you know there are -- there's  
21 generation in PJM in what we'll call regulated  
22 states, correct?

23 A. You mean like West Virginia or something  
24 like that?

25 Q. Yes.

1           A.    That's what we talked about.

2           Q.    And you don't know what those states are.

3           A.    I haven't tried to come up with a  
4 complete list. I know what some of the states are.

5           Q.    Yet you couldn't remember the specific  
6 states in your deposition, correct?

7           A.    I know -- probably didn't at the time of  
8 the deposition.

9           Q.    Okay. Now, you also know that there are  
10 some market participants in the capacity market that  
11 offer in their generation at zero, correct?

12          A.    Yes, yes, sir.

13          Q.    And that's not -- and that's not  
14 prohibited for certain types of generation, correct?

15          A.    That's correct, my understanding. I am  
16 not giving you a legal opinion.

17          Q.    Right, right. And it's not prohibited  
18 for existing generation.

19          A.    I believe that's the case, yes.

20          Q.    And under the rules relating to the  
21 minimum offer price, existing generation would  
22 include plants like Samsis and Davis-Besse, correct?

23          A.    I believe that's the case, but I have not  
24 tried to form a legal opinion on that.

25          Q.    And you would agree with me, would you



1 not, that there is a large percentage of capacity  
2 that offers in at zero into the capacity markets?

3 A. It varies from time to time, but  
4 certainly there have been large proportions of the  
5 capacity gets offered in at zero, yes.

6 Q. Now, you mentioned a couple of times in  
7 response to questions from Mr. Kurtz the cases  
8 involving New Jersey and Maryland. Both of those  
9 cases involve proposed new generation, correct?

10 A. I believe that's the case, yes.

11 Q. And both -- in both of those cases, the  
12 state, either by legislative or regulatory decree,  
13 would direct how the generation was to be offered,  
14 correct?

15 A. That's certainly the case in the case of  
16 New Jersey. I would have to go back and refresh my  
17 memory on Maryland.

18 Q. So Maryland you don't know?

19 A. I don't recall right now.

20 Q. So you don't know?

21 A. Right now, I don't know. I don't recall.  
22 Obviously I worked on the case, provided testimony in  
23 it and so forth. I just don't recall.

24 Q. And would it also be fair to say that the  
25 state either legislatively or by regulation was

1 effectively setting the wholesale price?

2 A. If you mean by that that they could  
3 affect the market clearing price in the PJM auction,  
4 that's the case.

5 Q. No, that they were dictating to the  
6 generator what price the generator would get.

7 A. The generator that they were bidding into  
8 the system, is that what you mean?

9 Q. Well, did you understand that there were  
10 out-of-market or non-PJM market revenues that would  
11 go to the generators in the Maryland and New Jersey  
12 schemes?

13 A. Yes.

14 Q. And what I am talking about is the New  
15 Jersey and Maryland schemes, either legislatively or  
16 from a regulatory aspect, were having the wholesale  
17 price that the generator would receive, nonmarket  
18 basis, was setting that, correct?

19 A. The effect of the policies would have  
20 been to set what the generator received.

21 Q. Okay. Now, I want to ask you a couple of  
22 questions about the polar vortex. Would it be fair  
23 to say that you are aware that gas plants represented  
24 a disproportionate number of plants that went out  
25 during the polar vortex in PJM?

1           A.    I'm -- disproportionate, I believe  
2           looking at the data that gas plants accounted for  
3           more of the outages than their share of installed  
4           capacity, if that's what you mean by  
5           "disproportionate."

6           Q.    Yes.  So the answer --

7           A.    Somewhat more.

8           Q.    And was it also the same that that  
9           occurred during 2014 and 2015, that gas plants  
10          represented --

11          A.    You mean the year after the polar vortex?

12          Q.    Yes.

13          A.    The polar vortex was early 2014, right.

14          Q.    In the winter of 2014-2015.

15          A.    Okay.

16          Q.    Gas plants also represented a  
17          disproportionate number of outages within PJM.

18          A.    I'm not sure.

19          Q.    Have you read any reports with respect to  
20          the performance of PJM during the winter of  
21          2014-2015?

22          A.    I may have.  I probably have.

23          Q.    All right.

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

25                EXAMINER PRICE:  You may.

1 Q. Dr. Kalt, I want to show you what has  
2 previously been marked and admitted as IGS Exhibit 1.  
3 This is a document that says "Winter Report" -- "2015  
4 Winter Report, May 15, 2015," from PJM. Have you  
5 seen this before?

6 A. It sure looks familiar.

7 Q. Is that a "yes"?

8 A. All I can say it looks familiar. Each  
9 one of these annual reports, they all look about the  
10 same.

11 Q. I am just trying to understand, sir.

12 A. I am just giving you the best of my  
13 recollection.

14 Q. Have you read it or have you not?  
15 Because I don't know what your answer means. Or you  
16 don't know.

17 MR. PETRICOFF: Your Honor, may the  
18 witness have a moment or two to look through the  
19 document?

20 EXAMINER PRICE: He may. Let us know  
21 when you are ready. Take your time.

22 A. I believe I have read all or portions of  
23 this report looking at it now.

24 Q. Thank you. Now, you are aware, are you  
25 not, of the fact that there are long-term PPAs where

1 the contract price is based upon the cost of the  
2 generating unit involved?

3 A. There can be PPAs of that sort, yes.

4 Q. And those PPAs could last as long as 15  
5 years or longer.

6 A. Yes.

7 Q. Now, would it also be fair to say that  
8 you would not expect that the retirement of Sammis or  
9 Davis-Besse will have an impact on the volatility or  
10 level of wholesale prices in PJM?

11 A. I believe, looking at the evidence, you  
12 would not expect it to have a material impact on  
13 volatility.

14 Q. Or level of prices, correct?

15 A. Or the level of prices, that's correct.

16 Q. And one of the reasons for that  
17 conclusion would be the relative size of the plants  
18 compared to the market, correct?

19 A. That's not the only one, but that's one  
20 of the reasons, yes.

21 Q. Now, fuel prices for different  
22 technologies do not move in lockstep, correct?

23 A. Not in lockstep. They tend to be highly  
24 correlated, though.

25 Q. All right. Well, isn't it true that for

1 different -- as a general matter, fuel prices for  
2 different technologies do not move in lockstep?

3 A. By lockstep, you mean perfect  
4 correlation? They do not move in perfect  
5 correlation.

6 Q. Let me refer you to your deposition, sir,  
7 again, the February deposition, page 165. Are you  
8 there?

9 A. Okay.

10 Q. And did you not give the following answer  
11 to the following question beginning at line 9:

12 "Question: Do you agree that fuel prices for  
13 different technologies such as coal and natural gas  
14 do not move in lockstep?

15 "Answer: As a general matter, that's  
16 true."

17 A. Yes. I just said they do not move in  
18 perfect correlation. They don't move in lockstep.

19 MR. KUTIK: Your Honor, I move to strike  
20 everything after the word "yes."

21 MR. PETRICOFF: Your Honor, it was a more  
22 complete answer he gave. That certainly can't be  
23 outside of the rules.

24 EXAMINER PRICE: That's a proper matter  
25 for you to raise on redirect with the witness. The

1 motion to strike will be granted.

2 Q. (By Mr. Kutik) And would it be correct to  
3 say, sir, that you've seen economic literature with  
4 regard to fuel diversity, that there is a portfolio  
5 effect from fuel diversity because changes in one  
6 fuel price can offset changes in another fuel price?

7 A. Sure.

8 Q. I want to talk to you a little bit about  
9 whether the plants at issue here, Davis-Besse and  
10 Sammis, would continue to operate. It's true that  
11 you have not -- never had decision-making authority  
12 with respect to the purchase or sale of a power  
13 plant, correct?

14 A. I have not been a decision maker, that's  
15 correct.

16 Q. And you have not had decision-making  
17 authority with respect to the retirement of the power  
18 plant, correct?

19 A. That's correct.

20 Q. And you didn't for purposes of your  
21 testimony derive a book value for the plants in this  
22 case, correct?

23 A. No. I found the numbers I needed in the  
24 record.

25 Q. Okay.

1           A.    I did not derive a book value.

2           Q.    Okay.  And isn't it true that you don't  
3 have a value for -- or a value for the book value of  
4 the plants?

5           A.    The way I use the term, I do look at book  
6 value.  That is, I relied on Mr. Lisowski, as I told  
7 you in my deposition, and he has those -- those  
8 numbers.  It's actually a series of numbers, so it is  
9 not a single number, so I don't have a single number.  
10 I have a series of numbers over the years.

11          Q.    Okay.  And are you -- and you are relying  
12 on Mr. Lisowski's attachments JJL-1, 2, and 3?

13          A.    JJL-1 and 2.  I believe JJL-3 does not  
14 have a book value in it.

15          Q.    Okay.  So it's your testimony that  
16 Attachment JJL-1 and 2 has a book value for the  
17 plants?

18          A.    The way an economist uses the term, yes,  
19 Mr. Lisowski has what is called total seller's  
20 invested capital, and that's what I relied on.

21          Q.    So just to be clear, you believe that's a  
22 book value number, correct?

23          A.    The way an economist does a book value,  
24 yes.

25          Q.    And when -- to a slightly different



1 subject, would you agree that when a company has  
2 negative cash flow, that may be made up by incurring  
3 debt?

4 A. That can happen, yes.

5 Q. And would it be fair to say you don't  
6 remember the specific amount of debt that FES has? I  
7 don't want you -- I just want the answer to be "yes"  
8 or "no," sir.

9 A. No, I have not tried to memorize that, so  
10 I do not have a specific number for you.

11 Q. But you believe, sir, that the -- there  
12 has been an upward trend in the amount of debt that  
13 FES has had, correct?

14 A. If you look over the long run, there  
15 tends to be an upper trend, yes.

16 Q. And you don't remember any public  
17 information that you've seen where FES has said  
18 publicly anything about its ability to take on more  
19 debt in the next three to five years, correct?

20 A. I may have seen something like that, but  
21 I don't recall as I sit here right now.

22 Q. And for purposes of your testimony, you  
23 don't have an opinion on FES's ability to incur more  
24 debt over the next five years, correct?

25 A. I don't have an opinion as to what FES

1 believes. I understand if you reduce risk, you can  
2 take on more debt. That's built into Mr. Lisowski's  
3 analysis. But I don't have an opinion as to whether  
4 FES intends to or will take on more debt.

5 Q. That's not my question, sir, so let's go  
6 to your deposition, and it's the deposition I took in  
7 July. Page 44, please. Sir, did you not answer the  
8 following question in the following way starting at  
9 line 18: "Question: So would it be fair to say that  
10 you do not have an opinion as to FES's ability to  
11 incur more debt over the next five years?"

12 "Answer: No. I have not found that  
13 necessary in the course of my work to analyze that  
14 question, no, for reasons I stated in my testimony."  
15 That was what you said in your deposition, correct?

16 A. That's correct, and that's true.

17 Q. Thank you. Now, is it also the case that  
18 it's not necessarily true that FES could borrow money  
19 based upon the projections in this case?

20 A. I'm sorry, say that again. I apologize.

21 MR. KUTIK: Sure. Could it be read,  
22 please, your Honor?

23 EXAMINER PRICE: Can we have the question  
24 back, please.

25 (Record read.)

1           Q.    (By Mr. Kutik) Let me say it again.  Is  
2   it the case that it's not necessarily true that FES  
3   could borrow money based upon the projections in this  
4   case?

5           A.    It's not necessarily true that they could  
6   borrow money based on the projections in this case.

7           Q.    Now, you are aware, are you not, that FES  
8   has retired a number of generating units over the  
9   last three years, correct?

10          A.    I believe that's the case, yes.

11          Q.    And they've retired somewhere in the  
12   nature of 24 units?

13          A.    I don't recall the number.

14          Q.    Okay.  Well, you -- do you recall the  
15   names of any of the units that they retired?

16          A.    Not as I sit here right now.

17          Q.    Do you recall that they were all gas  
18   fired or coal fired?

19          A.    I would have to go back and look at the  
20   data.  I don't recall.

21          Q.    All right.  And is it the case that  
22   these, sir, that these plants that were retired had  
23   experienced some recent investments?

24          A.    They may have.  I have not found it  
25   necessary to go and look at those retirements.

1 Q. You don't know?

2 A. I don't recall.

3 Q. Are you familiar with a plant called the  
4 Hatfield plant, the Hatfield station?

5 A. I have heard the name, yes.

6 Q. And are you aware that's a coal-fired  
7 plant?

8 A. I would have to go back and check. I  
9 don't recall specifically.

10 Q. And you don't -- is it fair to say you  
11 don't recall whether the Hatfield plant had scrubbers  
12 installed in recent years?

13 A. I don't recall specifically.

14 Q. Now, would it also be true despite these  
15 deactivations, the company, FES, nevertheless had to  
16 receive \$1.5 billion in cash infusion from  
17 FirstEnergy Corp. in 2013?

18 A. I'm sorry. Notwithstanding what now?

19 Q. Notwithstanding the deactivations --

20 A. Uh-huh.

21 Q. -- FirstEnergy Solutions --

22 A. Uh-huh.

23 Q. -- still had to obtain a cash infusion  
24 from FirstEnergy Corp. of \$1.5 billion in 2013,  
25 correct?

1           A.    I don't know if your phrase -- I can't  
2 answer "yes" or "no" to that one.  There may have  
3 been such an infusion.  I don't know if you can say  
4 they had to.  I haven't found it necessary to go  
5 analyze any reasons for such an infusion.

6           Q.    So you don't know whether the FES had  
7 received the cash infusion from its parent in 2013,  
8 correct?

9           A.    As I said, such an infusion may have  
10 occurred.  I recall some discussion.  What I told you  
11 I am not sure they had to.  That's all I am saying.

12          Q.    I am not sure what your answer is, sir.  
13 Is it a fact that FES received a cash infusion from  
14 its parent in 2013?

15          A.    Again --

16          Q.    "Yes" or "no."

17          A.    I can't give you a straight "yes" or  
18 "no."  What I can say, I recollect there was some  
19 infusion.  I don't recall the timing of the exact  
20 amount, but that's all I recall.

21          Q.    So you don't recall whether there was a  
22 cash infusion in 2013 or 2014 or in 2013 and 2014,  
23 fair to say?

24          A.    I don't recall the specific dates.

25          Q.    Okay.  So what I said was correct, right?

1           A.    Which part of what you said?  I  
2 apologize.

3           Q.    Well, you don't know whether they  
4 received a cash infusion, that is, FES, in 2013 or  
5 2014 or 2013 and 2014, correct?

6           A.    I have not -- I don't recall specific  
7 dates.  I recall some -- something about it in the  
8 infusion but that's all I recall.

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

10          A.    I guess it would be "yes."  You have got  
11 multiple clauses to it, so I am not quite sure.

12          Q.    Well --

13               EXAMINER PRICE:  Why don't you give  
14 counsel a straightforward "yes" or "no" answer to his  
15 question, please.  You want the question back?

16               THE WITNESS:  Yeah.

17               EXAMINER PRICE:  Read the preceding  
18 question, please.

19               (Record read.)

20          A.    No.  As I sit here -- no, I don't as I  
21 sit here right now, I don't.

22               EXAMINER PRICE:  Thank you.

23          Q.    So what I said was correct.

24               MR. PETRICOFF:  Asked and answered, your  
25 Honor.

1           A.    What you said was correct given the  
2 statement of my knowledge.

3           Q.    Thank you.  And would it also be correct  
4 to say you don't know whether -- what the amount of  
5 the cash infusion was, if any, that FirstEnergy  
6 Solutions might have received from FirstEnergy Corp.,  
7 correct?

8           A.    As I said, I don't recall the amount.

9           Q.    And would it be fair to say you don't  
10 know what cash or cash equivalents FES had at the end  
11 of 2013 or 2014, correct?

12          A.    I don't recall the numbers.  I've seen  
13 information in the 10-Q or 10-K.

14          Q.    But you don't know what that was?

15          A.    I don't recall the numbers.

16          Q.    So if I told you that it was only  
17 \$2 million at the end of 2014, you wouldn't be able  
18 to verify or deny that, correct?

19          A.    Not without going back to the documents.

20          Q.    So what I said was correct.

21          A.    I could verify it if I went back to the  
22 documents, so what you said isn't quite correct.

23          Q.    Do you have the documents with you, sir?

24          A.    I did not bring the 10-Ks with me.

25          Q.    So today you cannot say that?

1           A.    As I said, as I sit here right now, I  
2 cannot do it.

3           Q.    Now, you would agree with me, would you  
4 not, that there is a cost associated with debt.

5           A.    Of course.

6           Q.    And if FES writes off an asset that has  
7 debt, FES still has to pay off that debt, right?

8           A.    As a general matter, but it could depend  
9 on the nature of the debt obligations, but as a  
10 general matter, yes.

11          Q.    Now, you are aware, are you not, that  
12 there are accounting rules relating to taking an  
13 impairment, correct?

14          A.    Yes.

15          Q.    And you don't know what those accounting  
16 rules -- accounting rules are, correct?

17          A.    No, I don't provide expert accounting  
18 opinion. I know they exist, but I do not provide  
19 expert accounting opinion.

20          Q.    So you can't say when a firm is required  
21 to test for an impairment, correct?

22          A.    Not from a legal or an accounting  
23 perspective, no.

24          Q.    And you can't testify as to when a firm  
25 is required to take an impairment under the



1 accounting rules, correct?

2 A. Is that the question you asked two  
3 previous?

4 Q. No, first one was test.

5 A. Oh, okay.

6 Q. This one is take.

7 A. Okay. Again, I can't give you an expert  
8 accounting opinion on that.

9 Q. You would agree with me, though, an  
10 impairment would have an effect on that income,  
11 correct?

12 A. I believe that's the case, yes.

13 Q. And it would also have the effect of  
14 reducing book equity, correct?

15 A. It generally does. It doesn't  
16 necessarily in all cases.

17 Q. And it could also have a negative impact  
18 on the debt-to-capital ratio, correct?

19 A. It can, yes.

20 Q. And it could have an effect on covenants,  
21 debt covenants, that reference such ratios, correct?

22 A. Yes.

23 Q. You don't know if FES has debt covenants  
24 with such ratios, correct?

25 A. I do. At the time of my deposition, I

1 didn't recall, but I have gone back and looked, and  
2 you can see it in their 10-K, 10-Q there is  
3 discussion about debt covenants that do refer  
4 actually to capital ratios.

5 Q. Right. So you are now aware that, you  
6 weren't in deposition, that there are debt covenants  
7 that FES have that refers to debt-to-equity or  
8 debt-to-capital ratios, correct?

9 A. Yes, yes.

10 Q. An impairment could also have a negative  
11 impact on FES's credit rating, correct?

12 A. An impairment?

13 Q. Yes.

14 A. Oh, certainly, yes.

15 Q. And would it be fair to say FES's general  
16 credit rating is relatively poor performing?

17 A. Different credit -- credit companies,  
18 credit rating services, use different terminology.  
19 That phrase may have been used. I am aware they  
20 don't have -- they have generally recently had very  
21 highly rated debt.

22 Q. Isn't that phrase, that is, "poorly  
23 performing" that you used?

24 A. I believe so, yes.

25 Q. Now, you are aware of some of the factors

1 that credit rating agencies take into account in  
2 looking at or making their ratings, correct?

3 A. Sure.

4 Q. And one criterion or factor could be the  
5 firm's debt-to-equity ratio.

6 A. Certainly.

7 Q. Another would be the strength of the  
8 balance sheet.

9 A. Yes.

10 Q. Now, I want to talk to you a little bit  
11 about the impact of the retirements of Davis-Besse  
12 and Sammis. Would it be fair to say that the biggest  
13 socioeconomic impact of closing a nuclear plant  
14 occurs before decommissioning starts, that is, when  
15 the plant ceases operations?

16 A. Well, I don't quite know what you mean by  
17 biggest socioeconomic impact, but in a certain sense,  
18 you would expect the closing of a plant to have a  
19 larger impact than prior to the start of  
20 decommissioning, sure.

21 Q. And one of the things that would happen  
22 would be a reduction -- a potential reduction in  
23 property taxes, correct?

24 A. Possibly, yeah, depending on the  
25 jurisdiction.

1           Q.    Because the taxes -- property taxes would  
2           be adjusted downward because the property is no  
3           longer as valuable?

4           A.    That's possible depending on the  
5           jurisdiction.

6           Q.    Now, you are aware, are you not, that  
7           Sammis is in Jefferson County, Ohio, correct?

8           A.    I believe that's correct.

9           Q.    And Sammis is one of the largest  
10          employers in Jefferson County, correct?

11          A.    I believe that's right.

12          Q.    And you are not aware of who the other  
13          large employers are in Jefferson County, correct?

14          A.    I don't recall any names.

15          Q.    You are aware that Davis-Besse is in  
16          Ottawa County, Ohio, correct?

17          A.    Yes.

18          Q.    You are aware also that Davis-Besse is  
19          one of the largest employers in Ottawa County,  
20          correct?

21          A.    I believe that's correct.

22          Q.    You are not aware of what the other large  
23          employers might be in Ottawa County, correct?

24          A.    I don't recall any specific names.

25          Q.    Now, with respect to nuclear

1 decommissioning, would it be fair to say that a good  
2 deal of the work occurs when -- or after the reactor  
3 cools?

4 A. I'm sorry. Say that again. That most of  
5 the work, did you say?

6 Q. Yes.

7 A. Yes, I believe that's the case.

8 Q. And would it be fair to say that  
9 decommissioning may take decades?

10 A. Yes.

11 Q. Could take as much as 60 years.

12 A. Possibly, yeah.

13 Q. Now, you also have a comment in your  
14 supplemental testimony about coal from Sammis coming  
15 from outside Ohio. Would it be fair to say that you  
16 don't remember where from outside Ohio -- or you  
17 don't know where from outside Ohio that coal comes?

18 A. No. I've recently looked at the data,  
19 yes. You asked me the same question in my  
20 deposition.

21 Q. And you didn't know in your deposition,  
22 correct?

23 A. Can I answer the first question? I am  
24 aware of where it comes from.

25 Q. Okay. You were not aware in your

1 deposition, correct?

2 A. At the time of my deposition, I didn't  
3 recall.

4 Q. Okay. And was it also fair to say that  
5 there are mining activities in Pennsylvania and  
6 Ohio -- excuse me. Let me start again.

7 There are mining activities, coal mining  
8 activities, in Pennsylvania and West Virginia?

9 A. Of course.

10 Q. And you are aware some of those mining  
11 activities have an effect on the Ohio economy.

12 A. You mean mining activities have some  
13 effect on the Ohio company?

14 Q. In Pennsylvania and West Virginia.

15 A. Sure, certainly.

16 Q. Would it be fair to say that some of the  
17 coal that comes from outside Ohio comes from  
18 Ohio-based companies?

19 A. I'm not sure. Maybe shareholders who  
20 live in Ohio who own -- the definition of "a company"  
21 these days to where it is owned, as you know, is  
22 quite complicated. It could really be that there are  
23 Ohio people that own shares in mining companies, yes.

24 Q. So is your answer "yes," "no," or you  
25 don't know?

1           A.    No.  I would expect some people who are  
2           shareholders to reside in Ohio.

3           Q.    Okay.  When I say Ohio-based companies, I  
4           am -- do you understand what that phrase means, sir?

5           A.    To an economist, I am thinking of the  
6           shareholders, where they are.  You may mean that --

7           Q.    Well, I asked you if you understood, so  
8           let me give you a definition, sir.

9           A.    Okay.

10          Q.    A company that has its headquarters or  
11          its principal place of business in Ohio.  Now, the  
12          question to you, sir, is some of the coal that Sammis  
13          buys from outside Ohio comes from Ohio-based  
14          companies; does it not?

15          A.    It may.  I have not tried to study that  
16          matter.

17          Q.    Okay.  Now, isn't it true, sir, that the  
18          PJM queue does not include information about the  
19          names and counties or towns of plants that are either  
20          under study or under construction?

21          A.    As I recall, it generally includes  
22          information on the substation or station where  
23          interconnection would occur.  And the queue itself  
24          doesn't list -- the actual queue itself doesn't tell  
25          you the names that you just indicated.

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

2 A. I would have to check about the counties,  
3 but as a general matter, it gives you the substation  
4 names.

5 MR. KUTIK: May I have a minute, your  
6 Honor?

7 EXAMINER PRICE: You may.

8 MR. PETRICOFF: Your Honor, in fact, it  
9 has been over two hours. Would it be a good time for  
10 a 5 or 10-minute break?

11 EXAMINER PRICE: Let's go off the record  
12 and come back in 7 minutes.

13 (Recess taken.)

14 EXAMINER PRICE: Let's go back on the  
15 record.

16 Mr. Kutik.

17 MR. KUTIK: Your Honor, we ask to have  
18 marked as Company Exhibit 117 for identification a  
19 document that says "Generation Queues: Active" and  
20 some other information. And at the bottom, it shows  
21 a URL address for PJM.com dated October 14, 2015.

22 EXAMINER PRICE: It will be so marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. KUTIK: And I have handed a copy to  
25 the Bench while we were off the record and placed on



1 the witness stand and given it to Mr. Petricoff.

2 Q. Dr. Kalt, do you have what's been marked  
3 as Company Exhibit 117 before you?

4 A. Yes.

5 Q. And do you recognize this as a printout  
6 from the PJM website?

7 A. Yes.

8 Q. Particularly this is what we sometimes  
9 refer to as the PJM queue, correct?

10 A. Well, it's like a cover page too. The  
11 queue is a long set of documents.

12 Q. Look at the back of the document.

13 A. Right.

14 Q. And you can see, do you not, that this --  
15 this is a document that shows a -- the natural gas  
16 plants under study in the State of Ohio, correct?

17 A. That's correct.

18 Q. And if we look over to the second page of  
19 the document, we see what the PJM queue lists,  
20 correct?

21 A. Yes.

22 Q. And that includes the PJM substation  
23 information, correct?

24 A. Right.

25 Q. And that's the only information we see

1 with respect to the location of a project.

2 A. On this page?

3 Q. Correct.

4 A. On this page? Yes. Of the queue  
5 document, yes.

6 Q. Okay. Now, would it be fair to say --

7 A. I'm sorry, not the only information. You  
8 see other things but --

9 Q. But in terms of location.

10 A. Yes, yes.

11 Q. Would it be fair to say that you don't  
12 know whether new natural gas plants would be more  
13 economical to operate than Davis-Besse?

14 A. More economical to operate than  
15 Davis-Besse. I believe I have some information on  
16 that in the record.

17 Q. All right. Well, let me refer you to  
18 your February deposition, sir, and specifically page  
19 161.

20 MR. PETRICOFF: Was that first or second?

21 MR. KUTIK: February deposition.

22 Q. Are you there, sir?

23 A. Yes.

24 Q. And did you not answer the following  
25 question the following way starting at line 23:

1 "Question: Do you know whether the new natural gas  
2 plants would be more economical to operate than the  
3 Davis-Besse plant?

4 "Answer: I have not. I don't know. I  
5 haven't drawn any judgment about that." That's what  
6 you said in your deposition, correct?

7 A. In February, that was correct, yes.

8 Q. Okay. And is it also true that whether  
9 plants are more economical to run over time will  
10 depend on their going-forward costs which depends  
11 substantially on fuel costs?

12 A. Yes.

13 Q. Would it also be fair to say you don't  
14 know whether Sammis or Davis-Besse are dispatched  
15 economically or as must-run units?

16 A. At the time of my deposition, I didn't  
17 recall. I believe they are dispatched, as I recall.

18 Q. They are dispatched on a must-run basis  
19 or economically?

20 A. My understanding -- actually, I don't  
21 recall specifically. I don't recall.

22 Q. Okay. And so you don't know whether or  
23 where Sammis or Davis-Besse are located on the stack  
24 for dispatch on any particular day, correct?

25 A. On any particular day, I don't recall any

1 specific day, no.

2 Q. Now, with respect to the plants that you  
3 refer to, the gas plants that you refer to in your  
4 testimony, or just generally, you don't know if the  
5 gas transportation infrastructure exists today to  
6 provide supply to those plants, correct?

7 A. With respect to some of the facilities, I  
8 have information on that. I believe at the time of  
9 my deposition, I didn't or didn't recall, but I have  
10 information on that, yes.

11 Q. But you didn't at the time of your  
12 deposition, correct?

13 A. I didn't recall at the time of my  
14 deposition.

15 Q. Okay. And you're familiar, are you not,  
16 with the rules relating to natural gas transportation  
17 that requires natural gas to be diverted from natural  
18 gas generation to an area of greater need such as  
19 residential heating?

20 A. That can rise, yes.

21 Q. You are also not aware of the specific --

22 A. Also not aware -- I just told you I was  
23 aware of the first thing.

24 Q. Okay. Well, is it true you are not aware  
25 of the specific natural gas transportation

1 arrangements for any plant that you refer to in your  
2 attachment JK -- JPKS-1?

3 A. I have some information on that now. At  
4 the time of my deposition, I didn't, but I have some  
5 information on that now. You didn't see it in the  
6 record.

7 Q. Well, isn't it true -- in your  
8 deposition, you said you didn't, correct?

9 A. As I recall, I didn't recall at the time  
10 of my deposition.

11 Q. Okay. And isn't it true that you don't  
12 know if any of the plants take natural gas are  
13 proposed -- are proposed to take natural gas directly  
14 from either a local distribution company or an  
15 interstate pipeline?

16 A. At the time of my deposition, I didn't  
17 recall. We now -- I now have information on that,  
18 yes.

19 Q. Well, to the extent that plants take  
20 transportation from a local distribution utility,  
21 you've -- I take it then that you've reviewed the  
22 tariffs of those local distribution companies to  
23 determine whether they can be -- the deliveries to  
24 those gas plants can be interrupted?

25 A. No, I have not reviewed those tariffs.

1           Q.    Now, I want to talk to you a little bit  
2           about wholesale and retail price volatility.  Would  
3           it be fair to say that your Attachment JPK-5 suggests  
4           that with regard to a one-year wholesale product  
5           on-peak price, the annualized volatility is 18  
6           percent?

7           A.    Yes.

8           Q.    I want to talk to you now about  
9           Attachment JPKS-3A through C.  The information is  
10          from the Ohio Utility Rate Survey, correct?

11          A.    Yes, part of it.

12          MR. KUTIK:  May I approach?

13          EXAMINER PRICE:  You may.

14          MR. KUTIK:  Your Honor, I would like to  
15          have marked as Company Exhibit 118 a document  
16          entitled "A Report by the Staff of the Public  
17          Utilities Commission of Ohio, Ohio Utility Rate  
18          Survey" dated May 1, 2015.

19          EXAMINER PRICE:  It will be so marked.

20          (EXHIBIT MARKED FOR IDENTIFICATION.)

21          Q.    Dr. Kalt, I have handed you what's been  
22          marked for identification as Company Exhibit 118.  Do  
23          you recognize this?

24          A.    I have seen information like this.  I  
25          can't be 100 percent sure it was this document, but I

1 have seen comparisons like this, and I believe they  
2 were done by the staff.

3 Q. And so is it your testimony you are not  
4 sure when you have seen this report, but you've seen  
5 other reports of this type?

6 A. I believe so, yes.

7 Q. And the reports that you've seen of this  
8 type show a residential rate -- or back up. The  
9 residential rate information on this report is for  
10 nonshopping customers, correct?

11 A. Well, for some of the columns, I guess if  
12 I am understanding you correctly.

13 Q. Okay. And -- well, if we, for example,  
14 look at the fourth page of this document which is  
15 Ohio energy bills, residential customers, do you see  
16 that?

17 A. Okay.

18 Q. And let's just look at the top table  
19 which refers to residential customers, correct?

20 A. Uh-huh.

21 Q. Is this a "yes"?

22 A. Yes.

23 Q. Would it be fair to say what's shown  
24 there is information about nonshopping residential  
25 customers?

1           A.    I can't tell that from this figure.

2           Q.    Okay. Well, would it be information for  
3 customers taking service under the standard service  
4 offer from their local utility?

5           A.    Where does it say that?

6           Q.    I am asking you, sir.

7           A.    It says on the front page, it's labeled a  
8 column Electric Standard Service Offer, and that  
9 seems to be a single star on the second page of data.  
10 It says for customers not participating, nonshopping  
11 customers as you have called them. But I don't know  
12 how that relates to the top -- to the table you are  
13 now having me focus on. I can't see the  
14 calculations.

15          Q.    Well, let me refer you to your second  
16 deposition, sir, the one in July. Let me refer you  
17 to page 111 and 112. The bottom of page 111, I  
18 referred you to Attachment JPK-3A through C. See  
19 that?

20          A.    Page 111?

21          Q.    Yes, sir.

22          A.    In July?

23          Q.    Yes, sir.

24                   EXAMINER PRICE: Line 25.

25          A.    Oh, I'm sorry, I was looking for A



1 through C. It's on page 112, you mean.

2 Q. Well, the question starts --

3 A. I understand.

4 Q. Let me make sure we have a clear question  
5 and answer. At the bottom of page 111 and starting  
6 at the top of page 112, I direct you to Attachment  
7 JPK-3A through C, correct?

8 A. Yes.

9 Q. And on page 112, we talk about how that  
10 information comes from the utility -- the Ohio  
11 Utility Rate Survey, correct?

12 A. Uh-huh, yes.

13 Q. And then I asked you this question and  
14 you gave this answer starting at line 14: "Question:  
15 And with respect to the particular residential rate  
16 that you used, again, this would be for nonshopping  
17 customers, correct?"

18 "Answer: This would be for -- the way  
19 you and I were using it, this would be for people  
20 selecting the standard service offer from their  
21 local -- their local utility, correct?" That's what  
22 you said?

23 A. Yes, yes.

24 Q. And this would also reflect the total  
25 residential bill, correct?

1           A.    Do you mean what they are calling  
2 combined bill here?

3           Q.    Yes.

4           A.    Gasoline.

5           Q.    No, where it says electric bill, that's  
6 their combined bill, correct?

7           A.    Where -- which page of this are we on?

8           Q.    How about page 3, the page we were on.

9           A.    Okay.  Yes.

10          Q.    So the answer to my question is "yes"?

11          A.    What was the question again?  It shows --

12          Q.    It's the total bill.

13          A.    That's my understanding, yes, from this  
14 chart.

15          Q.    And it's a total bill and an assumed  
16 rate, correct?  Or assumed usage rate, excuse me.

17          A.    It does have a usage stated there in the  
18 table.

19          Q.    Now, would it be fair to say that you did  
20 not for purposes of your testimony review the  
21 wholesale electric rates versus the companies' rider  
22 that reflects the cost of their purchase power?

23          A.    You mean the power portion of the overall  
24 bill?

25          Q.    Correct.

1           A.    I did not find occasion to review that,  
2    no.

3           Q.    And it would be fair to say that you  
4    don't remember if the price that resulted from the  
5    companies' competitive bidding process for SSO load  
6    is published.

7           A.    At the time of my deposition, I couldn't  
8    recall. I have now seen that it is published, yes.

9           Q.    And would it be fair to say since you  
10   didn't recall it at your deposition, that you haven't  
11   for purposes of your testimony reviewed those prices  
12   or compared those prices with wholesale electric  
13   prices?

14          A.    No, I didn't. That comparison was not  
15   necessary to my analysis. I was interested in the  
16   all in rate, as I called it in my deposition, which  
17   is what I looked at.

18          Q.    Let me now refer you to attachment  
19   JPKS-2. That is data, is it not, from --

20          A.    One second. Yes.

21          Q.    That is data, is it not, from the PUCO's  
22   Apples to Apples website?

23          A.    That's correct.

24          Q.    And would it be fair to say you don't  
25   know if CRES providers are required to put all of

1 their offers on the Apples to Apples website?

2 A. I don't -- I don't know there is a legal  
3 requirement of that type. It wasn't pertinent to my  
4 analysis.

5 Q. So there may be other offers available to  
6 customers in the market other than those that are on  
7 the Apples to Apples website, correct?

8 A. That's a possibility, although my  
9 understanding, as I told you at the deposition, is  
10 the PUCO tries to be exhaustive in its cal -- in its  
11 compilations, and it indicates that on the website.

12 Q. You don't know if the Apples to Apples  
13 website even represents the majority of offers,  
14 correct?

15 A. I don't believe we can do a count of  
16 that.

17 Q. So the answer is "correct."

18 A. No, that's correct.

19 Q. Now, with respect to the various columns,  
20 12, 24, 36, would the 12-month product be basically  
21 what was available for all or most of the year of  
22 2015? Would that be a way to read this?

23 A. I don't believe you can do that. I  
24 believe that it was a snapshot in time from the  
25 apples and oranges website to see where the market

1 was sitting.

2 Q. Well, you filed your testimony, sir, in  
3 May of 2015, correct?

4 A. Yes, yes.

5 Q. So would it be fair to conclude that you  
6 were taking data off the Apples to Apples website  
7 sometime in the few weeks before May 11, 2015?

8 A. Sometime before May, 2015, yes.

9 Q. And so that was what would be available  
10 at that time a few weeks before May, 2015 -- May 1,  
11 2015, that would be available for a year, two years,  
12 or three years, correct?

13 A. For 12 months, 24 months, or 36 months,  
14 but they didn't run on calendar years. In other  
15 words, you might start in April and run to the end of  
16 the next March.

17 Q. Fair enough. So would it be fair to say  
18 it would have -- the one-year product, the 12-month  
19 product, would have included a good part of 2015?

20 A. In that offer, yes, it would have, yes.

21 Q. And --

22 A. Going forward from that date, sure.

23 Q. And the 24-month product would have  
24 included 2015 and 2016.

25 A. Sure.

1 Q. And the three-year product into 2017.

2 A. You're right.

3 Q. We can agree on that.

4 A. Definitely.

5 Q. Now, would it be fair to say that you are  
6 familiar with the capacity prices in ATSI for the  
7 delivery years beginning in 2015?

8 A. Familiar with the prices?

9 Q. Yes.

10 A. I am aware I believe there are capacity  
11 prices. I haven't tried to use them or quantify  
12 them, remember them.

13 Q. Well, would you agree with me that the  
14 capacity prices that would cover 2015 to 2016 are  
15 more than two times the capacity prices that would  
16 cover 2016 and 2017?

17 A. I would have to see the data before I  
18 agree with you.

19 Q. So you don't know.

20 A. I couldn't agree with you. I can't agree  
21 with you.

22 Q. Now, you make some comments about -- hold  
23 on a second.

24 MR. KUTIK: May I have a moment, your  
25 Honor?

1 EXAMINER PRICE: You may.

2 MR. KUTIK: May I proceed?

3 EXAMINER PRICE: You may.

4 Q. (By Mr. Kutik) You have some commentary  
5 in your testimony about the companies' electric  
6 transition plan case, correct, or the electric  
7 transition case, correct?

8 A. The companies -- you mean the  
9 restructuring transition?

10 Q. Do you know when I say electric  
11 transition plan, do you know what I mean?

12 A. I believe I do. Plans that were filed in  
13 association with that.

14 Q. Would it be fair to say you didn't  
15 participate in those cases?

16 A. Not directly.

17 Q. Do you know what a rate certainty plan  
18 is?

19 A. As a general matter, as I have seen that  
20 term used around the industry, usually it refers to  
21 some type of fixed pricing going forward, often used  
22 in the context of transitions.

23 Q. Do you know that in Ohio what the term  
24 rate certainty plan means?

25 A. No, I don't recall.

1 Q. Do you know what the term rate stability  
2 plan means?

3 A. Again, I have seen those discussed. I  
4 don't have any specific plan in mind, but my  
5 understanding, they had to do with the development of  
6 rates over time affecting the volatility.

7 Q. Isn't it true, sir, you haven't reviewed  
8 the companies' rate certainty plan or rate stability  
9 plan?

10 A. No. I don't believe I have.

11 Q. Now, you understand that the companies  
12 were allowed to collect stranded costs at one of  
13 those cases, correct?

14 A. My understanding was the companies were  
15 allowed to collect stranded costs.

16 Q. And would it be fair to say that you  
17 don't know as part of the various transition cases  
18 whether the companies rates went up or down?

19 A. I don't know. I have seen data on that.  
20 I don't recall what the pattern was, but I have seen  
21 data on that.

22 Q. So you don't recall.

23 A. Not as I sit here right now.

24 Q. And would it be fair to say you don't  
25 know if, in fact, stranded costs were ever written



1 off?

2 A. There's testimony in the public record by  
3 the staff to the effect that I believe they have  
4 indicated that stranded costs were written off.

5 Q. Isn't it true, sir, you don't know if  
6 stranded costs were, in fact, written off?

7 A. There are statements in the public record  
8 to that effect. That's the state of my knowledge. I  
9 didn't -- I don't know how I would do a separate  
10 calculation on that.

11 Q. Let me refer you to your deposition  
12 testimony, the February deposition, page 100. Are  
13 you there?

14 A. 100?

15 Q. Yes. Sir, did you not give the following  
16 answer to the following question, starting at line  
17 10: "Question: To the extent these stranded costs  
18 existed at that time, is it your understanding they  
19 had been written off by the -- off the books?

20 "Answer: By FES?

21 Answer -- or "Question: Yes.

22 "Answer: No, I haven't been able to  
23 determine based upon the record before us and what  
24 seems to be available from the PUCO."

25 A. Yes, that was my knowledge of the state

1 at the time of the deposition, yes.

2 MR. KUTIK: Thank you. May I have a  
3 minute, your Honor, please?

4 EXAMINER PRICE: You may.

5 MR. KUTIK: That's all I have, your  
6 Honor. Thank you, your Honor.

7 EXAMINER PRICE: Thank you.

8 Mr. McNamee?

9 MR. McNAMEE: No questions, thank you.

10 EXAMINER PRICE: Mr. Petricoff, redirect?

11 MR. PETRICOFF: Yes, your Honor. May we  
12 have a moment or two before we have redirect?

13 EXAMINER PRICE: You may. Let's go off  
14 the record.

15 (Discussion off the record.)

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

18 Mr. Petricoff?

19 MR. PETRICOFF: Yes, your Honor.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Petricoff:

23 Q. Just have a couple of direct -- redirect  
24 questions for you, Dr. Kalt. First, earlier this  
25 morning, Mr. Kutik asked you if you ever had the

1 responsibility to make a decision to close a power  
2 plant. Do you recall that?

3 A. Yes. You mean a decision-making role or  
4 authority?

5 Q. What is your -- your background and  
6 experience on making decisions to close a plant and  
7 what kinds of input have you provided for those who  
8 have to make decisions on closing a power plant?

9 A. Mostly I am not an electric power company  
10 executive, so I haven't had decision-making authority  
11 as Mr. Kutik asked. But I have served as a  
12 consultant looking at plant closing decisions and  
13 have had occasion to study in great detail how those  
14 decisions are made, the data that go into them, and  
15 even doing calculations myself on those decisions.

16 Q. And was your testimony about plant  
17 closings based on your experience in consulting on  
18 plant closings?

19 A. Yes.

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Leading.

23 EXAMINER PRICE: We'll just move on.

24 Q. Okay. Do you have with you on the stand  
25 what has been marked as Companies Exhibit 118? It's

1 the --

2 A. Yes.

3 Q. -- staff report. Have you -- other than  
4 during your deposition and during the hearing today,  
5 have you seen this report?

6 A. I've seen -- probably seen reports like  
7 it, but I don't recall seeing this one.

8 Q. Did you use this report in -- in  
9 preparing JPK3- -- I'm sorry, I guess it's JPK-3.

10 A. S-3C. You will see in those tables my  
11 data went out to January of 2015, and the data in  
12 this Exhibit 118 is for May, 2015.

13 Q. Okay. And then do you have with you what  
14 has been marked as Company Exhibit 117?

15 A. What is it?

16 Q. 117, that's the generation --

17 A. Got it.

18 Q. -- queues. Okay. When you did your --  
19 your report -- I'm sorry, when you did your testimony  
20 and in working in the area, do you use the computer  
21 version of the PJM generation queue?

22 A. I or my staff under my direction, yes.

23 Q. And how is that different from this --  
24 this Exhibit 117?

25 A. When you go to this electronically,

1 you'll see on the second page, for example, the green  
2 dots. What you can do is click on those, and it  
3 takes you to further information that are part of the  
4 whole queue suite of information. And so you can get  
5 additional information beyond what is shown here.

6 Q. Okay. One of the green dots I see says  
7 IMP. It's about, oh, about seven columns over from  
8 the -- from the left-hand side of the page. What  
9 does that stand for?

10 A. I think that refers to whether an impact  
11 study has been done or not.

12 Q. And what would one find in the impact  
13 study?

14 A. When you click on those, what you'll find  
15 is the computer will take you to those kinds of  
16 studies, and they will have all kinds of information,  
17 tell you generally who the owners are or the  
18 plants -- where the plants -- where the plant is  
19 located and so forth. In other words, you get detail  
20 down to the plant level around these projects.

21 Q. So if one uses the electronic version and  
22 clicked on the appropriate places and ran through the  
23 menus, could you recreate the chart that is S-1 minus  
24 the column that says "Sources"? Could you get all  
25 this information?

1 MR. KUTIK: Objection.

2 EXAMINER PRICE: Grounds?

3 MR. KUTIK: Leading.

4 MR. PETRICOFF: Your Honor, you can't  
5 tell what the answer will be from that.

6 EXAMINER PRICE: Overruled.

7 A. I believe so. I haven't recently tried  
8 to do it, but I believe so.

9 Q. Okay. And then I have -- you were asked  
10 by Mr. Kutik -- oh, yeah, before we leave that, what  
11 are these other items as well? What's ISA and CSA?

12 A. For example, CSA refers to whether there  
13 is a -- I believe it's a construction siting  
14 agreement or something like that. It's further  
15 documentation around projects.

16 Q. Okay. And this particular page doesn't  
17 show any menus to click on. Are there oftentimes  
18 menus you can click on under that column as well?

19 A. I believe so.

20 MR. KUTIK: Objection.

21 A. I would have to check.

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. KUTIK: Leading.

25 EXAMINER PRICE: Sustained.

1 Q. Okay.

2 MR. KUTIK: And I would appreciate it, if  
3 I object, the witness would stop talking.

4 EXAMINER PRICE: Actually, if any party  
5 objects, you should stop, particularly your counsel  
6 but also equally so --

7 THE WITNESS: I will treat them equally.  
8 I would interrupt them all.

9 MR. KUTIK: I would appreciate that.

10 EXAMINER PRICE: Mr. Petricoff, can we go  
11 off the record one minute?

12 MR. PETRICOFF: Sure.

13 (Discussion off the record.)

14 EXAMINER PRICE: Thank you. Please  
15 proceed.

16 Q. Dr. Kalt, Mr. Kutik asked you questions  
17 about debt ratios for FirstEnergy Solutions and the  
18 amount of debt and coverage ratios. Do you recall  
19 that line of questioning?

20 A. Sure.

21 Q. Is it your opinion that if rider RRS was  
22 approved, that FirstEnergy Solutions would be able to  
23 borrow more and at a lower cost than it can now?

24 A. You would expect that the approval of  
25 rider RRS would tend to reduce the cost of capital to

1 the company -- to FES.

2 MR. PETRICOFF: One second, your Honor.

3 Can we go off the record?

4 (Discussion off the record.)

5 EXAMINER PRICE: Back on the record.

6 A. You would expect that if rider RRS goes  
7 through and certain risks are shifted to captive  
8 ratepayers, shifting those risks away from the  
9 companies would cause the capital markets to provide  
10 more capital and/or capital at a lower cost because  
11 you've taken some of the risk out of the -- out of  
12 the equation for the capital market analogy. My  
13 first car I ever bought, my -- my uncle cosigned it  
14 for me. They wouldn't give me the loan if I hadn't.  
15 So, sure, if someone else will take the risk, then it  
16 will cut your costs of capital.

17 Q. From the testimony -- from the  
18 FirstEnergy testimony and the application, can you  
19 calculate what the value of shifting the risk to the  
20 ratepayers would be? Can you quantify that?

21 A. You actually can, yes.

22 Q. How would you do that and what does it  
23 come to?

24 MR. KUTIK: Objection.

25 A. I have calculated --



1 MR. KUTIK: Objection.

2 EXAMINER PRICE: Objection. Grounds?

3 MR. KUTIK: Beyond the scope of  
4 redirect -- beyond the scope of cross, excuse me.

5 MR. PETRICOFF: Your Honor, he was asked  
6 in detail about -- about the debt and basically this  
7 follows through the answers about debt, debt ratio  
8 impairments. This is what it all funnels down to.

9 MR. KUTIK: We had no questions, your  
10 Honor, about cost of debt, relative cost of debt,  
11 none of those.

12 MR. PETRICOFF: Actually, he was asked  
13 the amount of debt from the company.

14 MR. KUTIK: The amount, not the cost.

15 MR. PETRICOFF: And he was also asked  
16 about a balance sheet too, I think.

17 MR. KUTIK: And he hadn't read it.

18 EXAMINER PRICE: He hadn't read it. He  
19 didn't know the amount of debt.

20 MR. KUTIK: This is all speculative.  
21 This is made up stuff.

22 MR. PETRICOFF: Well, your Honor, I think  
23 the characterization of made up is wrong. The  
24 question was what in the testimony. It's going to  
25 have to come out of the FirstEnergy testimony.

1                   EXAMINER PRICE: Okay. We are going --  
2 to the extent that he can tie it to FirstEnergy's  
3 testimony and solely to FirstEnergy's testimony, we  
4 will allow the question.

5           A. You better rephrase it.

6           Q. Okay.

7           A. You just want me to explain it?

8           Q. Based on FirstEnergy's testimony, have  
9 you been able to calculate what the value of it --  
10 what the value of switching -- what the value of the  
11 rider RRS would be to FirstEnergy Solutions?

12          A. Yes. Would you like me to explain?

13          Q. Yes. Please explain.

14          A. And this is all from the testimony. I  
15 lay that out in my report. It's all from the  
16 testimony. I didn't have to go to balance sheets or  
17 10-Qs for this. In the testimony of a group of FES  
18 witnesses, Mr. Lisowski, Mr. Staub, Mr. Ruberto, and  
19 Mr. Rose as well, the company lays out if you have  
20 heard this number, \$770 million.

21                   It calculates that the present discounted  
22 value, and it says this is a benefit of \$770 million  
23 to the captive ratepayers. What I do in my  
24 supplemental report, your Honor, is I take the same  
25 testimony, and I look at what they are saying about

1 why that arises, and what they say is, it is  
2 primarily Mr. Straub, puts in testimony that says the  
3 impact of the rider RRS is twofold on this whole  
4 issue of the cost of debt, the amount of debt,  
5 impairment, all of that, the impact of all of that  
6 shifting the risk to the captive ratepayers is to  
7 allow the companies -- the company in this case, FES,  
8 to carry a higher debt equity ratio, a 50/50 debt  
9 ratio instead of 65 percent debt, 35 percent equity.  
10 And you know when you raise more debt because debt is  
11 cheaper than equity, it lowers -- you sit on these  
12 Commissions, you hear this all the time, so it lowers  
13 your cost to capital.

14           Secondly, Mr. Straub argues that -- it is  
15 in my supplemental report, argues that cost of equity  
16 capital is also reduced by shifting the risk on to  
17 the captive ratepayers from -- I believe it's from  
18 13.3 percent to he recommends 11.15 percent, okay.  
19 And what he is saying there when you read it, he is  
20 talking about how by having this risk shifted to the  
21 capital ratepayers, the capital market will allow the  
22 company to go into the equity markets at a lower  
23 cost. 13.3 drops to 11.15.

24           When -- now, when you then take the  
25 discounted cash flow analysis that Mr. Ruberto does

1 based on Mr. Lisowski, okay, and use those costs of  
2 capital, the -- what if we didn't have rider RRS,  
3 what if we didn't shift, again, the same prices in  
4 the marketplace, that's what they put forward, the  
5 same costs that's performed, what you find is the net  
6 value to the company is \$550 million positive.

7 And this goes to the issue of  
8 retirements, why I say it is not about to be retired,  
9 depends on its own numbers, that difference between  
10 770 versus 550, 770 million to 550 million, is the  
11 market's measure according to their testimony of what  
12 the -- what risk there is that they are shedding  
13 because if they had to still bear the risk, they  
14 wouldn't -- they wouldn't have that lower cost of  
15 equity and wouldn't have that lower cost, that  
16 greater debt ratio rate.

17 So the actual calculations in my  
18 supplemental report, that difference between 770  
19 million and 550 million is a measure of the cost of  
20 risk that is -- risk doesn't go away. You know, the  
21 economy will boom or rise and prices will go up or  
22 down. It is being shifted to captive ratepayers, and  
23 that's the measure in their own calculations of the  
24 benefit to them of shifting net risk. They saved  
25 that money. But the risk is shifted on to the

1 captive ratepayers. And so that's the basic way in  
2 which you can calculate and see exactly what the  
3 companies' offer, FES's testimony, exactly what their  
4 numbers imply. That's what I do in my supplement.

5 EXAMINER PRICE: Can you press your  
6 microphone. You cut out there at the end.

7 THE WITNESS: Did I go out again?

8 EXAMINER PRICE: And so your testimony is  
9 predicated on the fact that you believe that moving  
10 the plants will change their debt equity ratio from  
11 65/35 to 50/50?

12 THE WITNESS: Well, that's the companies'  
13 testimony. That's how they set it forward.

14 EXAMINER PRICE: That's not what I asked  
15 you.

16 THE WITNESS: I know. What I am saying  
17 is, using those numbers, those results, all I can say  
18 is I have not tried a different forecast for the debt  
19 equity rate or what their cost of equity would be.  
20 But the direction of movement is accurate, that is,  
21 all else equal, if I could shift the rest of the risk  
22 to my uncle, they will let me make that loan, I will  
23 carry more debt, if you will, okay. And so the  
24 direction is correct. I have not tried to do  
25 separate calculations of what those numbers might be.

1 I relied entirely on the FES witnesses.

2 EXAMINER PRICE: Can you explain again to  
3 me because I had trouble following you what you did  
4 with the return on equity in the adjustment from 13  
5 to 11.15?

6 THE WITNESS: Yeah. What Mr. Straub  
7 does, Mr. Straub -- Mr. Ruberto does the basic  
8 discounted cash flow calculation that results in this  
9 calculation of 770 million net positive value,  
10 present value. That's Mr. Ruberto.

11 He employs in that calculation a cost of  
12 equity that goes into the cost of capital to the  
13 discount rate of 11.15. That comes from Mr. Straub  
14 who says that at an unregulated company without  
15 recourse to captive ratepayers, the way the RRS does,  
16 rider RRS, he says the cost of capital would be 13.3.  
17 Then he argues, I believe it is actually pages 7  
18 through 10 of Mr. Straub, it is all right there, he  
19 then says but we're not going to ask the ratepayers  
20 to cover 13.3. We are going to reduce that because  
21 essentially they are saying we recognize we are  
22 shifting risk to the ratepayers, and so our cost of  
23 equity should be treated as somewhat lower.

24 And actually what he argues  
25 fundamentally, I think he says -- I could go back and

1 read the entire words in a recent AEP decision 11.15  
2 was decided on, whether it was some kind of similar  
3 shifting going on. And that's what he endorses.

4 EXAMINER PRICE: That's a factual  
5 question, but okay.

6 Thank you, Mr. Petricoff.

7 MR. PETRICOFF: No further questions,  
8 your Honor.

9 EXAMINER PRICE: Mr. Hays?

10 MR. HAYS: No cross. Thank you, your  
11 Honor.

12 EXAMINER PRICE: Ms. Bojko?

13 MS. BOJKO: No questions. Thank you.

14 EXAMINER PRICE: Mr. Sahli?

15 MR. SAHLI: No.

16 EXAMINER PRICE: Mr. Sauer?

17 MR. SAUER: No questions, your Honor.

18 EXAMINER PRICE: Mr. Kurtz?

19 - - -

20 RECROSS-EXAMINATION

21 By Mr. Kurtz:

22 Q. I do want to ask about this lowering of  
23 the risk. Why isn't that creating value, creating a  
24 win-win situation by lowering the capital cost of the  
25 entity by entering into this lower risk transaction?

1           A.     For two basic reasons, as I just said to  
2     the court here, risks don't go away. Risks don't go  
3     away. You are still going to have booms and busts in  
4     the economy, oil prices will go up, down, gas prices.  
5     All the underlying risk doesn't go away. It's just  
6     being shifted to capital ratepayers under the  
7     proposal.

8                     And so the notion of a win-win is wrong  
9     because it ignores the fact that there are real risks  
10    out there, that, for example, you can live for 15  
11    years, you are going to live for 15 years as a  
12    captive ratepayer and there are tremendous  
13    uncertainties with that, with respect to that. Will  
14    a certain technology come along to change the market  
15    completely as fuel prices change, et cetera?

16                    Secondly, what we have also learned, I  
17    think it goes back to the learned treatise issue,  
18    secondly, and very importantly, when you insulate --  
19    the reason the economics of our system moved toward  
20    the reliance on competitive markets is when you  
21    insulate decision makers who can control risk, choice  
22    of technology, choice of fuel, choice of whether to  
23    operate and so forth, from those who bear the risk,  
24    okay, you produce inefficient decisions, and  
25    that's -- in other words, that's what we found under



1 traditional cost-of-service regulation. That's that  
2 learned treatise.

3 Q. Okay.

4 A. And so you have to take into account that  
5 you are going -- you are distorting them. You are  
6 subsidizing the costs of the decision maker, and it  
7 distorts the decisions away from efficient decisions  
8 that would be a win-win, but that's the problem.

9 Q. Okay. Your redirect just dealt with the  
10 capital structure and the cost of capital, and I want  
11 to stick with that. Consumers are being charged --  
12 or the utilities are being charged by FES the risk  
13 adjusted return, the lower return on equity, and the  
14 lower -- and the less leverage -- excuse me, the more  
15 highly leveraged capital structure, so that's  
16 embedded in the price utilities are paying, correct?

17 A. Yes. And that's what I am trying to  
18 convey to you, is that is embedded in the price, but  
19 in addition to paying for electricity, those  
20 consumers, their captive ratepayers, have to sit  
21 there for 15 years and bear risks.

22 Risks, for example, that market prices  
23 will soften and that they will end up having to make  
24 large net payments compared to which is buying on the  
25 market and not being captive, so they are bearing

1 those risks.

2 One last point. You asked me an  
3 open-ended question.

4 MR. KUTIK: It wasn't open ended, so I  
5 move to strike everything after the word "yes." It  
6 was correct, is what he was asked.

7 EXAMINER PRICE: Finish his question and  
8 then we'll take up the motion to strike.

9 THE WITNESS: What I was trying to convey  
10 to you was the consumer still bears -- the ratepayer  
11 still bears the risk that the world will turn out not  
12 as forecasted by Mr. Lisowski's and Mr. Rose's and so  
13 forth as not as forecasted. Some of that risk is  
14 this negative consequence of what if it turns out  
15 that it would have been a lot cheaper to just not  
16 have the RRS and buy on the open market. That's one  
17 of the risks that's being taken.

18 That is not reflected in the cost of  
19 capital that Mr. Straub calculates and is used in  
20 these calculations. In fact, what's done is the  
21 market is telling you the cost of that risk.  
22 Essentially if you believe Mr. Straub's numbers,  
23 that's the marketplace speaking as to what the cost  
24 of risk is that is being shed by the companies and  
25 put on the captive ratepayers.

1 MR. KUTIK: Renew my motion, your Honor.

2 EXAMINER PRICE: Mr. Kurtz, do you want  
3 to weigh in on the motion to strike?

4 MR. KURTZ: I agree with Mr. Kutik.

5 EXAMINER PRICE: I wasn't sure. If he  
6 was answering your question, I was going to deny the  
7 motion to strike. Let me see the question, please.

8 MR. PETRICOFF: Could we have the  
9 question read back?

10 EXAMINER PRICE: Just read back  
11 Mr. Kurtz's last question, please.

12 (Record read.)

13 EXAMINER PRICE: We will grant the motion  
14 to strike at this time.

15 MR. KURTZ: No further questions.

16 EXAMINER PRICE: Mr. Randazzo?

17 MR. RANDAZZO: No questions.

18 EXAMINER PRICE: Mr. Kurtz -- Mr. Kutik?

19 MR. KUTIK: I don't know which one of us  
20 should be insulted, your Honor.

21 EXAMINER PRICE: You should both be  
22 equally complimented.

23 MR. KUTIK: Okay.

24 - - -

25



1           A.    It might be.  We don't know.  We don't  
2 know.  It isn't forecasted by the company  
3 witnesses --

4           Q.    All right.

5           A.    -- except insofar as they pulled a  
6 forecast in at 50/50.

7           Q.    Well, is it your view that the  
8 companies -- excuse me, FES would change its capital  
9 structure under the proposed agreement?  "Yes" or  
10 "no."

11          A.    That could be one of their options that  
12 would become more likely that they would do it, but  
13 we don't know what they are going to...

14          Q.    So the answer to my question is you don't  
15 know.

16          A.    I don't know.  It's a forecast.

17               MR. KUTIK:  Thank you, your Honor.  No  
18 further questions.

19               EXAMINER PRICE:  Ms. Addison?  
20 Ms. Chiles?

21               Thank you.  You are excused.

22               At this time, we will take up again the  
23 motions, pending motions to strike one of the  
24 attachments.

25               MR. KUTIK:  I believe it's JPKS-1, your

1 Honor.

2 EXAMINER PRICE: That's correct.

3 Mr. Petricoff, you had indicated you would like an  
4 opportunity to explain what's in the Ventyx Velocity  
5 Suite. Do you have any further arguments you would  
6 like to make with respect to that?

7 MR. PETRICOFF: Yeah. Basically these  
8 are -- that's a data package, and I just wanted to  
9 note that in addition to what's on here, there's --  
10 there's also a data package. And my point was going  
11 to be that, you know, experts generally gather in the  
12 data, can accumulate it, and put out a chart. I  
13 think it doesn't matter whether you got it from the  
14 data package which got it from PJM or you went  
15 through and clicked through all the little -- all the  
16 little icons to get it that way. That's just the way  
17 these charts are put together. And that, I think, is  
18 within the realm of an expert to do.

19 EXAMINER PRICE: Mr. Kutik?

20 MR. KUTIK: Your Honor, I guess I didn't  
21 hear an answer "yes" to your question.

22 EXAMINER PRICE: I heard his answer. Do  
23 you have any other issues you would like to raise?

24 MR. KUTIK: Well, your Honor, I think as  
25 the testimony indicates, the PJM queue data does not

1 include the information data that appears on this,  
2 particularly with respect to the location of the  
3 plant or the name of the plant. The best thing that  
4 he could get -- that Mr. Petricoff could get from the  
5 witness is "I believe," but I would have to look at  
6 it. That's not good enough.

7 EXAMINER PRICE: It's not clear to the  
8 Bench that the plants that he has listed all have had  
9 their impact studies. I understand his testimony was  
10 if you flowed through to the impact study, you might  
11 be able to find the name and location. Unfortunately  
12 the document provided by the companies was only the  
13 Ohio plants which are not in dispute. The burden of  
14 proof of establishing the authenticity of the  
15 document is on P3/EP5A, and accordingly, we are going  
16 to grant the motion to strike.

17 MR. PETRICOFF: Okay. Your Honor, could  
18 I get a clarification on the motion to strike?

19 EXAMINER PRICE: Yes.

20 MR. PETRICOFF: At the top of the page,  
21 we do have a chart and the source is provided as  
22 coming from PJM on the base residual auction. I  
23 assume that the top of the chart stays in?

24 MR. KUTIK: That's not the subject of our  
25 motion.

1 EXAMINER PRICE: That was not the subject  
2 of the motion.

3 MR. PETRICOFF: That's the clarification.

4 EXAMINER PRICE: It's solely the names  
5 and owners and other associated information with the  
6 non-Ohio plants in the -- in JPKS-1; is that correct?

7 MR. KUTIK: No.

8 EXAMINER PRICE: No? I thought you were  
9 not arguing over Oregon and Carroll.

10 MR. KUTIK: Yes, that's correct, but I  
11 believe the others...

12 EXAMINER PRICE: Those are the only two  
13 Ohio plants.

14 MR. KUTIK: The others purport to be  
15 potentially in Ohio, but yes.

16 EXAMINER PRICE: No.

17 MR. KUTIK: I think we are on the same  
18 wavelength.

19 EXAMINER PRICE: Okay. Let me rephrase  
20 it.

21 MR. KUTIK: Everything but.

22 EXAMINER PRICE: Oregon and Carroll will  
23 stay in; everything else is out.

24 MR. PETRICOFF: Understood, your Honor.

25 EXAMINER PRICE: Mr. Petricoff?



1 MR. PETRICOFF: Yes, your Honor. At this  
2 time subject to these -- these decisions on the  
3 motions to strike, we would move to enter into the  
4 record P3/EPISA Exhibits 1 through 6.

5 EXAMINER PRICE: Any objections subject  
6 to the motions to strike?

7 Hearing none, they will be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER PRICE: Mr. Kutik.

10 MR. KUTIK: Your Honor, we would move for  
11 the admission of Company Exhibit 116.

12 EXAMINER PRICE: Any objection?

13 MR. PETRICOFF: Your Honor, this wasn't  
14 used for anything.

15 EXAMINER PRICE: I had the same question.  
16 Mr. Kutik?

17 MR. KUTIK: Your Honor, this is -- this  
18 is a -- in this testimony or in this brief, there is  
19 a discussion of this witness's beliefs regarding  
20 long-term contracts, and so we believe it's relevant  
21 to be able to talk -- or to include in our brief  
22 quotes from this witness's briefs.

23 MR. PETRICOFF: If --

24 MR. KUTIK: He verified it. It's  
25 authentic. It's not hearsay; therefore, it's

1 admissible.

2 EXAMINER PRICE: Mr. Petricoff?

3 MR. PETRICOFF: He did identify it, but  
4 that doesn't make it relevant. And until we have the  
5 conversation as to what those quotes are going to be  
6 and what his responses are going to be, then it  
7 doesn't make the relevancy and, you know, quite  
8 frankly, the opportunity was here to make those  
9 points and that opportunity has come and gone.

10 MR. KUTIK: Your Honor, I don't have -- I  
11 don't have to point out what points of the document I  
12 want. I can show the court or the Bench it's  
13 relevant. You can turn to page 7 where the witness  
14 says, "Long-term contracts encourage investment by  
15 reducing developers' and lenders' risk that will fail  
16 to recoup their investments over time. By agreeing  
17 to long-term contracts, both buyers and sellers are  
18 able to hedge against future uncertainty and locking  
19 in stable rates" and there are other statements like  
20 that.

21 EXAMINER PRICE: Mr. Petricoff?

22 MR. PETRICOFF: That's fine.

23 EXAMINER PRICE: You can -- if he uses in  
24 his brief something you don't think is relevant, you  
25 can raise it on your reply. You can deal with it

1 accordingly in your reply brief. We are going to  
2 admit the exhibit.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MR. KUTIK: Your Honor, we would ask the  
5 Bench to take administrative notice of the staff  
6 reports on the Ohio Utility Rate Survey from 2014 and  
7 2015.

8 EXAMINER PRICE: We will take  
9 administrative notice of those documents.

10 MR. KUMAR: Your Honor, would you be  
11 taking administrative notice of the ones taken every  
12 month? I believe they are published on a monthly  
13 basis.

14 MR. KUTIK: I am going to do all of  
15 those, your Honor.

16 EXAMINER PRICE: Okay. All of them from  
17 2014 through currently in 2015. Are you going to  
18 move 117?

19 MR. KUTIK: No, your Honor, we are not.

20 EXAMINER PRICE: Okay. Ms. Bojko, you  
21 may call your next witness. Again, I think we said  
22 this off the record, but we will have to break at  
23 1:15 sharp for the Commission meeting, sharing  
24 facilities.

25 MS. BOJKO: Thank you, your Honor. At

1 this time OMA Energy Group calls John Seryak to the  
2 stand.

3 (Witness sworn.)

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

6 THE WITNESS: John A. Seryak, 3709 North  
7 High Street, Columbus, Ohio 43214.

8 EXAMINER PRICE: Please proceed,  
9 Ms. Bojko.

10 - - -

11 JOHN A. SERYAK

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

14 DIRECT EXAMINATION

15 By Ms. Bojko:

16 Q. Mr. Seryak, are you the same John A.  
17 Seryak that filed direct testimony in this proceeding  
18 on March 2, 2015?

19 A. Yes.

20 MS. BOJKO: Your Honors, at this time, I  
21 would like to mark the direct testimony of Mr. Seryak  
22 as OMAEG Exhibit 22.

23 EXAMINER PRICE: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Seryak, was this direct testimony

1 prepared by you or under your direction?

2 A. Yes.

3 Q. And, sir, do you have any changes to your  
4 testimony today?

5 A. Yes, one change.

6 Q. Please proceed.

7 A. On page 2, line 14.

8 EXAMINER PRICE: Can we go off the record  
9 one moment?

10 (Discussion off the record.)

11 EXAMINER PRICE: Go back on the record.

12 A. Yes, page 2, line 14, the word "analysis"  
13 should be "analyst." That's all.

14 Q. Thank you. And when you provided the  
15 answers to the questions in the testimony, did you  
16 answer truthfully and to the best of your knowledge?

17 A. Yes.

18 Q. And with the change that you just  
19 mentioned, if I were to ask you the same questions  
20 today, would your answers be the same?

21 A. Yes.

22 MS. BOJKO: At this time, your Honor, I  
23 would like to move OMAEG Exhibit 22 subject to  
24 cross-examination, and I tender the witness for  
25 cross.

1 EXAMINER PRICE: We will address the  
2 admission of OMAEG 22 after cross-examination.

3 Mr. Sahli?

4 MR. SAHLI: No questions.

5 EXAMINER PRICE: Ms. Petrucci?

6 MS. PETRUCCI: No questions.

7 EXAMINER PRICE: Mr. Sauer?

8 MR. SAUER: No questions, your Honor.

9 EXAMINER PRICE: Mr. Kurtz?

10 MR. KURTZ: No questions.

11 EXAMINER PRICE: Let's go off the record.

12 (Discussion off the record.)

13 EXAMINER PRICE: Let's go back on the  
14 record. Mr. Randazzo.

15 MR. RANDAZZO: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Randazzo:

19 Q. Good afternoon.

20 A. Hi.

21 Q. Page 1 of your testimony, you indicate  
22 there that you are the chief executive officer of two  
23 firms, RunnerStone and Go Sustainable Energy. Do  
24 both of those firms have commercial relationships  
25 with either the Ohio Manufacturers' Association or

1 OMAEG?

2 MS. BOJKO: Objection, your Honor.

3 EXAMINER PRICE: Grounds?

4 MS. BOJKO: Compound question, but I  
5 object to relevancy with regard to OMA. OMA is not a  
6 party to this proceeding, and thus any relationships  
7 with OMA are irrelevant.

8 EXAMINER PRICE: We will overrule the  
9 objection as to compound, and we will sustain the  
10 objection as to Ohio Manufacturers' Association.

11 Q. Sir, are you -- are you a member of the  
12 Ohio Manufacturers' Association Energy Group?

13 A. No.

14 EXAMINER PRICE: One second. Did you  
15 want an answer to your question?

16 MR. RANDAZZO: Well, I am going to back  
17 up, your Honor.

18 EXAMINER PRICE: Okay.

19 Q. Do you know whether the Ohio  
20 Manufacturers' Energy Group is owned by the Ohio  
21 Manufacturers' Association?

22 MS. BOJKO: Objection to the extent it  
23 calls for a legal conclusion of the word "own."

24 EXAMINER PRICE: Overruled.

25 A. I believe it's a subsidiary.

1 Q. Okay. Do you know whether or not the  
2 Ohio Manufacturers' Association controls the OMA  
3 Energy Group?

4 MS. BOJKO: Objection.

5 EXAMINER PRICE: Grounds?

6 MS. BOJKO: Relevancy -- well, relevancy  
7 with regard to this proceeding and, again, questions  
8 regarding OMA. OMA is not a party.

9 MR. RANDAZZO: It's a foundation  
10 question, your Honor.

11 EXAMINER PRICE: We'll allow it.

12 A. Can you clarify what you mean by  
13 "controls"? Like controls what?

14 Q. Well, let me back up and ask this, are  
15 you aware of the governance process for the Ohio  
16 Manufacturers' Energy Group?

17 A. Generally aware.

18 Q. And is that governance process published?  
19 Is it a public governance process, if you know?

20 MS. BOJKO: Objection.

21 MR. RANDAZZO: I will withdraw the  
22 question.

23 Q. Now, you've indicated that the Ohio  
24 Manufacturers' Association Energy Group is a  
25 subsidiary of the OMA. Do you have a commercial



1 relationship with either the OMA or the Ohio  
2 Manufacturers' Association Energy Group?

3 MS. BOJKO: Objection.

4 MS. DUNN: Your Honor, if I may be heard  
5 on the objection.

6 EXAMINER PRICE: Yes.

7 MS. DUNN: There --

8 EXAMINER PRICE: Why don't we let  
9 Ms. Bojko -- I think we all know what our grounds  
10 are, but let's go ahead and let her repeat them and  
11 then we will go on.

12 MS. DUNN: Sorry, I apologize.

13 MS. BOJKO: The objection is relevancy,  
14 that OMA is not a party to the proceeding, and just  
15 because he added a phrase before his question that  
16 was previously sustained doesn't make the question  
17 proper.

18 EXAMINER PRICE: Ms. Dunn?

19 MS. DUNN: Your Honor, this witness will  
20 discuss various relationships he has with both OMA  
21 and OMAEG and relating specifically to energy  
22 efficiency which is the topic of his testimony. It  
23 goes to the weight and credibility of his testimony,  
24 so questions regarding -- all questions regarding OMA  
25 should not be excluded just because they involve OMA.

1 MS. BOJKO: Your Honor, if I may respond?

2 EXAMINER PRICE: You may.

3 MS. BOJKO: Ms. Dunn assumes that her  
4 questions may ask OMA-related questions, but  
5 Mr. Seryak's testimony does not discuss OMA. The  
6 intervenor in this case is OMAEG, and he is talking  
7 about the companies' stipulation and the companies'  
8 position about energy efficiency and how those costs  
9 should be passed on to customers. He is here  
10 testifying on behalf of OMAEG.

11 EXAMINER PRICE: We are going to sustain  
12 the objection. Let's try to limit the questioning  
13 for now to OMAEG.

14 Q. (By Mr. Randazzo) Sir, do you have a  
15 commercial relationship to the Ohio Manufacturers'  
16 Association Energy Group?

17 A. Yes.

18 Q. What's the nature of that commercial  
19 relationship?

20 MS. BOJKO: Objection.

21 EXAMINER PRICE: Overruled.

22 MS. BOJKO: Different grounds. May I  
23 state my grounds?

24 EXAMINER PRICE: You can try.

25 MS. BOJKO: To the -- I am only objecting

1 to the extent it calls for confidential information.  
2 There is -- there are confidentiality agreements in  
3 place, so I would just caution the witness to not  
4 state anything confidential in the public session.

5 EXAMINER PRICE: Thank you.

6 THE WITNESS:

7 A. Can you repeat the question?

8 Q. Yes. I asked you if you had a commercial  
9 relationship with the Ohio Manufacturers' Association  
10 Energy Group, and you said yes, and I asked you to  
11 identify the nature of that relationship.

12 A. We provide subject matter expertise on  
13 issues of what I would call customer-sited resources,  
14 so energy efficiency, demand response, combining  
15 power, energy resources, things of that nature.

16 Q. And when you said "we," who were you  
17 referring to there?

18 A. That would include myself and staff, my  
19 staff.

20 Q. Would it include either of the two  
21 companies or both of the two companies that you  
22 identify in your testimony at page 1, RunnerStone and  
23 Go Sustainable?

24 A. Yes, it could include both.

25 Q. So is the -- is the commercial

1 relationship between OMA Association Energy Group one  
2 that's personal with you, or is it a relationship  
3 that involves these two companies?

4 A. It involves the two companies.

5 Q. Do you participate in Ohio Manufacturers'  
6 Association Energy Group meetings?

7 A. Yes.

8 Q. And you are not a member of that  
9 organization?

10 A. That's correct.

11 Q. And are you a member of the Ohio  
12 Manufacturers' Association?

13 A. We are.

14 Q. Is it true that you have to be a member  
15 of the Ohio Manufacturers' Association to be a member  
16 of the Ohio Manufacturer's Association Energy Group?

17 A. I'm not certain about that.

18 Q. Now, within the -- within your testimony,  
19 do you hold yourself out to be an expert in the  
20 wholesale electric market?

21 A. I hold myself to have certain expertise  
22 on customer-sited resource participation in the --  
23 components of the wholesale electric market. I want  
24 to hold myself to be an expert in all facets of the  
25 wholesale electric market.

1 Q. Okay. Now, you -- in your testimony, you  
2 use the words "behind the meter customer-sited  
3 energy resources" on page 2, lines 18 and 19. What  
4 are you referring to there?

5 A. Behind the meter the customer-sited  
6 energy resources, I would include energy efficiency,  
7 demand response, combined heat, power, and other  
8 forms of distributed generation that would be sited  
9 behind a customer's meter that could be rooftop solar  
10 or location specific, wind turbines, fuel cells,  
11 technology and resources of that nature.

12 Q. Yes. And how do you define energy  
13 efficiency?

14 A. I mean, energy efficiency probably is  
15 the -- when you have an equivalent output, an output  
16 could be a good service with less energy input.

17 Q. Okay. And does -- would reducing the BTU  
18 input per unit of output qualify as energy efficiency  
19 in your definition?

20 A. Not necessarily. Energy efficiency -- I  
21 mean, there is a range. I mean, everything has an  
22 energy -- everything has an energy efficiency, so  
23 technically speaking. So in terms of practice or  
24 regulatory affairs, the term energy efficiency is  
25 used somewhat differently. It's used to note an

1 improvement from existing or baseline energy  
2 efficiencies.

3 Q. In some of your other duties on behalf of  
4 the Ohio Manufacturers' Association Energy Group, is  
5 it true that you testified in opposition to Senate  
6 Bill 58?

7 A. That's correct.

8 Q. And you also testified in opposition to  
9 Senate Bill 310?

10 A. Yes.

11 Q. Are you aware of whether or not there are  
12 any provisions in the statutory structure dealing  
13 with an Electric Security Plan that provide for --  
14 provide for provisions dealing with energy  
15 efficiency?

16 MS. BOJKO: Objection.

17 EXAMINER PRICE: Grounds?

18 MS. BOJKO: Clarity. You just mentioned  
19 Senate Bill 58, Senate Bill 310. I am not sure if  
20 the question is based upon those or some other  
21 statutory structure.

22 MR. RANDAZZO: I asked about Electric  
23 Security Plan.

24 EXAMINER PRICE: He can answer if he  
25 knows.

1 Q. If you know.

2 A. You will have to rephrase. I didn't  
3 understand your question.

4 Q. Okay. That's fine. In the course of  
5 Senate Bill 310, did the Ohio Manufacturers'  
6 Association Energy Group support the ability of  
7 larger customers to opt out of the mandates on a  
8 streamlined basis?

9 MS. BOJKO: I guess I am going to object.

10 EXAMINER PRICE: Grounds?

11 MS. BOJKO: Well, relevancy, if he is  
12 talking about what led up to Senate Bill 310 or is he  
13 talking about how Senate Bill 310 currently stands?

14 EXAMINER PRICE: He can answer if he  
15 knows. Overruled.

16 A. Okay. The OMA has a -- engaged a member  
17 driven process to discuss how and -- how to deal with  
18 large industrials in relations to efficiency  
19 programs. You know, the -- there's general  
20 principles the OMA is supportive of for large  
21 industrials. Some of those principles weren't met by  
22 Senate Bill 310.

23 Q. So, now, to my question, did the OMA or  
24 the Ohio Manufacturers' Energy Group support the  
25 provisions in Senate Bill 310 allowing customers

1 served above primary to opt out on a streamlined  
2 basis of the cost of benefits associated with the  
3 energy efficiency mandates?

4 MS. BOJKO: Objection.

5 Q. If you know.

6 EXAMINER PRICE: Grounds?

7 MS. BOJKO: Well, the question was  
8 compound about OMA and OMAEG. And with regard to  
9 OMA, it's irrelevant and I think the whole question  
10 is irrelevant because OMAEG did not take a position  
11 as Mr. Randazzo infers in his questions.

12 EXAMINER PRICE: That was a question for  
13 the witness to answer, not counsel. Second, with  
14 respect to OMA, the witness opened the door because  
15 he talked about in the answer to the previous  
16 question what OMA did and didn't do, so it's fair to  
17 ask him the question. You can answer the question to  
18 the best of your ability.

19 THE WITNESS: Sorry, I keep forgetting  
20 what the question was.

21 EXAMINER PRICE: We will have the  
22 question back again.

23 THE WITNESS: Yeah. Can you restate it?

24 EXAMINER PRICE: No. We will have the  
25 reporter reread it.



1 (Record read.)

2 A. I can answer the question. The  
3 opposition was to Senate Bill in 310 in total. I  
4 don't believe OMA or OMAEG picked out certain  
5 provisions to support or oppose. It was the  
6 opposition to the bill in total.

7 Q. So the answer to my question would be  
8 "no"?

9 MS. BOJKO: Objection.

10 EXAMINER PRICE: Grounds?

11 MS. BOJKO: Mischaracterizes his  
12 testimony. That's not what he said.

13 EXAMINER PRICE: Well, he was asking. Is  
14 the answer to his question "no"?

15 A. The members discussed the bill in its  
16 entirety and opposed the bill in its entirety. I  
17 don't recall any specific position on an individual  
18 component of the bill.

19 MR. RANDAZZO: Okay. That's fine. Thank  
20 you. That's all I have, your Honor.

21 EXAMINER PRICE: Thank you.

22 Ms. Dunn?

23 MS. DUNN: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Dunn:

Q. Good afternoon, Mr. Seryak.

A. Good afternoon.

Q. You testified in response to one of Mr. Randazzo's questions that OMAEG is a subsidiary of OMA. Is it true that OMAEG is comprised of a smaller number of members than OMA?

A. Yes.

Q. And the members of OMAEG are also members of OMA, correct?

MS. BOJKO: Objection.

EXAMINER PRICE: Grounds?

MS. BOJKO: Asked and answered.

EXAMINER PRICE: Sustained.

MS. DUNN: Your Honor, if I may, that wasn't the question Mr. Randazzo asked. He didn't ask that specific question.

EXAMINER PRICE: He asked if you had to be a member of OMA to be a member of OMAEG, and the witness said yes. That's pretty close.

Q. (By Ms. Dunn) And, Mr. Seryak, you're a consultant to OMAEG, correct?

A. Yes.

Q. And you are retained in general by OMAEG,

1 not specifically for your testimony today, correct?

2 A. Correct.

3 Q. And your retainer from OMAEG is how you  
4 were paid for your testimony in this case, correct?

5 A. Yes.

6 Q. On page 1 of your testimony, line 6, you  
7 state you are chief executive officer of RunnerStone,  
8 LLC, correct?

9 A. Correct.

10 Q. There are no other officers of  
11 RunnerStone, correct?

12 A. That's right.

13 Q. And RunnerStone is a subsidiary of Go  
14 Sustainable Energy, a company in which you are a  
15 partner, correct?

16 A. Yes.

17 Q. And RunnerStone provides subject matter  
18 expertise on customer-sited resources as it relates  
19 to regulatory policy and energy markets, correct?

20 A. Yes.

21 Q. RunnerStone does not have a payroll,  
22 correct?

23 A. That's correct.

24 Q. And on page 1, lines 6 to 7, you state  
25 that you are the lead analyst for RunnerStone,

1 correct?

2 A. Yes.

3 Q. Other than you, only one other -- one  
4 other analyst conducts work for RunnerStone, correct?

5 A. That's right.

6 Q. And OMA and/or OMAEG is a client of  
7 RunnerStone, correct?

8 MS. BOJKO: Objection.

9 EXAMINER PRICE: Grounds?

10 MS. BOJKO: Again, it's irrelevant of  
11 whether OMA is or is not a client.

12 EXAMINER PRICE: Why don't we -- it's  
13 also compound. Why don't you ask it -- break up the  
14 two entities, and we will see which one is  
15 objectionable and which one is not.

16 Q. (By Ms. Dunn) OMAEG is a client of  
17 RunnerStone, correct?

18 A. Correct.

19 Q. OMA is a client of RunnerStone as well,  
20 correct?

21 MS. BOJKO: Objection.

22 EXAMINER PRICE: Relevance?

23 MS. BOJKO: Relevancy.

24 EXAMINER PRICE: Sustained.

25 MS. DUNN: Your Honor, it's very similar

1 to the questions that were asked by Mr. Effron about  
2 this client, about this witness's relationship with  
3 either OMA or OMAEG. They are part of the same  
4 corporate family, if you will, and there has been  
5 various questions through this case by members of our  
6 corporate family on the company side, and so it's  
7 fair to ask I think this person's relationship given  
8 the weight and credibility.

9 EXAMINER PRICE: Most of the questions  
10 that were asked were objected to by the companies,  
11 and I think most of those objections were sustained  
12 by the Bench, so we will sustain the objection.

13 Q. (By Ms. Dunn) On page 1, line 9 to 10,  
14 you state that you are the chief executive officer of  
15 Go Sustainable Energy, correct?

16 A. Correct.

17 Q. And Go Sustainable provides expertise to  
18 OMA and its members on energy efficiency, correct?

19 A. Yes.

20 Q. Go Sustainable has been a consultant to  
21 OMA for approximately three years, correct?

22 MS. BOJKO: Objection.

23 EXAMINER PRICE: Grounds?

24 MS. BOJKO: She is asking about OMA  
25 again. It's irrelevant to the proceeding before us.

1 MS. DUNN: And, your Honor, he cites Go  
2 Sustainable as part of his expertise on energy  
3 efficiency, and Go Sustainable's relationship with  
4 OMA is appropriate given the subject matter of his  
5 testimony.

6 EXAMINER PRICE: I agree. Overruled.  
7 But having said that, I am not trying to open the  
8 door for a bunch of questions about OMA. On this one  
9 narrow topic, I agree with you, but I am not  
10 reversing my previous decision.

11 MS. DUNN: I understand, your Honor.  
12 Could I have my last question reread, please?

13 EXAMINER PRICE: Yes.

14 (Record read.)

15 A. That's about right.

16 Q. And for purposes of narrowing the  
17 question for the expertise that you provide in energy  
18 efficiency to OMA, you have a contract with OMA and a  
19 retainer relationship to provide that expertise,  
20 correct?

21 MS. BOJKO: Objection.

22 EXAMINER PRICE: Overruled.

23 A. This -- a contract, yes. The specifics  
24 of the contract has changed over time.

25 Q. Thank you.

1 MS. BOJKO: Excuse me, your Honor, before  
2 you continue, Mr. Seryak, you are going to have to  
3 try to still face forward so I can hear you. Thank  
4 you.

5 Q. (By Ms. Dunn) OMA is an energy efficiency  
6 administrator with the companies currently, correct?

7 MS. BOJKO: Objection.

8 EXAMINER PRICE: Why are you asking about  
9 OMA again, Ms. Dunn?

10 MS. DUNN: It's relating to the services  
11 that OMA provides relating to energy efficiency  
12 administrators which goes directly to the subject  
13 matter of his testimony which is energy efficiency.  
14 So it's relevant to describe what relationship and  
15 what OMA and Go Sustainable has done as it relates to  
16 the energy efficiency programs of the companies which  
17 this is the foundational question getting to those  
18 questions. I am not trying to open up the door about  
19 things not related to energy efficiency.

20 EXAMINER PRICE: We will give you a  
21 little bit of leeway on this one.

22 MS. DUNN: Thank you, your Honor.

23 EXAMINER PRICE: You can answer the  
24 question.

25 THE WITNESS: Can you repeat it?

1           Q.    Sure.  OMA is an energy efficiency  
2 administrator with the companies currently, correct?

3           A.    That's my understanding.

4           Q.    And one of the responsibilities of the  
5 energy efficiency administrators is to assist members  
6 in submitting energy efficiency projects to the  
7 companies' programs, correct?

8           A.    That is one of their responsibilities.

9           Q.    And Go Sustainable has assisted OMA  
10 members with mercantile self-direct applications  
11 before, correct?

12          A.    Yes.

13          Q.    And Go Sustainable has also done energy  
14 audits for OMA members, correct?

15          A.    We provide energy audits for many  
16 industrial clients.  Some of those may be OMA  
17 members, but it's not as a function of the OMA.

18          Q.    And when I use the term the companies'  
19 amended energy efficiency plans, you understand I  
20 mean the companies' energy efficiency and peak demand  
21 reduction plans for 2015 and 2016, correct?

22          A.    Yes, I do.

23          Q.    And the mercantile self-direct program is  
24 still available under the companies' amended energy  
25 efficiency plans, correct?



1           A.    Yes.

2           Q.    And OMA is still an administrator under  
3 the companies' amended energy efficiency plan,  
4 correct?

5           A.    Yes.

6           Q.    Turning to page 4, lines 6 to 9.  When  
7 you state on line 8 "primary benefit," you mean the  
8 primary benefit to the signatory parties, correct?

9           A.    Yes, that was my intent.

10          Q.    And also on line 6 to 9, the basis for  
11 your statement there is the terms and conditions of  
12 the actual stipulation, correct?

13          A.    Yes.

14          Q.    And you have not spoken with any of the  
15 signatory parties referenced in Section 5(B) of the  
16 stipulation, correct?

17          A.    I have not spoken with them.

18          Q.    So outside of the language of the  
19 stipulation itself, you do not have any other facts  
20 to support your conclusion contained on page 4, lines  
21 6 to 9.

22          A.    I've since read the discovery questions  
23 of the parties that supports my assertion when they  
24 responded that they hadn't read the ESP, meaning that  
25 the benefit of which they knew about was the offering

1 of energy efficiency coming to them.

2 Q. At the time of your deposition, you had  
3 not read those discovery questions, correct?

4 A. That's right.

5 Q. And at the time of drafting your  
6 testimony, you had not read those discovery  
7 questions, correct?

8 A. That's correct.

9 Q. On page 4, lines 12 to 15, you state that  
10 "The companies unilaterally withdrew available energy  
11 efficiency programs and energy efficiency project  
12 funding." The companies received Commission approval  
13 from the Commission to amend their energy efficiency  
14 plans, correct?

15 A. The companies received approval at their  
16 sole discretion to do that, yes.

17 MS. DUNN: Your Honor, I move to strike  
18 the answer as unresponsive. It was a "yes" or "no"  
19 question.

20 MS. BOJKO: Your Honor, it's very  
21 responsive. He's explaining what they did or did not  
22 have discretion to apply for.

23 EXAMINER PRICE: We are going to deny the  
24 motion to strike.

25 MS. DUNN: Your Honor, may I approach the

1 witness?

2 EXAMINER PRICE: You may.

3 MS. DUNN: Ms. Bojko, do you need a copy  
4 of Mr. Seryak's deposition?

5 MS. BOJKO: No, I do not. Thank you.

6 Q. (By Ms. Dunn) Mr. Seryak, please turn to  
7 page 48 of your deposition, line 20. "Question: Did  
8 the companies receive Commission approval to amend  
9 their energy efficiency plan?

10 "Answer: Yes." Did I read that  
11 correctly?

12 MS. BOJKO: Objection.

13 EXAMINER PRICE: Grounds?

14 MS. BOJKO: This is not proper  
15 impeachment. He said yes. He just explained why or  
16 what the companies did to amend their plans. He said  
17 they unilaterally filed. He said yes. It's very  
18 consistent with the deposition.

19 MS. DUNN: Your Honor, he didn't bring  
20 that up when I asked him the same exact question at  
21 the deposition which is why I used the deposition.

22 EXAMINER PRICE: I agree. Your objection  
23 is overruled.

24 Q. (By Ms. Dunn) The amended energy  
25 efficiency plans maintained -- oh, did I read that

1 correctly?

2 A. You did.

3 Q. Thank you. The amended energy efficiency  
4 plans maintained some energy efficiency programs,  
5 correct?

6 A. That's correct.

7 Q. And turning to page 8 of your testimony,  
8 in footnote 6, you're referencing the order that  
9 approved the companies amended plan, correct?

10 MS. BOJKO: Excuse me, your Honor. May I  
11 have that question reread?

12 EXAMINER PRICE: You may.

13 (Record read.)

14 A. By footnote 6, you mean line 6?

15 Q. Page 8, footnote 6 of your testimony.

16 A. Oh, sorry, of my testimony. Yes.

17 Q. And that order was issued on November 20,  
18 2014?

19 A. Yes.

20 Q. And the stipulation that you discuss in  
21 your testimony, that was filed on December 22, 2014,  
22 correct?

23 A. That's correct.

24 Q. And you agree that the companies'  
25 application for amended -- to amend their energy

1 efficiency plan was filed sometime prior to November  
2 20, 2014?

3 A. Yes.

4 Q. And the signatory parties to the  
5 December 22 stipulation were not signatory parties to  
6 a stipulation at the time the companies filed their  
7 application for energy to amend their energy  
8 efficiency plan, correct?

9 MS. BOJKO: Objection.

10 EXAMINER PRICE: Grounds?

11 MS. BOJKO: Assumes facts not in  
12 evidence. We do not know when the signatory parties  
13 agreed to or did not agree to a stipulation in  
14 concept.

15 MS. DUNN: My question was narrowed as to  
16 when they were a signatory party.

17 EXAMINER PRICE: Why don't you rephrase.

18 MS. DUNN: Okay.

19 Q. (By Ms. Dunn) At the time the Commission  
20 approved the companies' amended energy efficiency  
21 plan, the stipulation filed on December 22 did not  
22 exist, correct?

23 MS. BOJKO: Objection. Same objection.  
24 Assumes facts not in evidence. We have --

25 EXAMINER PRICE: Okay. Let me try. At

1 the time the Commission approved the amended  
2 portfolio plan, the stipulation had not been filed;  
3 is that correct? You can answer my question.

4 THE WITNESS: It had not been filed.

5 EXAMINER PRICE: Yeah.

6 Q. (By Ms. Dunn) And hypothetically  
7 speaking, if there were parties to an agreement prior  
8 to December 22, you would have no knowledge of that,  
9 correct?

10 A. I wouldn't.

11 Q. I'm correct, you wouldn't?

12 A. Yes, yes.

13 Q. And when I say the companies' original  
14 energy efficiency plan, you understand I mean the  
15 companies' previous energy efficiency plan from  
16 January 1, 2013, to December 31, 2014?

17 A. Yes.

18 Q. The companies' original plan included  
19 programs geared towards small enterprises, correct?

20 A. I'm sorry, can you ask that again?

21 Q. Sure. The companies' original amended  
22 plan included programs geared towards small  
23 enterprises?

24 MS. BOJKO: Objection. It may be easier  
25 if the question is reread. I think there was

1 incorrect...

2 EXAMINER PRICE: Can we have the question  
3 back, please?

4 (Record read.)

5 EXAMINER PRICE: You used both original  
6 and amended in the question.

7 MS. DUNN: Oh. Thank you.

8 EXAMINER PRICE: Please rephrase.

9 Q. The companies' original plan included  
10 programs geared toward small enterprises, correct?

11 A. Yes.

12 Q. And those programs would have been  
13 available to COSE members, correct?

14 A. Yes.

15 Q. And on page 5 of your testimony, lines 11  
16 to 13, you acknowledge that the companies suspended  
17 small enterprise programs, correct?

18 A. Correct.

19 Q. And the small enterprise program for  
20 audits that was included in the original energy  
21 efficiency plan and the audit program identified in  
22 Section 5(B)(4) of the stipulation are not identical,  
23 correct?

24 A. I can't say whether they are identical or  
25 not. The details of the audit program offered in

1 the -- there aren't details of the audit program in  
2 the stipulation.

3 Q. It's not your testimony that the audit  
4 program under the stipulation and the audit program  
5 under the original plan are identical, though,  
6 correct?

7 MS. BOJKO: Objection.

8 EXAMINER PRICE: Grounds?

9 MS. BOJKO: Asked and answered.

10 EXAMINER PRICE: Overruled. You can  
11 answer.

12 A. I can't say if they are identical.

13 Q. Mr. Seryak, could you please turn to your  
14 deposition, page 63, line 21, "Question: It's not  
15 your testimony that the audit program under the  
16 stipulation and the audit program under the original  
17 plan are identical, right?

18 "Answer: They're not identical." Did I  
19 read that correctly?

20 A. You did.

21 Q. Thank you. On page 8 of your testimony,  
22 you state "The Stipulation runs counter to the intent  
23 of the Commission's finding and order, and that the  
24 costs paid by a customer for EE-PDR programs who is  
25 not a signatory party to the stipulation will not be



1 reduced proportionately as reflected in the DSE  
2 rider." You have not done a quantitative analysis of  
3 whether the cost will not be reduced proportionately  
4 as reflected in the DSE rider, correct?

5 A. I haven't done a comprehensive analysis,  
6 but it's logical to infer that.

7 Q. You have not done a quantitative  
8 analysis, though, with numbers, correct?

9 A. I have done a preliminary analysis to  
10 know that there's extra costs for the signatory party  
11 that will be passed on to all parties. I don't have  
12 access -- access to the companies' filings for the  
13 rider cases which is preventing me from doing a  
14 comprehensive analysis.

15 Q. So the answer is no, you have not done a  
16 quantitative analysis?

17 MS. BOJKO: Objection, your Honor.

18 EXAMINER PRICE: Grounds?

19 MS. BOJKO: He answered why he can't  
20 answer "yes" or "no" to that question, and he  
21 answered that he did do a quantitative analysis in  
22 part and then he went and explained why he couldn't  
23 do additional, so he answered that.

24 EXAMINER PRICE: No. He answered why he  
25 couldn't do an analysis, but he has not actually

1 answered the question whether he did not do an  
2 analysis. So you can go ahead and answer the  
3 question.

4 THE WITNESS: Quantitative implies --  
5 making a quantitative analysis implies I am making  
6 a -- you know, understanding something based on  
7 numbers. So I guess let me clarify that I've seen  
8 the budgets for the energy efficiency programs that  
9 would be provided to the -- or funding provided to  
10 the signatory parties and had done a preliminary  
11 quantitative analysis on additional costs that might  
12 be passed through to other ratepayers.

13 Q. You do not know whether the companies  
14 filed their workpapers related to the DSE rider in an  
15 annual audit process, correct?

16 A. I don't know.

17 Q. At the time of the deposition, you did  
18 not know, correct?

19 A. That's correct.

20 Q. And at the time of your testimony, you  
21 did not know, correct?

22 A. That's correct.

23 Q. You don't know exactly what the companies  
24 will do to meet energy efficiency benchmarks in the  
25 future, correct?

1           A.    I don't know exactly.

2           Q.    And you don't know what specific programs  
3 the companies will use to meet the energy efficiency  
4 benchmarks in the future, correct?

5           A.    That's right.

6           Q.    And you also do not know specifically  
7 what the companies' baseline for the energy  
8 efficiency benchmarks will be in the future, correct?

9           A.    That depends if you are talking about  
10 baseline as a percentage of sales which is pretty  
11 well defined by law or baseline in terms of the  
12 nominal kilowatt-hours or megawatt-hours that would  
13 have to be calculated, but the benchmark requirement  
14 and the method to calculate that is known.

15          Q.    But you don't know what the numbers would  
16 be for the companies, correct?

17          A.    Well, we don't know exactly what the  
18 baseline kilowatt-hour usage is going to be until all  
19 those years have occurred in time, so no, no one can  
20 say for certain what the kilowatt-hour baseline  
21 number will be.

22          Q.    So I guess then the answer to my question  
23 you also do not know specifically what the companies'  
24 baseline for the energy efficiency benchmarks will be  
25 in the future is "no," correct?

1           A.    Yes, that's correct.

2           Q.    And in your testimony you reference  
3 opt-out customers, correct?

4           A.    Can you point -- can you tell me  
5 specifically where?

6           Q.    Sure.  Page 7, line 8 and also line 17.

7           A.    Yes, I reference the opt-out mechanism.

8           Q.    When customers opt out, the companies'  
9 baselines are adjusted; is that correct?

10          A.    That's my understanding.

11          Q.    And you do not know how many customers  
12 will opt out -- excuse me.  Let me start over.  You  
13 do not know how many customers will opt out of the  
14 companies' energy efficiency riders in 2017 and  
15 beyond, correct?

16          A.    I don't know that.

17          Q.    For compliance purposes, the companies  
18 have historically exceeded their energy efficiency  
19 benchmarks, correct?

20          A.    Somewhat, that's my understanding.

21          Q.    EDUs in Ohio are allowed to count banked  
22 energy efficiency savings, correct?

23          A.    Yes.

24          Q.    You would assume that the companies would  
25 use banked savings to comply with energy efficiency

1 benchmarks, correct?

2 A. I think that's possible.

3 Q. Now, relating to the amended plan, you  
4 don't know at what point the companies' staff began  
5 developing an amended plan, correct?

6 A. I do not.

7 Q. And you don't know when the companies'  
8 representatives spoke to COSE regarding the  
9 settlement of the ESP or stipulation, correct?

10 A. That's correct.

11 Q. And the companies do not have an approved  
12 energy audit program for 2017 and beyond, correct?

13 A. That's a correct statement.

14 MS. DUNN: I have no further questions,  
15 your Honor.

16 EXAMINER PRICE: Mr. McNamee?

17 MR. McNAMEE: No questions. Thank you.

18 EXAMINER PRICE: At this time, we will  
19 break for lunch, and after lunch, we will take up the  
20 redirect of this witness. Let's come back at 2:15.

21 (Thereupon, at 1:08 p.m., a lunch recess  
22 was taken until 2:15 p.m. of the same day.)

23 - - -

24

25

1 Wednesday Afternoon Session,  
2 October 14, 2015.

3 - - -

4 EXAMINER PRICE: Okay. Let's go back on  
5 the record.

6 Ms. Bojko.

7 MS. BOJKO: Yes, your Honor. I'll just  
8 talk loudly.

9 - - -

10 JAMES A. SERYAK

11 having been previously sworn, as prescribed by law,  
12 was examined and testified as follows:

13 REDIRECT EXAMINATION

14 By Ms. Bojko:

15 Q. I do have a few additional questions for  
16 Mr. Seryak. Mr. Seryak, Ms. Dunn asked you some  
17 questions about audit programs under the original  
18 plan versus audits provided in the stipulation. Why,  
19 sitting here today, did you respond that you are not  
20 sure if the audits are identical?

21 A. I responded that way because in the  
22 original plans, the audit program has a lengthy set  
23 of terms and conditions, and in the stipulation,  
24 there is only a reference to energy audits, energy  
25 audits. I don't know what the terms and conditions

1 would be, so that's why I responded that I don't know  
2 how identical they will be.

3 Q. And given your expertise, could you  
4 explain why you believe the programs were otherwise  
5 available?

6 MS. DUNN: Objection, your Honor. That's  
7 beyond the scope of my cross.

8 MR. RANDAZZO: I agree.

9 EXAMINER PRICE: Which -- which  
10 question -- which counsel's questions are you  
11 referring to?

12 MS. BOJKO: Your Honor, Ms. Dunn went  
13 into extensive cross-examination about the original  
14 plans versus the audit plans and whether -- the  
15 timing of those plans, which all goes to whether they  
16 were available or not available. It's the exact  
17 issue.

18 EXAMINER PRICE: Whether what were  
19 available or not available?

20 MS. BOJKO: The audit, whether the audit  
21 program is available, otherwise available under the  
22 Commission -- or the companies' portfolio plan.

23 MS. DUNN: Your Honor, if I may respond?  
24 I asked just a couple of questions about dates,  
25 whenever the amended plan was approved, when the stip

1 was entered into. I asked a very specific question  
2 about whether the audits were -- were identical. I  
3 did not go into his testimony about otherwise  
4 available or even use the words otherwise available,  
5 and I think that's why this broad question is beyond  
6 the scope of my narrow cross.

7 EXAMINER PRICE: Why don't --  
8 Mr. Randazzo?

9 MR. RANDAZZO: I was just going to say  
10 the question, I think, is not as Ms. Bojko explained.

11 MS. BOJKO: They opened the door or she  
12 opened the door when she talked about the audit  
13 programs and one versus the other, and that's what I  
14 am trying to get from him, to explain why he believes  
15 the one is not the same as the other or whether they  
16 are available in another fashion.

17 EXAMINER PRICE: Well, I understand the  
18 identical versus not identical. Where you are losing  
19 me is on the "otherwise available" question. So why  
20 don't you try tying your question a little better to  
21 something that was actually asked.

22 Q. (By Ms. Bojko) There were several  
23 questions from Ms. Dunn regarding the timing of the  
24 stipulation and the timing of the application in  
25 front of the Commission with regard to FirstEnergy's



1 amended plan. And could you please explain whether  
2 you believe that had the Company not suspended its  
3 plan, whether the audits would be available under the  
4 original plan as it was filed and approved by the  
5 Commission?

6 EXAMINER PRICE: Which audits are you  
7 referring to?

8 MS. BOJKO: There is an audit program.  
9 That's the audit program that counsel referred to.  
10 There is an audit program under the original plan,  
11 and there is an audit program under the amended plan,  
12 and she asked several questions about the differences  
13 between the original and the amended.

14 EXAMINER PRICE: And your question, what  
15 are you asking about?

16 MS. BOJKO: I am asking him in relation  
17 to when the program was suspended and when the  
18 stipulation was signed, which are also questions that  
19 Ms. Dunn asked about, when those two happened, does  
20 he believe that had they not suspended their program,  
21 whether the audits would still be available under  
22 the --

23 EXAMINER PRICE: That's easy. That's  
24 outside the scope of re -- outside the scope of  
25 cross. There weren't any questions about what you

1 are talking about in cross at all. Nobody asked him  
2 about what audits were in the original plan on cross.

3 MS. BOJKO: Yeah. She asked about the  
4 identicalness of the audits and whether the original  
5 audit plan program is the same as the stipulation  
6 program.

7 EXAMINER PRICE: Right. Nobody asked him  
8 whether they were otherwise -- asked any questions  
9 about whether the audits would have been otherwise  
10 available but for the suspension of the original  
11 plan. It simply asked whether they were identical,  
12 and they simply asked him to match up some  
13 stipulation dates. So your objection is sustained.

14 MS. DUNN: Thank you, your Honor.

15 Q. (By Ms. Dunn) Under that same line of  
16 Miss Dunn asking you about the timing of the  
17 suspension program and whether the amended plan was  
18 filed prior to the stipulation being filed, she also  
19 asked you whether you spoke to stipulating parties in  
20 that context. When -- why did you make your  
21 recommendations regarding whether the program was  
22 suspended and resurrected because of the stipulating  
23 parties?

24 MS. DUNN: Objection. Outside the scope  
25 of my cross.

1 EXAMINER PRICE: Ms. Bojko?

2 MS. BOJKO: Your Honor, if the CRES  
3 infers one thing, you are allowed to ask the  
4 opposite. Her cross questions were about the timing  
5 and whether he talked to stipulating parties, and I  
6 am asking why it wasn't necessary to talk to  
7 stipulating parties or why he drew the conclusions  
8 that he drew from not talking to stipulating parties.

9 MS. DUNN: Your Honor, I believe that's a  
10 different question than she asked that I objected to.

11 MS. BOJKO: If that's less objectionable,  
12 I will ask that question.

13 EXAMINER PRICE: Okay. Rephrase.

14 MS. BOJKO: Okay. Thank you, your Honor.

15 Q. (By Ms. Bojko) Given the timing of the  
16 amended plan -- well, I don't want to lead the  
17 witness. Do you know when the amended plan was  
18 filed?

19 A. I believe the amended plan was filed on  
20 September 24, 2014.

21 Q. Okay. And why do you not -- why did you  
22 not believe it was necessary to talk to stipulating  
23 parties regarding the timing of the plans and how you  
24 drew your conclusions in your testimony?

25 MS. DUNN: Objection, to the second half

1 of the question, how he draw his conclusions. If he  
2 wants to answer why he didn't talk to the signatory  
3 parties, that's fine.

4 EXAMINER PRICE: Let's deal with two  
5 questions separately. Why don't you go ahead and  
6 answer the first part of the question, and we will  
7 get to the second part. Why did you find it was not  
8 necessary to talk to the stipulating parties?

9 THE WITNESS: I didn't speak with the  
10 signatory parties. I thought it was fairly clear in  
11 the filed stipulation. It says a timeline is laid  
12 out of when discussions occurred that shows that the  
13 stipulation discussions overlapped with the amended  
14 portfolio filing. It says the Powering Ohio's  
15 Progress companies discussed -- discussed the  
16 stipulation since August. That is before the amended  
17 plan filing date of September 24.

18 So I didn't speak to the parties because  
19 I thought it was fairly clear in the stipulation that  
20 the signatory parties had been discussing energy  
21 audits and other efficiency programs in the context  
22 of the stipulation at the same time they were being  
23 suspended in the amended portfolio plan filing.

24 Q. (By Ms. Dunn) In -- Ms. Dunn asked you  
25 regarding a quantitative analysis. Why did you not

1 do a comprehensive quantitative analysis?

2 A. I was unable to do that because in order  
3 to do a comprehensive quantitative analysis, I would  
4 need the workpapers that support the companies' DSE2  
5 rider filing. I requested those several times in the  
6 collaborative. The companies denied it and asked me  
7 to go through the rider case.

8 And so I consulted with counsel to  
9 request that information through the rider case, and  
10 that hasn't been provided yet. So we don't have the  
11 information available to do a comprehensive  
12 quantitative analysis.

13 Q. And do you know whether the information  
14 through the second process that you just mentioned,  
15 do you know whether that information has, in fact,  
16 been requested of the company?

17 A. Yes, it has.

18 Q. And do you know whether the companies'  
19 responded to that request?

20 A. I believe they objected to it.

21 EXAMINER PRICE: In the rider case?

22 THE WITNESS: Correct.

23 EXAMINER PRICE: Did you ask for  
24 workpapers in this case?

25 THE WITNESS: No, only in the

1 collaborative and the rider case.

2 Q. (By Ms. Bojko) With the information  
3 available to you, what quantitative analysis did you  
4 perform prior to drafting your testimony?

5 A. With the information from the stipulation  
6 I was able to quantify the -- let me get the wording  
7 correct, the total cost that would be passed on to  
8 the ratepayer base of unrestricted payments,  
9 restricted payments, and then also estimated the cost  
10 of audits that are going to the signatory parties; so  
11 I was able to quantify that.

12 MS. BOJKO: I have no further questions.  
13 Thank you, your Honor.

14 EXAMINER PRICE: Thank you. Mr. Hays,  
15 redirect?

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

17 EXAMINER PRICE: Mr. Sahli?

18 MR. SAHLI: No.

19 EXAMINER PRICE: Mr. Sauer?

20 MR. SAUER: No. Thank you, your Honor.

21 EXAMINER PRICE: Mr. Kurtz?

22 MR. KURTZ: No, your Honor.

23 EXAMINER PRICE: Mr. Randazzo?

24 MR. RANDAZZO: Just a couple.

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RECROSS-EXAMINATION

By Mr. Randazzo:

Q. Sir, have you participated in the collaborative process associated with FirstEnergy's compliance -- the FirstEnergy Companies' compliance with the portfolio mandates?

A. You are speaking what's generally referred to as the energy efficiency collaborative?

Q. The energy efficiency collaborative.

A. Yes, I have.

Q. And for how long?

A. I mean, approximately three years, give or take.

Q. And do you know how long legislation was pending before the General Assembly to modify the portfolio requirement?

MS. BOJKO: Objection, your Honor. This is way beyond the scope of recross.

MR. RANDAZZO: I will withdraw the question.

Q. (By Mr. Randazzo) Are you aware of any other circumstances where programs have been -- energy efficiency related programs have been suspended?

MS. BOJKO: Objection, your Honor. I

1       tried to ask questions about the suspension of  
2       programs and the non-suspension and it was -- I guess  
3       the motion was granted.

4               EXAMINER PRICE:   Yes.   You are not  
5       allowed to ask them.

6               MS. BOJKO:   Right.

7               EXAMINER PRICE:   Neither is Mr. Randazzo.  
8       Sustained.

9               Q.    (By Mr. Randazzo) You, in response to  
10       questions from your counsel, you indicated that  
11       you -- your conclusions about the timing of the  
12       amended plan and the discussions regarding the  
13       settlement were based upon your inference from the  
14       text in the settlement; is that correct?

15              A.    Yes.

16              Q.    Now, have there been other examples of  
17       cases where energy efficiency programs have been  
18       halted as a consequence of reaching funding  
19       limitations associated with the program?

20              MS. BOJKO:   Objection.

21              EXAMINER PRICE:   Overruled.

22              A.    Ask that again.

23              EXAMINER PRICE:   Please.

24              THE WITNESS:   Or restate it, I guess.

25              Q.    (By Mr. Randazzo) Are you aware of



1 programs, energy efficiency related programs that  
2 have been suspended as a result of reaching the  
3 dollar limits associated with the plan -- compliance  
4 plans that have been approved by the PUCO?

5 MS. BOJKO: Objection, your Honor. This  
6 goes to the suspension issue that I was not allowed  
7 to ask about.

8 EXAMINER PRICE: Well, but you did get  
9 the follow-up question properly asked, and he gave an  
10 answer, and Mr. Randazzo is following up on his  
11 discussions with stipulating parties. I will give  
12 Mr. Randazzo a little leeway on this one.

13 A. So in my experience with utility-operated  
14 efficiency programs, utilities will -- if there is a  
15 funding limitation from their budget, you will see  
16 different behavior from utilities. Some utilities  
17 will spend a little bit more, shift costs from one  
18 budget to another, true-up later.

19 Others will -- may stop offering a  
20 program because of budget limitations. You know,  
21 it's very highly dependent on the attitudes and  
22 cultures of the individual people running that  
23 program and also how involved the customer base is  
24 with the success of that program. So I can't think  
25 of a specific example for you. It may exist.

1           Q.     (By Mr. Randazzo) Now, with regard to the  
2 application to amend the energy efficiency and peak  
3 demand reduction compliance plan, are you aware of  
4 whether or not there was a specific time window  
5 specified by the statute during which that amended --  
6 amendment needed to be filed with the PUCO?

7           MS. BOJKO:  Objection.  This is way  
8 beyond recross.  It's in line with cross, but  
9 Mr. Randazzo missed his chance.  This is recross.

10          EXAMINER PRICE:  You asked him which day  
11 it was filed.  He was asking whether there were any  
12 parameters as to when it had to be filed.

13          A.     Yes, I believe there was a specific  
14 timeline by which utilities had to file an amended  
15 portfolio program if they chose to.

16          Q.     (By Mr. Randazzo) And prior to  
17 FirstEnergy, the electric distribution utilities of  
18 FirstEnergy filing to amend their energy efficiency  
19 and peak demand reduction compliance plan, did you  
20 anticipate that FirstEnergy was going to make such a  
21 filing?

22          MS. BOJKO:  Objection.

23          EXAMINER PRICE:  Grounds?

24          MS. BOJKO:  Again, it's -- now we are  
25 before the date that was never discussed in my

1 recross. Also, I'm not sure if he can --

2 MR. RANDAZZO: I'll withdraw the  
3 question, your Honor. Thank you. I will withdraw  
4 the question.

5 EXAMINER PRICE: Ms. Dunn?

6 MS. DUNN: Thank you, your Honor.

7 MR. RANDAZZO: That's all I have. Thank  
8 you.

9 MS. DUNN: Your Honor, may I approach the  
10 witness?

11 EXAMINER PRICE: You may. I am using the  
12 supplemental testimony that was already identified in  
13 this case. I don't have copies for everyone, I  
14 apologize, but I have one for the Bench.

15 - - -

16 RECROSS-EXAMINATION

17 By Ms. Dunn:

18 Q. Mr. Seryak, thank you. Turn to page 5 of  
19 Miss Mikkelsen's supplemental testimony that was  
20 previously identified as a company exhibit.

21 A. Okay.

22 Q. In your discussion with Ms. Bojko, you  
23 were referring to the paragraph on line 17 to 28,  
24 correct?

25 MS. BOJKO: Objection. He -- this is

1 beyond the scope of recross. He never referred to  
2 Mikkelsen's testimony.

3 Q. (By Ms. Dunn) You were referring to  
4 something you had read regarding the meeting of  
5 various parties and the timing. Was this something  
6 you were relying on for your opinion on that?

7 MS. BOJKO: Excuse me, there is an  
8 objection pending.

9 EXAMINER PRICE: She is rephrasing in  
10 response to your objection.

11 MS. BOJKO: Oh, okay.

12 EXAMINER PRICE: You may answer.

13 MS. BOJKO: Objection.

14 EXAMINER PRICE: What are you objecting  
15 to?

16 MS. BOJKO: May I have the question  
17 reread? I had to object before he answered.

18 EXAMINER PRICE: Let's have the question  
19 back, please, and we will strike the objection.  
20 Pause and give her a chance to object after you hear  
21 the question.

22 MS. DUNN: I can actually rephrase one  
23 more time if you would like.

24 EXAMINER PRICE: That would be fine.

25 Q. (By Ms. Dunn) In your discussion with

1 Ms. Bojko, were you referring to this document or the  
2 stipulation itself, regarding the discussions that  
3 the companies had with various parties regarding the  
4 stipulation?

5 A. I was referring -- I was not referring to  
6 Ms. Mikkelsen's testimony. I was referring to the  
7 stipulation following the last project, page 3.

8 Q. Then you may go ahead and set that aside.

9 MS. DUNN: And may I approach, your  
10 Honor?

11 EXAMINER PRICE: You may.

12 Q. Turning to page 5 of the stipulation.

13 MS. BOJKO: Your Honor, for the record,  
14 we are talking about Company Exhibit 2, which is the  
15 first stipulation that was filed; is that correct?

16 MS. DUNN: Yes.

17 EXAMINER PRICE: I believe so.

18 Q. (By Ms. Dunn) And Mr. Seryak, in your  
19 discussion with Ms. Bojko, were you referring to the  
20 first paragraph of the stipulation on page 5?

21 A. I was referring to page 3. First  
22 paragraph, it says, "Since filing Powering Ohio's  
23 Progress in August, the companies have discussed --  
24 the paragraph goes on to discuss that -- say that the  
25 discussion has been happening since August.

1 Q. Okay. So we are talking about the same  
2 document now? We are on the same page, correct?

3 A. I think we may literally be on the same  
4 page, page 3.

5 Q. Okay. Good. On the second sentence that  
6 says, "With parties to this case," you don't know  
7 which parties, correct?

8 A. Okay. We are not on the same page again.  
9 Are you on page 5?

10 Q. No, I'm sorry, back to page 3.

11 A. Page 3.

12 Q. Okay. The paragraph you were just  
13 reading to me, starting with "since" --

14 A. Yes.

15 Q. -- the second sentence says, "With  
16 parties to this case..."

17 A. Okay.

18 Q. You don't know specifically which  
19 parties, correct?

20 A. Correct.

21 Q. And on the fourth sentence down, fourth  
22 line down, "The companies engaged in extensive  
23 serious negotiation with parties," you don't know  
24 which parties, correct?

25 A. Right after that says, "culminating in

1 the development of the stipulation and  
2 recommendation." I think it's pretty logical that  
3 the parties include the signatory parties to the  
4 stipulation and recommendation. It says  
5 "culminating." It says very logical, so....

6 Q. You don't know when these negotiations  
7 occurred, correct?

8 A. Since August.

9 Q. You don't know what date?

10 A. I don't know the exact date.

11 Q. You don't know what the exact subject  
12 matter was with each separate party, correct?

13 A. This is correct.

14 Q. And you were asked a question regarding  
15 workpapers that you may or may not have had the  
16 opportunity to review?

17 A. Yes.

18 Q. In our discussion, you mentioned that you  
19 had -- you now know that certain workpapers are filed  
20 publicly, correct?

21 A. That's right.

22 Q. And in preparation of -- Well, never  
23 mind. Strike that.

24 MS. DUNN: Your Honor, I have no further  
25 questions.

1 EXAMINER PRICE: Thank you. Mr. McNamee.

2 MR. McNAMEE: No questions. Thank you.

3 EXAMINER PRICE: Ms. Addison?

4 Ms. Chiles? Thank you. You are excused. At this  
5 time, we will take up Ms. Bojko's motion to admit  
6 her --

7 MS. BOJKO: Your Honor --

8 EXAMINER PRICE: We are rolling ahead  
9 without you. We will take up her pending motion to  
10 admit OMAEG Exhibit 22. Any objection?

11 MS. DUNN: No, your Honor.

12 EXAMINER PRICE: Seeing none, it will be  
13 admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER PRICE: Let's go off the record  
16 for one moment.

17 (Discussion off the record.)

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

20 Mr. Kumar, you may proceed.

21 MR. KUMAR: The OCC would like to call  
22 Mr. Jim Williams, James Williams to the stand. We  
23 would like his direct testimony marked as OCC Exhibit  
24 27 and the confidential version of his direct  
25 testimony marked as OCC Exhibit 28C.



1 EXAMINER CHILES: So marked.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 (Witness sworn.)

4 EXAMINER CHILES: Thank you. You may be  
5 seated, and I would ask you to please turn on your  
6 microphone.

7 - - -

8 JAMES D. WILLIAMS

9 being first duly sworn, as prescribed by law, was  
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Kumar:

13 Q. Could you state your full name and  
14 business address for the record.

15 A. Yes. My full name is James D. Williams.  
16 My business address is 10 West Broad Street, Suite  
17 1800, Columbus, Ohio, 43215.

18 Q. And are you the same James Williams whose  
19 direct testimony was filed in these cases?

20 A. I am.

21 Q. On whose behalf do you appear?

22 A. The Office of the Ohio Consumers'  
23 Counsel.

24 Q. Did you prepare your testimony?

25 A. I did.

1           Q.    Do you have any changes or corrections to  
2 your testimony?

3           A.    I do have some corrections.  The first  
4 correction is on page 1, line 6, my title.  Since I  
5 prepared this testimony, my title has changed to  
6 "senior utility consumer policy analyst."

7                    On page 4 of my testimony, in footnote 4,  
8 I've also added after the period or before the period  
9 "and JAR-1 Revised filed November 14, 2014."

10                   On page 9 of my testimony, in Table 1,  
11 the reference in the next to the last column for  
12 "175 percent poverty" should change to "185 percent  
13 poverty."

14                   On page 12 of my testimony, the -- the  
15 title for Table 2 at the end should be changed,  
16 "2013, 2014."  Also, in the disconnections for  
17 nonpayment for Toledo Edison, the number should  
18 change from "9,717" to "9,217."  And Footnote 24, the  
19 reference to the date on that filing should be  
20 "June 27, 2014."

21                   Page 14 of my testimony, Table 3, the  
22 Toledo Edison number of disconnections should be --  
23 should match the earlier correction, "217," and the  
24 reconnection rate in Column E should be "65 percent."

25                   MS. DUNN:  Could we go back one, please?

1 The Toledo Edison, the -- are you talking about in  
2 Column B "9,717" should be different?

3 MR. KUMAR: Yeah, I think it should be  
4 "9,217."

5 THE WITNESS: "9,217."

6 MS. DUNN: Thank you.

7 THE WITNESS: And on page 16, line 8, the  
8 reference to the statute should be "RC  
9 4928.143(B)(2)(H)."

10 And then on JDW-1, my first attachment,  
11 since I filed this testimony, I have filed testimony  
12 or testified in three different cases. These cases  
13 are Case 14-1051-EL-RDR, February 6, 2015, the Duke  
14 application to modify the grid modernization rider.  
15 The 18th case is Case 14-1158-EL-ATA, April 24, 2015.  
16 This is AEP's application to establish costs for  
17 advanced meter opt out. And the last case is Case  
18 19. This would be Case 14-1160-EL-ATA, September 18,  
19 2015. This would be Duke's application to establish  
20 costs for an advanced meter opt out. With those  
21 corrections, it's complete.

22 Q. (By Mr. Kumar) With those changes and  
23 corrections, if I asked you today the same questions  
24 found in your direct testimony in OCC Exhibit No. 27  
25 and 28C, would your answers be the same?

1           A.     They would be.

2           MR. KUMAR:  Your Honor, OCC moves for the  
3 admission of OCC Exhibits 27 and 28C and would like  
4 to make the witness available for cross-examination.

5           EXAMINER CHILES:  Thank you.  We will  
6 defer ruling on the exhibits until cross-examination  
7 is complete and we will proceed with  
8 cross-examination.  Mr. Hays?

9           MR. HAYS:  No questions.  Thank you, your  
10 Honor.

11          EXAMINER CHILES:  Miss Ghiloni?

12          MS. GHILONI:  No questions, your Honor.

13          EXAMINER CHILES:  Schaefer. Sahli?

14          MR. SAHLI:  No questions.

15          EXAMINER CHILES:  Ms. Petrucci?

16          MS. PETRUCCI:  No questions.

17          EXAMINER CHILES:  Mr. Kurtz?

18          MR. KURTZ:  No questions.

19          EXAMINER CHILES:  Ms. Dunn?

20          MS. DUNN:  Thank you, your Honor.

21                                 - - -

22                                 CROSS-EXAMINATION

23         By Ms. Dunn:

24                 Q.     Good afternoon, Mr. Williams.

25                 A.     Good afternoon, Ms. Dunn.

1 Q. Thank you for your patience and  
2 flexibility.

3 A. Thank you.

4 Q. If you could turn to page JW-1, or, I'm  
5 sorry, your attachment JW-1. On No. 11 --

6 A. Excuse me, I am not there yet.

7 Q. I'm sorry.

8 A. Which one?

9 Q. No. 11.

10 A. I'm there.

11 Q. No. 11 states you testified in one of AEP  
12 Ohio's ESP case, correct?

13 A. Yes.

14 Q. And your testimony in that case was  
15 similar in many ways to the testimony you filed in  
16 this case as it relates to affordability, correct?

17 A. I believe that would be the case.

18 Q. And then moving down to No. 12 on the  
19 same page, you testified in what became DP&L's ESP  
20 case, correct?

21 A. Yes, I did.

22 Q. And in that case, you were also asking  
23 the Commission to consider affordability as it  
24 rendered -- rendered its opinion, correct?

25 A. That would be correct.

1 Q. And moving down to No. 14, you testified  
2 in AEP Ohio's ESP III case, correct?

3 A. Yes, I did.

4 Q. And part of your testimony in that case  
5 also asked that the Commission consider affordability  
6 as it rendered its opinion in that case, correct?

7 A. That would be correct.

8 Q. And No. 15, you testified in Duke's most  
9 recent ESP case, correct?

10 A. That is correct.

11 Q. And in that case, in part you also asked  
12 the Commission to consider affordability as it  
13 rendered its opinion, correct?

14 A. That would be correct.

15 Q. And in this case, part of your testimony  
16 similarly asked that the Commission consider  
17 affordability as it renders its opinion, correct?

18 A. That would be correct.

19 Q. There are several items that can be  
20 reviewed to determine whether rates or rate increases  
21 are affordable, correct?

22 A. Yes. There's a number of different  
23 criteria that can be evaluated.

24 Q. And projected bill impacts are something  
25 that can be reviewed in order to determine

1       affordability, correct?

2               A.     That's -- that's some criteria that can  
3     be considered.

4               Q.     And turning to your testimony, page 4,  
5     lines 11 to 14, on those lines you defer to  
6     witness -- OCC Witness Rose, OCC/NOPEC Witnesses  
7     Wilson and Sioshansi, correct?

8               A.     That is correct.

9               Q.     You did not do anything to confirm the  
10    accuracy of the recommendation of those witnesses,  
11    correct?

12              A.     No.   Those witnesses could speak for  
13    themselves.

14              Q.     And so you didn't confirm their -- the  
15    accuracy, correct?

16              A.     No.   I just asked that the Commission  
17    consider the RRS -- consider affordability as it  
18    renders a decision in the RRS.

19              Q.     On page 4, line 1 to 4, you testify that  
20    rider RRS is estimated by Witness Ruberto to cost  
21    464 million during the three-term of the ESP,  
22    correct?

23              A.     That is correct.

24              Q.     And the ESP IV term is June 1, 2014, to  
25    May 31 -- excuse me, June -- where did I get that

1 number from? June 1 --

2 A. 2016.

3 Q. -- 2016 to May 31, 2019, correct?

4 A. That is correct.

5 MS. DUNN: Your Honor, if I may approach?

6 EXAMINER CHILES: You may.

7 Q. (By Ms. Dunn) Mr. Williams, I have handed  
8 you what's previously been marked as Companies'  
9 Exhibit 33 for the direct testimony of Jay Ruberto  
10 and Companies' Exhibit 34, which is the errata.  
11 You've seen these two documents before, correct?

12 A. Yes, I have.

13 Q. Turning to Attachment JAR-1 on the direct  
14 testimony which will be the last page --

15 A. I'm there.

16 Q. -- in calculating the \$464 million, you  
17 included the numbers that he has listed for 2016,  
18 2017, and 2018, correct?

19 A. That is correct.

20 Q. And looking at the 2019, you did not  
21 include the number in parentheses for 2019, correct?

22 A. I did not include that. I didn't know if  
23 that was within the term of the ESP or outside the  
24 term of the ESP, because that would be the last year  
25 of the ESP IV.



1 Q. And the parentheses means, at least  
2 according to JAR-1, that means overrecovery, correct?

3 A. Yes. But, again, I am talking about  
4 within the term of the ESP, and what I was able to  
5 identify was these costs specifically within the term  
6 of the ESP.

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

9 MR. KUMAR: Your Honor, I think he  
10 provides a valuable context to the methodology that  
11 Ms. Dunn is asking about.

12 EXAMINER CHILES: As has been our  
13 tradition, I am going to deny the motion to strike.  
14 I will allow the witness to answer this question with  
15 an extra comment. However, I am going to direct the  
16 witness to please just answer the question, and if  
17 you feel additional context is needed, Mr. Kumar can  
18 bring it out on redirect.

19 THE WITNESS: Thank you, your Honor.

20 EXAMINER CHILES: Thank you.

21 Q. (By Ms. Dunn) Turning back to your  
22 testimony on page 6 and 7.

23 A. I am on page 6.

24 Q. And on page 6 and 7, you reference  
25 at-risk populations, correct?

1           A.    Yes.  I talk about the at-risk  
2 population.

3           Q.    At-risk populations can be a number of  
4 different population groups, correct?

5           A.    That's correct.

6           Q.    And you have not seen a definition of  
7 at-risk population from the PUCO, correct?

8           A.    I have not seen that type of a  
9 definition.

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

11           EXAMINER CHILES:  You may.

12           Q.    (By Ms. Dunn) Mr. Williams, I have handed  
13 you what has previously been marked as Company  
14 Exhibit 2, which is the December 22, 2014,  
15 stipulation.  Could you turn, please, to page 13 of  
16 this document?

17           A.    I'm there.

18           Q.    And paragraph C1 references in the first  
19 two lines, customers at or below 200 percent of the  
20 federal poverty guideline.  Do you see that?

21           A.    I do.

22           Q.    That group would fall into your  
23 definition of an at-risk customer group, correct?

24           MR. KUMAR:  Objection, your Honor.

25           EXAMINER CHILES:  Grounds?

1 MR. KUMAR: I think this is beyond the  
2 scope of -- I think, first of all, it  
3 mischaracterizes Mr. Williams' testimony. I think  
4 it's further beyond the scope of his direct. He  
5 is -- the OCC, I believe, is not a party to the  
6 stipulation, and I think it would be inappropriate to  
7 cross-examine him on a provision that is in a  
8 stipulation to which the OCC is not a party in.

9 MS. DUNN: Your Honor, I can respond, if  
10 you like.

11 EXAMINER CHILES: You may. Could you  
12 turn your microphone on?

13 MS. DUNN: I may have to switch in a  
14 minute. His testimony discusses the ESP as a whole.  
15 It discusses the at-risk populations. He explains  
16 that he believes the ESP doesn't benefit enough  
17 at-risk populations. I am testing that theory with  
18 the stipulation.

19 EXAMINER CHILES: The objection is  
20 overruled. He may answer, if he knows.

21 Q. (By Ms. Dunn) Do you need the question  
22 reread?

23 A. Could you, please.

24 MS. DUNN: May we, your Honor?

25 EXAMINER CHILES: Would you reread the

1 question, please, Karen? Thank you.

2 (Record read.)

3 THE WITNESS: Yes. Those customers in  
4 the CEI service territory, not the customers that  
5 would be within Ohio Edison or Toledo Edison.

6 MS. DUNN: Your Honor, I was simply  
7 asking about customers at or below 200 percent of the  
8 property level. It was a yes or no question, and I  
9 move to strike the remainder of his response.

10 EXAMINER CHILES: Mr. Kumar?

11 MR. KUMAR: Your Honor, she asked a  
12 question regarding customers in the service territory  
13 that are below the poverty line. Mr. Williams  
14 provided an answer that includes the companies'  
15 entire service territory.

16 EXAMINER CHILES: Motion to strike is  
17 denied.

18 Q. (By Ms. Dunn) And page 13 also identifies  
19 the Cleveland Housing Network, the Consumer  
20 Protection Agency, and the Council for Economic  
21 Opportunities in Greater Cleveland, correct?

22 A. I do see that.

23 Q. And you are familiar with those  
24 organizations, correct?

25 A. Yes, I am.

1 Q. These organizations provide support for  
2 customers that tend to be at risk as poverty-level  
3 customers, correct?

4 MR. KUMAR: Objection, your Honor.

5 EXAMINER CHILES: Grounds?

6 MR. KUMAR: Mr. Williams is not a member  
7 of those organizations. The OCC is not one of those  
8 organizations, and I think it would be inappropriate  
9 for Mr. Williams to testify as to what those  
10 organizations actually do.

11 EXAMINER CHILES: Overruled. He can  
12 answer if he knows.

13 THE WITNESS: I don't know all the  
14 services that are provided at these agencies. I do  
15 know that these agencies have distributed fuel funds  
16 to at-risk customers in the CEI service territory in  
17 the past.

18 Q. (By Ms. Dunn) Turning back to your  
19 testimony, page 7, line 6, you state, "Even more  
20 alarming" -- I'll wait to see if you are there. I  
21 apologize. Are you there?

22 A. I am there.

23 Q. You state, "Even more alarming, the  
24 at-risk population of Ohioans living in poverty has  
25 increased from 10.6 percent since 1999." You don't

1 know why you chose 1999 as the starting point, do  
2 you?

3 A. I believe that the 1999 was just the data  
4 that was available in the source report that I used,  
5 The Ohio Poverty Report 2013. And I believe that  
6 also 1999 was the closest time period that I could  
7 find to when Senate Bill 3 was enacted and electric  
8 structuring occurred within the state.

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

10 EXAMINER CHILES: You may.

11 Q. (By Ms. Dunn) Mr. Williams, could you  
12 turn to page 66 of your deposition, line 18: "And  
13 why did you choose 1999 as your starting point?  
14 "Answer: I am not 100 percent certain. It would be  
15 speculative on that answer."

16 A. I believe also --

17 Q. "Question: So you don't know why you  
18 chose 1999?"

19 A. I believe also --

20 MS. DUNN: Your Honor, I am not finished.

21 EXAMINER CHILES: Mr. Williams, please  
22 wait.

23 THE WITNESS: Thank you.

24 Q. "Answer: I believe that I chose 1999  
25 because that was around the same time as Senate Bill

1 3 retail electric program was being developed, but I  
2 am not 100 percent sure that's the only thing I  
3 considered." Did I read that correctly?

4 A. Yes. As I said, that's the only thing --  
5 I am not sure that was the only thing I considered,  
6 and I believe that's the answer that I just provided.

7 MS. DUNN: Your Honor, I move to strike  
8 everything after "yes."

9 MR. KUMAR: Your Honor, Ms. Dunn didn't  
10 engage in proper impeachment there. I think that  
11 Mr. Williams was providing some essential context  
12 that was necessary in his deposition that he provided  
13 on the stand earlier and that was essential to  
14 understanding the answer he provided.

15 EXAMINER CHILES: I am going to deny this  
16 motion to strike.

17 Q. (By Ms. Dunn) The problems you have  
18 identified in your testimony related to poverty  
19 levels is not exclusive to the FirstEnergy service  
20 territories. It is a statewide issue, correct?

21 A. There is statewide poverty data.

22 Q. Is my statement correct, though, it's a  
23 statewide issue?

24 A. I believe it to be a statewide issue.

25 Q. The monthly payments that PIPP customers

1 pay would not be affected by rate increases, correct?

2 A. Not the monthly bill that customers pay  
3 since they pay a percentage of their income.

4 Q. Okay. Thank you.

5 A. But they are still responsible for paying  
6 the bill.

7 MS. DUNN: Your Honor, I do move to  
8 strike everything after "but." My question was very  
9 specific of whether the monthly payments that PIPP  
10 customers pay would not be affected by rate  
11 increases, correct?

12 EXAMINER CHILES: Could I have the  
13 question and answer read back, please?

14 (Record read.)

15 EXAMINER CHILES: I am going to deny the  
16 motion to strike.

17 Q. (By Ms. Dunn) At-risk population is a  
18 broadly used term, correct?

19 A. Yes, it can be broadly used, and that's  
20 why I tried to narrow it -- focus it in my testimony  
21 to some specific groups, just for context.

22 Q. You can't give an example from any of  
23 your previous testimonies where you agreed that a  
24 rider proposed by a company was appropriate and  
25 affordable, correct?



1           A.     Not as I sit here today.

2           Q.     In preparation of your testimony, you did  
3 not do an analysis as it relates to the projected  
4 bill impacts -- let me start over.

5                     In preparation of your testimony, you did  
6 not do an analysis as it relates to projected bill  
7 impacts, correct?

8           A.     Just based upon the total bill impact,  
9 the total impact of the costs that would be passed on  
10 to customers, I did not do that on an individual  
11 customer's basis to determine what that would be, but  
12 I do know it was \$1.2 billion.

13                     MS. DUNN: Your Honor, I move to strike  
14 after the "but you do know".

15                     MR. KUMAR: Your Honor, I think in these  
16 hearings, we have allowed the witness to say "yes,"  
17 "no" or answer why he can't answer the question. And  
18 I think Mr. Williams answered why he couldn't answer  
19 the question there, so I would -- I don't think his  
20 answer should be stricken.

21                     EXAMINER CHILES: I think he did answer  
22 the question, but then he added on at the end, so I  
23 am going to grant the motion to strike beginning with  
24 "what I do know".

25           Q.     (By Ms. Dunn) Mr. Williams, please turn

1 to your deposition, page 75, line 21. "Question:  
2 Okay. And then for your testimony, did you do any  
3 analysis as it relates to bill impacts?

4 "Answer: I did not." Did I read that  
5 correctly?

6 A. Yes, but I think you need to look at the  
7 next question as well: "Why not?"

8 MS. DUNN: Your Honor, I would move to  
9 strike everything after "but." If that's an argument  
10 his counsel wants to make, he can interject, but  
11 that's not appropriate for the witness.

12 EXAMINER CHILES: Mr. Kumar, do you have  
13 a response?

14 MR. KUMAR: You know, I think it was  
15 improper impeachment. We've -- Mr. Williams was just  
16 trying to establish why he wasn't able to answer the  
17 properly asked question.

18 MS. DUNN: I asked whether I could read  
19 something or read it correctly.

20 EXAMINER CHILES: I am going to grant the  
21 motion to strike beginning with the word "but."

22 Q. (By Ms. Dunn) Mr. Williams, you are aware  
23 that the companies filed projected bill impacts with  
24 their application, correct?

25 A. I am.

1 Q. And you also have not done your own  
2 analysis of the companies' projected bill impacts  
3 filed in this case, correct?

4 A. I did not.

5 Q. Turning to page 8 of your testimony, line  
6 11 to 3 -- 13, you state, in fact, "FirstEnergy  
7 neither proposes to continue the Percentage of Income  
8 Payment Plan Plus discount, nor to fund the bill  
9 payment assistance programs that were included in  
10 prior ESPs. The reason the companies stated that  
11 there was -- was no continuation of the Percentage of  
12 Income Payment Plan plus discount was because there  
13 was no supplier interested in providing that,"  
14 correct?

15 A. I believe I've heard that since.

16 Q. You did not know that at the time of your  
17 testimony?

18 A. Actually, I believe that was included in  
19 the original testimony.

20 Q. The companies themselves couldn't have  
21 given a discount for PIPP generation because they are  
22 not a generation supplier, correct?

23 A. That is correct.

24 Q. Turning to page 9 of your testimony,  
25 Table 1 is derived from Table A7 of the 2014 Ohio

1 Poverty Report, correct?

2 A. Yes, it is.

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

4 EXAMINER CHILES: You may.

5 MS. DUNN: Your Honor, I would like to  
6 mark as Company Exhibit 119 the Ohio Poverty Report,  
7 February 2014, Ohio Development Services Agency.

8 EXAMINER CHILES: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. (By Ms. Dunn) Mr. Williams, have you seen  
11 this exhibit before?

12 A. Yes, I have.

13 Q. Can you please turn to page 61, Table A7.  
14 Is this the table you utilized in developing Table 1  
15 on page 9 of your testimony?

16 A. Yes, it is.

17 Q. And Table 1 of your report does not list  
18 all of the counties in the FirstEnergy territories in  
19 Ohio, correct?

20 A. It's just select counties, as I believe  
21 it was referenced.

22 Q. So my answer is correct, it doesn't list  
23 all of the counties?

24 A. It's not every county.

25 Q. And Table 7 of The Ohio Poverty Report

1 does list all of the counties in Ohio, correct?

2 A. Yes, it does.

3 Q. And in determining which counties to  
4 include in your chart, you used at least, in part,  
5 the number of customers or the population of the  
6 counties, correct?

7 A. I did look at the population.

8 Q. And you also used the actual level of  
9 ratio of income-to-poverty level in determining which  
10 counties to include in your chart, correct?

11 A. Can you repeat that question, please?

12 Q. Sure. You also used the actual level of  
13 ratio of income-to-poverty level in determining which  
14 counties to include in your chart, correct?

15 A. Yes, I did.

16 Q. And turning to The Ohio Poverty Report,  
17 Exhibit 119, I'm looking at the list on page 61,  
18 Table A7. You see Geauga County, correct? It's the  
19 third from the bottom.

20 A. Yes, I do.

21 Q. And Geauga County has a population of  
22 92,702 people, according to this chart, correct?

23 A. Yes, it does.

24 Q. And Geauga County is in FirstEnergy's  
25 Ohio service territories, correct?

1           A.    I believe that to be the case.

2           Q.    And this county is not included in your  
3 chart on Table 1, correct?

4           A.    It was not.

5           Q.    And turning to page 62, Lake County,  
6 according to the chart, Lake County has a population  
7 of 226,996 people, correct?

8           A.    That is correct.

9           Q.    And Lake County is also in FirstEnergy's  
10 Ohio service territory, correct?

11          A.    I believe that to be the case.

12          Q.    And did you not include Lake County in  
13 your Table 1, correct?

14          A.    No.  I just provided select counties.

15          Q.    And another example would also be on page  
16 62, Medina County.  According to the chart, Medina  
17 County has a population of 170,786 people, correct?

18          A.    That is correct.

19          Q.    And Medina County is also in  
20 FirstEnergy's service territory, correct?

21          A.    Yes, it is.

22          Q.    And you did not include Medina County in  
23 Table 1 either, correct?

24          A.    I did not.

25          Q.    Turning to your Table 1 on page 9, I see

1 you did include Cuyahoga County, correct?

2 A. Yes, I did.

3 Q. Cuyahoga County has more than one  
4 electric utility, correct?

5 A. At a minimum, Columbus -- Cleveland  
6 Public Power also operates.

7 Q. So in Table 1, the numbers for Cuyahoga  
8 County would also include customers of Cleveland  
9 Public Power, correct?

10 A. Or any other electric provider in  
11 Cuyahoga County, yes.

12 Q. Turning to page 10 of your testimony, on  
13 lines 2 to 4, you state, "within the CEI service  
14 territory over one-third of the population of  
15 Cuyahoga County is designated as close to the poverty  
16 level. This one-third would include both customers  
17 of CEI and any other electric utility in Cuyahoga  
18 County," correct?

19 A. That is correct.

20 Q. Page 11, lines 7 to 8, you reference  
21 customers' rates to increase even more. You have not  
22 done any bill impacts in order to determine how the  
23 proposed rates will increase, correct?

24 A. I just know that bills -- that there's  
25 approximately \$1.2 billion in costs that would be

1 passed on, but, again, I don't know what the  
2 individual bill impact would be, if that's what you  
3 are asking.

4 MS. DUNN: Your Honor, I asked a specific  
5 yes or no question about whether he -- you have not  
6 done any bill impacts in order to determine how the  
7 proposed rates will increase rates, yes or no. I  
8 believe he answered it at the end, but the first part  
9 was not responsive to my question, so I move to  
10 strike.

11 EXAMINER CHILES: Mr. Kumar, do you have  
12 a response?

13 MR. KUMAR: Well, I think this question's  
14 already been asked and answered, but I also think  
15 that Mr. Williams is providing some essential context  
16 in his answer that was necessary to answer the  
17 question.

18 EXAMINER CHILES: I am going to grant the  
19 motion to strike, but leave the portion that says, "I  
20 don't know what the individual bill impacts would be,  
21 if that's what you are asking." That's the part that  
22 was responsive to the question.

23 Q. Turning to page 13, on line 1, you have a  
24 "297,400" figure. That total is derived from the  
25 number of customers disconnected, the number of



1 customers on PIPP Plus, and the number of customers  
2 on payment plans in FirstEnergy's Ohio territory,  
3 correct?

4 A. That is correct.

5 Q. There could be a number of reasons a  
6 customer is disconnected for nonpayment, correct?

7 A. If they are disconnected for nonpayment,  
8 I would see that as the reason for the disconnection.  
9 I don't know if you are asking me about the cause or  
10 the people are disconnected for nonpayment, that's --  
11 that is why they were disconnected.

12 Q. Mr. Williams, could you please turn to  
13 your deposition, page 97, line 14, "Question: There  
14 could be a number of reasons a customer is  
15 disconnected for nonpayment, correct?

16 "Answer: That is correct." Did I read  
17 that correctly?

18 A. You did.

19 MR. KUMAR: Objection, your Honor.

20 EXAMINER CHILES: Grounds?

21 MR. KUMAR: The answer provided in  
22 Mr. Williams' deposition is a part of a series of  
23 questions. We don't have the context of that entire  
24 series of questions here today. I think Mr. -- I am  
25 going to object on the grounds that it is improper

1 impeachment, because I think Mr. Williams' answer to  
2 the first question that Ms. Dunn asked was responsive  
3 in the context of what the question she asked today.

4 EXAMINER CHILES: Could I have the  
5 question and answer read back, please?

6 MR. KUMAR: I think there's an entire --  
7 if you look on page 96 and 97 of the deposition,  
8 there's an entire discussion of nonpayment, and the  
9 answer of that question was in the context of that  
10 discussion.

11 MS. DUNN: Your Honor, I know you were  
12 waiting to have the question reread.

13 EXAMINER CHILES: Let's have the question  
14 reread, and then you can respond.

15 MS. DUNN: Thank you.

16 EXAMINER CHILES: Thank you, Ms. Dunn.

17 (Record read.)

18 EXAMINER CHILES: Ms. Dunn, do you want  
19 to respond?

20 MS. DUNN: My question to him was word  
21 for word that question, and if there is other  
22 information in the depo, counsel is welcome to  
23 explore that on redirect. My question was proper.

24 MR. KUMAR: Your question in the  
25 deposition was in the context of, I think, a

1 multi-page discussion of nonpayment. To answer -- to  
2 require Mr. Williams to answer just that question  
3 without the rest of the context I think is improper.

4 EXAMINER CHILES: The objection is  
5 overruled. You can bring out any additional context  
6 on redirect.

7 MR. KUMAR: Thank you, your Honor.

8 Q. (By Ms. Dunn) And Mr. Williams, you don't  
9 know all the reasons why customers may have been  
10 disconnected for nonpayment, correct?

11 A. I do not know.

12 Q. And on page -- Table 2 of your page 12 of  
13 your testimony, you don't know all the factors that  
14 could be contributing to the disconnection rate  
15 referenced in Table 2, correct?

16 A. I do not.

17 Q. There are many reasons a customer could  
18 be on the PIPP program, correct?

19 A. Yes.

20 Q. And you don't know all the reasons that a  
21 customer may be on PIPP, correct?

22 A. I don't know.

23 Q. You don't know all the reasons that  
24 customers may be on payment plans, correct?

25 A. Not every reason, no.

1 Q. And it's not your testimony that the only  
2 reason a customer would be on the PIPP program is  
3 because their electric utility rates are  
4 unaffordable, correct?

5 A. To be on PIPP, it would be because they  
6 are low income and an at-risk population and  
7 presumably even some help with the payment plan.

8 Q. But my -- that's not the only reason a  
9 customer would be -- the only reason a customer --  
10 step back. My question was, it's not your testimony  
11 that the only reason a customer would be on the PIPP  
12 program is because their electric utility rates are  
13 unaffordable, correct?

14 A. There could be other reasons.

15 Q. Other than the data you have provided in  
16 your testimony, you have not done any studies or  
17 analysis relating to the difficulty you believe  
18 customers have in paying their bills, correct?

19 A. No, I have not.

20 Q. Page 13, line -- I am really trying to  
21 make this not -- page 13, lines 5 to 7, you state,  
22 "the proposed ESP will raise rates even higher and  
23 may make electric service unaffordable for additional  
24 customers." You have not done a specific analysis on  
25 how the proposed ESP will raise rates even higher,

1 correct?

2 A. Not beyond just looking at the total  
3 costs that are being passed on to customers.

4 Q. In question 10, you discuss the  
5 reconnection rates for CEI and Toledo Edison,  
6 correct, among other things?

7 A. I believe also for Ohio Edison, for all  
8 three of the operating companies.

9 Q. You don't specifically know why a  
10 customer may or may not have electric service  
11 reconnected, correct?

12 A. I don't know every reason, no.

13 Q. And looking at the testimony you have  
14 listed on JW-1, including the -- well, let's start  
15 with not the ones you added today but just on the  
16 ones that are in JW-1 that were before you added  
17 today, you have not ever supported a company's  
18 question to add an additional rider or increase  
19 rates, correct?

20 A. I don't believe I've supported any type  
21 of an increase in rates. I don't know about -- you  
22 know, it's a lot of cases I participated in. As I  
23 sit here today, I can't think of any riders that I  
24 have supported, but I also hate to say I never have.  
25 There are -- could be something.

1 Q. Turning to page 16, lines 13 to 14.

2 A. I'm there.

3 Q. You state that, "Infrastructure  
4 modernization is different from distribution  
5 transmission in general in the intangible plant that  
6 the utility is seeking to recover in the ESP,"  
7 correct?

8 A. That is correct.

9 Q. You are aware that the companies' rider  
10 DCR has been audited by the PUCO in the past,  
11 correct?

12 A. I believe that there's an annual audit or  
13 review. I don't know if that's an actual audit.

14 Q. So in your deposition, were you aware  
15 that the companies had audits of their rider DCR?

16 A. If you could point me to the deposition,  
17 I would be glad to provide clarification.

18 Q. Sure. Page 128, line 7, "Question: Are  
19 you aware that the companies have had audits of their  
20 rider DCR?

21 "Answer: I am aware of that." Those are  
22 the audits I am discussing today. You are aware that  
23 there are audits of rider DCR?

24 A. Yes.

25 Q. And you have not reviewed any of the

1 auditor's reports, correct?

2 A. I have not.

3 Q. You don't know the specific kinds of  
4 projects the companies have previously included in  
5 rider DCR, correct?

6 A. I do not. I have not.

7 Q. Page 16, lines 14 to 17, you reference  
8 expenses associated with the general maintenance of a  
9 utility's distribution system. You understand that  
10 the companies are not including O&M expenses in rider  
11 DCR, correct?

12 A. Yes. I understand this to be all  
13 capital.

14 Q. Page 20, lines 4 to 6, you state, "As  
15 stated earlier, rider DCR is not authorized under  
16 Ohio law because it allows the utility to collect  
17 costs that have nothing to do with infrastructure  
18 modernization," correct?

19 A. That is correct.

20 Q. The Commission has approved rider DCR for  
21 the companies in the past, correct?

22 A. The context of my testimony is an ESP IV.

23 Q. I guess the answer -- I am asking you  
24 about previous ESPs. The Commission has approved  
25 rider DCR in the past, correct?

1           A.    I believe DCR was approved in the ESP II  
2           and ESP III.  Again, the scope of my testimony is the  
3           ESP IV.

4           Q.    The Commission has also approved similar  
5           riders for AEP in the past, correct?

6           A.    Yes, the Commission has, although the  
7           Commission has also limited some of the types of  
8           expenses that could -- that AEP sought to recover  
9           through its DIR rider in its most recent ESP.

10          MS. DUNN:  Your Honor, I move to strike  
11          everything after "yes."  It's a "yes" or "no"  
12          question.

13          MR. KUMAR:  Your Honor, I think the  
14          question was rather broad in its definition of  
15          "similar," and I think Mr. Williams was simply trying  
16          to narrow the scope of the question with his answer.

17          EXAMINER CHILES:  Motion to strike is  
18          denied.

19          Q.    (By Ms. Dunn) Is it your testimony that  
20          the Commission's approval of rider DCR in the past  
21          was contrary to law?

22          A.    Again, the context of my testimony is an  
23          ESP IV.  I don't know that I have proper context for  
24          ESP II or III.  I believe that the Commission should  
25          not continue DCR now in the ESP IV.



1 Q. Page 13 of your testimony, line 15, you  
2 reference an \$810 million figure. That \$810 million  
3 isn't an increase from the current ESP III DCR rates,  
4 correct?

5 A. My understanding is that the DCR at the  
6 end of the ESP III, short of the Commission approving  
7 an additional DCR, there would not be an  
8 authorization to continue collecting this 810  
9 million.

10 MS. DUNN: Your Honor, I would move to  
11 strike the whole answer as nonresponsive. I asked a  
12 very specific "yes" or "no" question. The  
13 \$810 million isn't an increase from the current ESP  
14 III rates, correct?

15 MR. KUMAR: Your Honor, may I have the  
16 question and answer reread?

17 EXAMINER CHILES: I would like to hear it  
18 too. Thank you, Karen.

19 (Record read.)

20 EXAMINER CHILES: Do you have a response,  
21 Mr. Kumar?

22 MR. KUMAR: I think Mr. Williams was  
23 testifying to his understanding and a proper response  
24 to the question, his understanding of how the  
25 increase would work.

1 MS. DUNN: If Mr. Williams thought I  
2 wasn't correct, he could have just said "no, not  
3 correct."

4 EXAMINER CHILES: I think Mr. Williams  
5 was trying to be responsive, so I am going to deny  
6 the motion to strike. If you want to try restating  
7 your question, Ms. Dunn.

8 Q. (By Ms. Dunn) Would you agree that some  
9 part of the \$802 million that you cite in your  
10 testimony is included within the ESP III rates?

11 MR. KUMAR: Objection.

12 EXAMINER CHILES: Grounds?

13 MR. KUMAR: Do you mean 810?

14 MS. DUNN: 810, sorry. I will start over  
15 for clarity.

16 EXAMINER CHILES: Thank you.

17 Q. (By Ms. Dunn) Would you agree that part  
18 of the \$810 million you cite in your testimony is  
19 included within the ESP III rates?

20 A. Yes.

21 Q. Turning to Table 4, page 19 of your  
22 testimony, Table 4 of your testimony includes time  
23 periods from ESP II and ESP III, correct?

24 A. Some part of that would have included,  
25 yes.

1 MS. DUNN: Your Honor, if I may have just  
2 a minute to check my notes for the nonconfidential  
3 session?

4 EXAMINER CHILES: You may.

5 MS. DUNN: Thank you, your Honor. We can  
6 move to confidential session where I have a few  
7 questions.

8 EXAMINER CHILES: Thank you, Ms. Dunn.  
9 Let's see if staff has any questions for the public  
10 report.

11 MS. DUNN: I apologize.

12 MR. BEELER: No questions, your Honor.

13 EXAMINER CHILES: All right. At this  
14 time, let's move to the confidential record.

15 MS. DUNN: I think there's a couple faces  
16 I don't know, so if we can go off the record for a  
17 minute.

18 EXAMINER CHILES: Let's go off the record  
19 quickly, have the company check the room.

20 (Discussion off the record.)

21 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER CHILES: I'm sorry, did you say  
you don't have any public?

1 MR. KUMAR: Yeah, we don't have any  
2 public redirect either.

3 EXAMINER CHILES: Okay. Thank you. You  
4 are excused.

5 THE WITNESS: Thank you, your Honor.

6 EXAMINER CHILES: Okay. Mr. Kumar,  
7 exhibits?

8 MR. KUMAR: Yes, the OCC would move for  
9 the admission of Exhibits 27 and 28C.

10 EXAMINER CHILES: Are there any  
11 objections to the admission of OCC Exhibits 27 and  
12 28C?

13 MS. DUNN: No, your Honor.

14 EXAMINER CHILES: Hearing none,  
15 they will be admitted.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 EXAMINER CHILES: Ms. Dunn, thank you.  
18 Mr. Beeler.

19 MR. BEELER: Thank you, your Honor. At  
20 this time, the staff calls Barbara Bossart.

21 MS. DUNN: Your Honor, may I have a  
22 moment just to shift folders?

23 EXAMINER CHILES: Yes.

24 MS. DUNN: Thank you. Let's go off the  
25 record.

1 (Discussion off the record.)

2 EXAMINER CHILES: Go back on the record.

3 Mr. Beeler? I'm sorry, you called your witness.

4 Ms. Bossart, would you please raise your right hand.

5 (Witness sworn.)

6 MR. BEELER: Thank you, your Honor. I  
7 would like to, at this point, mark for identification  
8 purposes Staff Exhibit 2 which is the direct  
9 testimony of Barbara Bossart on behalf of the staff  
10 of the Public Utilities Commission filed on September  
11 18, 2015, in this docket.

12 EXAMINER CHILES: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 - - -

15 BARBARA BOSSART

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

18 DIRECT EXAMINATION

19 By Mr. Beeler:

20 Q. Good afternoon. Please state your name  
21 and by whom you are employed.

22 A. My name is Barbara Bossart. I am  
23 employed by the Public Utilities Commission of Ohio.

24 Q. Do you have in front of you what has been  
25 marked as Staff Exhibit 2?

1           A.    Yes, I do.

2           Q.    Please identify that document for the  
3 record.

4           A.    It's my prefiled testimony.

5           Q.    That testimony was prepared by you or  
6 under your direction?

7           A.    Yes.

8           Q.    Do you have any corrections to make to  
9 this document?

10          A.    Yes, I do.

11          Q.    What would those be?

12          A.    On page 2, line 10, I want to delete  
13 "first," and on line 17, delete that whole line, and  
14 then on page 4, question 8, line 1 through 8 and  
15 line -- and question 9, lines 10 through 14.

16               EXAMINER CHILES:  Just to clarify, you  
17 are deleting the entirety of questions 8 and 9?

18               THE WITNESS:  Correct.

19               EXAMINER CHILES:  Thank you.

20          Q.    Why are you making these corrections?

21          A.    After I filed my testimony, it came to my  
22 attention that the information that I was seeking was  
23 on the back of the bills.

24          Q.    Okay.  With those corrections, if I were  
25 to ask you the questions in your testimony today,

1 would your answers be the same?

2 A. Yes.

3 Q. And those answers would be true and  
4 accurate, to the best of your knowledge?

5 A. Yes.

6 MR. BEELER: Thank you.

7 Your Honor, at this time, subject to  
8 cross-examination, I would move the admission of  
9 Staff Exhibit 2 into the record, and the witness is  
10 available for cross.

11 EXAMINER CHILES: Thank you. We will  
12 defer ruling on the motion for admission until  
13 cross-examination is complete.

14 Mr. Hays?

15 MR. HAYS: No questions. Thank you.

16 EXAMINER CHILES: Ms. Bojko?

17 MS. BOJKO: No questions. Thank you.

18 EXAMINER CHILES: Mr. Sahli?

19 MR. SAHLI: No questions.

20 EXAMINER CHILES: Ms. Petrucci?

21 MS. PETRUCCI: No questions.

22 EXAMINER CHILES: Mr. Sauer?

23 MR. SAUER: No questions.

24 EXAMINER CHILES: Ms. Dunn?

25 MS. DUNN: Thank you, your Honor.



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CROSS-EXAMINATION

By Ms. Dunn:

Q. Good afternoon, Ms. Bossart.

A. Good afternoon.

Q. Your opinion on page 3 of your testimony is confined to the costs for providing CRES provider logos, correct?

A. Correct.

MS. DUNN: Your Honor, may I approach the witness?

EXAMINER CHILES: You may.

Q. Ms. Bossart, on page 3, you reference on line 10 the Entry on Rehearing in Case 12-3151, and that would be the order -- the Entry on Rehearing in the retail market investigation, correct?

A. Correct.

Q. And on page 3 -- can I point your attention to page 15 of the Entry on Rehearing.

A. Yes.

Q. And on page 15, the middle paragraph, there's a sentence that says, "Further, while the Commission understands that there are costs involved with providing CRES provider logos on customer bills, the Commission indicated in the order that the EDUs may file applications for recovery of those costs

1 and, as indicated above, may file applications for  
2 deferral authority until their next distribution rate  
3 case," correct?

4 A. That is correct.

5 Q. And does the Commission entry that I just  
6 referenced allow for the companies to file an  
7 application of recovery of costs and also an  
8 application for deferral authority for costs  
9 associated with providing supplier logos on customer  
10 bills?

11 A. It states that they may file applications  
12 for recovery of those costs and may file applications  
13 for deferral authority until the next distribution  
14 rate case.

15 Q. And in this proceeding, is it your  
16 understanding that the companies are not only seeking  
17 cost recovery for bill logos through rider GDR but  
18 also seeking deferral authority for the cost of bill  
19 logos?

20 A. Could you repeat that question?

21 Q. Sure. In this proceeding, is it your  
22 understanding that the companies are not only seeking  
23 cost recovery for bill logos through rider GDR but  
24 also seeking deferral authority for the cost of bill  
25 logos?

1           A.    I believe they are seeking cost recovery.  
2    I cannot say whether they were seeking deferrals.

3           Q.    Have you had the opportunity to review  
4    Brandon McMillen's testimony in this case?

5           A.    No, I did not.

6           Q.    Is it your understanding that the  
7    companies are proposing a base distribution rate  
8    freeze until 2019 in this case?

9           A.    No, I did not.

10          Q.    Assuming the companies are seeking  
11    deferral authority in this case for the costs  
12    associated with bill logos, would you support the  
13    request for deferral authority, not necessarily  
14    recovery, in GDR but in the next base distribution  
15    rate case?

16          A.    My scope of my testimony was to bring the  
17    attention of the Commission directive which stated  
18    that the companies can seek recovery through the next  
19    base distribution rate case or they could file  
20    authority for deferrals.  So I don't have an opinion  
21    if that changed.

22          Q.    And as mentioned in your testimony, the  
23    companies were ordered in the retail market  
24    investigation to provide CRES provider logos on their  
25    bills, correct?

1           A.    Correct.

2           Q.    Would you agree that the companies will  
3 incur costs for the implementation of bill logos on  
4 the companies' bills as a result of a governmental  
5 directive over which the companies have no control?

6           A.    I believe the companies will incur costs  
7 to include the bill logos on their bill.

8           Q.    Do you agree that the costs the companies  
9 will incur are a result of the Commission order in  
10 the retail market investigation?

11          A.    I believe with -- I don't know that they  
12 will incur additional costs to what they already are  
13 recovering through base distribution rates.

14          Q.    Do you know if the costs to implement  
15 bill logos on the companies' bills were included as  
16 part of the test year from the last base distribution  
17 rate case?

18          A.    Could you repeat that?

19          Q.    Sure. Do you know if the costs to  
20 include bill logos on the company bills were part of  
21 the test year from the last base distribution rate  
22 case?

23          A.    I do not. Like I said, my testimony is  
24 to only advise of the Commission's directive in  
25 the -- regarding the recovery of the CRES logos in

1 Case No. 12-3151.

2 MS. DUNN: Your Honor, if I may have just  
3 a moment.

4 EXAMINER CHILES: You may.

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

7 EXAMINER CHILES: Thank you, Ms. Dunn.

8 MS. DUNN: Thank you, Ms. Bossart.

9 EXAMINER CHILES: Mr. Beeler, redirect?

10 MR. BEELER: One short moment.

11 (Discussion off the record.)

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

14 MR. BEELER: No redirect, your Honor.

15 EXAMINER CHILES: Thank you, Ms. Bossart.  
16 You are excused.

17 THE WITNESS: Thank you.

18 MR. BEELER: At this time, your Honor, I  
19 would renew my motion to move Staff Exhibit 2 into  
20 the record.

21 EXAMINER CHILES: Are there any  
22 objections to the admission of Staff Exhibit 2?

23 MS. DUNN: No objection, your Honor.

24 EXAMINER CHILES: Hearing none, it will  
25 be admitted. Thank you.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER CHILES: Mr. Beeler.

3 MR. BEELER: Go off the record one  
4 second.

5 EXAMINER CHILES: Sure.

6 (Discussion off the record.)

7 (Recess taken.)

8 EXAMINER CHILES: Let's go ahead and go  
9 back on the record.

10 Mr. Lindgren.

11 MR. LINDGREN: Thank you, your Honors. I  
12 would ask to have marked as Staff Exhibit 3 the  
13 prefiled testimony of Krystina Schaefer that was  
14 filed in this docket on September 18 of 2015.

15 EXAMINER CHILES: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. LINDGREN: Thank you. Good  
18 afternoon, Ms. Schaefer. Would you please state your  
19 full name for the record.

20 EXAMINER CHILES: We need to swear her  
21 in.

22 (Witness sworn.)

23 EXAMINER CHILES: Thank you.

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KRYSTINA M. SCHAEFER

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

DIRECT EXAMINATION

By Mr. Lindgren:

Q. Good afternoon, Ms. Schaefer. Would you please state your full name for the record.

A. My name is Krystina Marie Schaefer.

Q. And where are you employed?

A. I'm employed by the Public Utilities Commission of Ohio.

Q. Do you have in front of you a document that has been marked as Staff Exhibit 3?

A. I do.

Q. And what is that document?

A. It's my prefiled testimony.

Q. Was that testimony prepared by you or under your direction?

A. Yes, it was.

Q. And do you have any corrections to that testimony?

A. I do. I have one.

Q. Please proceed.

A. On page 3, line 1, it reads, "Most recently in August of 2014," that should read, "Most

1 recently in August of 2015." And that's it.

2 Q. Thank you. With that correction being  
3 made, if I were to ask you the same questions in this  
4 testimony today, would your answers be the same?

5 A. Yes, they would.

6 Q. And are the answers in this testimony  
7 true and accurate, to the best of your knowledge?

8 A. Yes.

9 MR. LINDGREN: Thank you.

10 Your Honors, at this time, subject to  
11 cross-examination, I would move for the admission of  
12 Staff Exhibit 3 into the record, and the witness is  
13 now available for cross-examination.

14 EXAMINER CHILES: Thank you. We will  
15 defer ruling on the motion to admit Staff Exhibit 3  
16 and proceed with cross-examination.

17 Mr. Hays?

18 MR. HAYS: No questions. Thank you, your  
19 Honor.

20 EXAMINER CHILES: Ms. Bojko?

21 MS. BOJKO: No questions. Thank you.

22 EXAMINER CHILES: Mr. Sahli?

23 MR. SAHLI: No questions.

24 EXAMINER CHILES: Ms. Petrucci?

25 MS. PETRUCCI: No questions.



1 EXAMINER CHILES: Mr. Sauer?

2 MR. SAUER: Just a few, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Sauer:

6 Q. Good afternoon, Ms. Schaefer. My name is  
7 Larry Sauer. I am an attorney with the Office of  
8 Ohio Consumers' Counsel.

9 EXAMINER CHILES: Let's go off the record  
10 for a moment.

11 (Discussion off the record.)

12 EXAMINER CHILES: Go back on the record.

13 Q. (By Mr. Sauer) Could you turn to page 7  
14 of your testimony, looking at question and answer No.  
15 9.

16 A. Yes, on page 7, starting at line 13.

17 Q. And you've listed there some information  
18 that the companies propose to make available to CRES  
19 providers through the web portal; is that correct?

20 A. Yes.

21 Q. And do you agree that that data to be  
22 made available is appropriate?

23 A. It depends on if the Commission accepts  
24 the proposal and recommendation of Staff Witness  
25 Benedict. In that instance, we are recommending that

1 additional date be provided through that supplier web  
2 portal.

3 Q. And what additional data would you  
4 suggest be provided?

5 A. Well, Staff Witness Benedict recommends  
6 that the company file an expanded SmartGrid  
7 deployment plan. Staff's expectation is that the AMI  
8 data associated with that expanded deployment, along  
9 with the existing SmartGrid pilot, would be provided  
10 through that supplier web portal.

11 Q. Okay. And if you could look at page 9,  
12 line 11, you noted that the companies have installed  
13 34,711 smart meters that are capturing the relevant  
14 customer energy usage data, but will not be made  
15 available through the proposed web portal. Do you  
16 see that?

17 A. I do.

18 Q. And do you know how many residential  
19 customers have smart meters?

20 A. In Ohio or in FirstEnergy service  
21 territory?

22 Q. Of the 34,711 that are installed, do you  
23 know how many of those are residential customers?

24 A. I do not.

25 Q. And could you look at page 9, lines 11 to

1 15.

2 A. Yep.

3 Q. There you state that the only data to be  
4 made available under the companies' proposal is data  
5 from interval data recorder meters. Do you see that?

6 A. Yes.

7 Q. And do you know how many residential  
8 customers have installed interval data recorder  
9 meters?

10 A. My understanding is that not many at all  
11 would. Interval data recorders are usually  
12 associated with larger commercial and industrial  
13 customers.

14 MR. SAUER: Okay. I have no other  
15 questions, your Honor.

16 EXAMINER CHILES: Thank you, Mr. Sauer.  
17 Ms. Dunn?

18 MS. DUNN: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Ms. Dunn:

22 Q. Good afternoon, Ms. Schaefer.

23 A. Good afternoon.

24 Q. My name is Carrie Dunn. I represent Ohio  
25 Edison Company, the Cleveland Electric Illuminating

1 Company, and The Toledo Edison Company in this case.

2 Could you please turn to page 4 of your  
3 testimony.

4 A. I'm on page 4.

5 Q. And on page 4 you reference the retail  
6 market investigation in Case 12-3151, correct?

7 A. Yes, I do.

8 Q. And are you aware that staff prior to the  
9 Commission order that you reference on this page  
10 filed a market development work plan in that case?

11 A. Yes, I contributed to that.

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

13 EXAMINER CHILES: You may.

14 MS. DUNN: Your Honor, I would like to  
15 have marked as Company Exhibit 120 the market  
16 development work plan filed by staff on January 16,  
17 2014 in Case No. 12-3151.

18 EXAMINER CHILES: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Ms. Schaefer, you indicated you  
21 provided -- you assisted with this market development  
22 work plan?

23 A. Yes. I believe my name is on page 2.

24 Q. So then it's fair to say you are familiar  
25 with this document?

1 A. I have reviewed it previously, yes.

2 Q. Could you please turn to page 24 to 25.

3 A. I am on page 24.

4 MS. DUNN: Your Honor, may I have just  
5 one moment?

6 EXAMINER CHILES: You may.

7 MS. DUNN: Thank you, your Honor.

8 Q. Ms. Schaefer, could you please turn to --  
9 sorry, page 23. And I am looking at the paragraph at  
10 the bottom. And there is a sentence that says,  
11 "However," do you see where I am reading from?

12 A. Let me start at the beginning of the  
13 paragraph, please.

14 Q. Sure.

15 A. I've read the sentence you are  
16 referencing talks about the difference between  
17 traditional electric mechanical meter data and AMI  
18 data.

19 Q. Does that sentence also say that it  
20 creates a new facet of personal information that  
21 needs to be evaluated and addressed before these  
22 services can develop?

23 A. Yes.

24 Q. To your knowledge, has this been  
25 evaluated?

1           A.    Yes, it has.

2           Q.    And turning to the page 24 -- oh, I'm  
3           sorry, still on page 23, the sentence right after  
4           that "Finally for EDUs the cost of providing the data  
5           access and availability for smart meter CEUD needs to  
6           be formally investigated." To your knowledge, has  
7           that been investigated?

8           A.    With respect to the FirstEnergy companies  
9           of Ohio, the expectation is that would be formally  
10          investigated. If the recommendation of Staff Witness  
11          Benedict were adopted by the Commission, that would  
12          be the appropriate venue to examine the costs  
13          associated with providing AMI data to CRES providers  
14          and customers.

15          Q.    And turning on to page 24 and the section  
16          starting -- that says, "data access and  
17          time-differentiated rates."

18          A.    I see that section, yes.

19          Q.    The third sentence that begins with  
20          "However..."

21          A.    Yes.

22          Q.    It states that, "However, staff notes  
23          that a formal investigation into the costs of  
24          providing this data access is necessary to provide  
25          insight into the appropriate granularity frequency,

1 data quality, and format." Is that also something  
2 you would expect would be in the business case that  
3 Mr. Benedict recommends?

4 A. I think the specifics of that, yes. I  
5 think in general and what we've seen in other service  
6 territories in other states is that the EDI process  
7 is used for transfer of billing information where  
8 supplier web portals are used for transfer of the  
9 historical 12 to 24-month AMI data.

10 I think the specifics of that should be  
11 figured out in a subsequent case if that  
12 recommendation is adopted, but staff's expectation is  
13 that CRES providers would have -- the functionality  
14 would enable CRES providers to offer their own  
15 time-of-use rates.

16 Q. Turning to page 25.

17 A. I'm on page 25 now.

18 Q. On the paragraph right before "multistate  
19 standardization collaborative," there's a sentence  
20 that begins "Staff recommends..."? It says, "Staff  
21 recommends that while the data access issues are  
22 being addressed and until there are systematically  
23 beneficial time differentiated rates offered by CRES  
24 providers, EDUs with all or a significant number of  
25 AMI deployed and certified should offer pilot time

1 differentiated rates," correct?

2 A. I see that sentence, yes.

3 Q. And then on page 4 of your testimony --

4 A. Yes.

5 Q. -- you are referencing both the Finding  
6 and Order and the Entry on Rehearing, correct, in the  
7 RMI order?

8 A. Yes, there is a clarification on the  
9 Entry of Rehearing.

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

11 EXAMINER CHILES: You may.

12 MS. DUNN: Mr. Beeler, do you need a copy  
13 of the Entry on Rehearing -- or Mr. Lindgren?

14 MR. LINDGREN: Yes, please.

15 MS. DUNN: Okay.

16 Q. (By Ms. Dunn) Turning to page 36 of the  
17 Finding and Order and paragraph 38.

18 A. I'm there now.

19 Q. In paragraph 38, the Commission adopted  
20 staff's recommendations from the market development  
21 working group as it relates to tariffs for terms,  
22 conditions, and charges associated with providing  
23 interval CEUD, correct?

24 A. Yes.

25 Q. And the recommendation that staff made in



1 its market development work plan was for EDUs who  
2 have all or significant number of AMI to provide  
3 amended tariffs that specify terms, conditions, and  
4 charges associated with providing interval CEUD,  
5 correct?

6 A. Yes, that's staff's understanding as well  
7 noting that significant has not been defined anywhere  
8 on record yet.

9 Q. And then turning to the entry on  
10 rehearing, paragraph 40 -- or I'm sorry, the Finding  
11 and Order, paragraph 40.

12 A. The bottom of page 37?

13 Q. Yes. And as it relates to time  
14 differentiated rates, did the Commission also in  
15 paragraph 40 adopt staff's recommendations, in part?

16 A. Yes.

17 Q. And the Commission ordered EDUs with --  
18 with AMI SmartGrid to include time-differentiate  
19 pilot programs and EDUs without significant AMI in  
20 their application to implement AMI a proposal for  
21 time differentiated pilot programs, correct?

22 A. Could you restate that?

23 Q. Sure. On page -- I think it will be  
24 easier for me to just refer to the order.

25 A. Yeah.

1 Q. Page 38, the first paragraph, six lines  
2 down, you see "Additionally"?

3 A. Uh-huh.

4 Q. "The Commission encourages any EDU  
5 without an AMI SmartGrid program or without  
6 significant AMI SmartGrid deployment to include a  
7 proposal to implement a pilot timed differentiated  
8 rate program in its application to implement an AMI  
9 SmartGrid program," correct?

10 A. Yes.

11 Q. In turning to the Entry on Rehearing,  
12 paragraph 29, would you agree that in paragraph 29  
13 that the Commission was discussing amended tariffs  
14 regarding customer energy usage data from interval  
15 meters?

16 A. Just a minute. I want to read through it  
17 here.

18 Q. Sure.

19 A. Could you repeat the question one more  
20 time?

21 Q. Would you agree that in paragraph 29, the  
22 Commission was discussing customer energy usage data  
23 from interval meters?

24 A. I would say even more specifically than  
25 that, the Commission was referencing the

1 recommendations from the staff work plan which were  
2 specific to advanced metering infrastructure of smart  
3 meters, not just interval meters broadly.

4 Q. The Commission in paragraph 29 granted  
5 Direct Energy's rehearing on this issue, correct?

6 A. Yes, it says rehearing on Direct Energy's  
7 assignment should be granted.

8 Q. And would -- would you agree that Direct  
9 Energy was asserting that the order is unlawful and  
10 unreasonable because it does not explicitly state  
11 that EDUs must provide interval customer energy usage  
12 data to CRES providers?

13 A. Could you repeat that one more time?

14 Q. Sure. Would you agree that the rehearing  
15 that Direct Energy was seeking was relating to the  
16 order as being unlawful and unreasonable because it  
17 did not explicitly state that EDUs must provide  
18 interval customer energy usage data?

19 A. I'm not a lawyer, and without looking at  
20 Direct Energy's comments, I believe that is what was  
21 written, but interval -- interval meter data and  
22 smart meter data were used a little bit  
23 interchangeably with this, but in general, as I  
24 mentioned previously, I think interval meter data is  
25 referencing smart meter data in this instance, but

1 yes.

2 Q. Are you aware if -- in response to the  
3 Commission's order in paragraph 29, are you aware if  
4 the companies filed a letter of compliance with the  
5 Commission?

6 A. I believe they did, but I don't know for  
7 sure without going back and checking the docket.

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

9 EXAMINER CHILES: You may.

10 MS. DUNN: Your Honor, I would like to  
11 mark for Company Exhibit 121 a letter from myself on  
12 behalf of the companies stated November 21, 2014, in  
13 Case No. 13-21 -- excuse me, Case No. 12-3151.

14 EXAMINER CHILES: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Ms. Dunn) Ms. Schaefer, have you seen  
17 Company Exhibit 121 before?

18 A. I have.

19 Q. Would you agree that this letter  
20 indicates that the companies already comply with the  
21 Commission's Entry on Rehearing, specifically  
22 paragraph 29?

23 A. I think, yes, that's correct unless in  
24 this case the recommendation of Staff Witness  
25 Benedict is adopted and there is future SmartGrid

1 deployments discussed in the subsequent filing, I  
2 think that compliance obligation may change, but  
3 currently, yes.

4 Q. And on page 9, lines 12 to 15 of your  
5 testimony, specifically line 15 where you mention  
6 interval data recorder meters, you would agree that  
7 interval data recording meters are different from  
8 smart meters, correct?

9 A. Yes. Specifically the two-way  
10 communication I think is the main difference.

11 Q. And I think you also mentioned in  
12 response to Mr. Sauer's question that large customers  
13 tend to have the interval data meters, not  
14 residential?

15 A. That's my understanding.

16 Q. Okay. Ms. Schaefer, are you familiar  
17 with the companies' Ohio site deployment of the  
18 SmartGrid modernization initiative?

19 A. I was not directly involved with the  
20 case, but I have some familiarity with reviewing the  
21 docket.

22 Q. And you understand that that deployment  
23 included three different elements, one which would be  
24 AMI deployment, correct?

25 A. Yes.

1 Q. Volt/VAR technology, correct?

2 A. I believe so.

3 Q. And distribution automation, correct?

4 A. Yes, I believe so.

5 Q. And I believe in your testimony also on  
6 page 9, line 10, you do reference the 34,711 smart  
7 meters that were deployed as part of the Ohio site  
8 deployment of the SmartGrid modernization initiative,  
9 correct?

10 A. Yes.

11 Q. Would you agree that this number  
12 represents residential and some small commercial  
13 customers?

14 A. Yes.

15 Q. And would you agree that this 34,711  
16 smart meters is not all of CEI's customers meter  
17 base?

18 A. I believe you guys have 2.1 million in  
19 Ohio approximately.

20 Q. And so I think given that you just said  
21 that, that you would also agree that 34,711 smart  
22 meters is not all of FirstEnergy's customers in Ohio,  
23 correct?

24 A. Yes, that's correct.

25 Q. And would you agree that 34,711 meters

1 out of 2.1 million customers is not a significant  
2 number?

3 A. I think that's fairly accurate.

4 Q. And are you aware that the AMI  
5 deployment -- the AMI portion of the Ohio site  
6 deployment has completed?

7 A. Yes.

8 Q. And are you aware that the AMI deployment  
9 was a front-end system that collects data and  
10 interfaces with a hosted meter data management  
11 system?

12 A. Yes. That's generally how it works.

13 Q. And do you know if that data is  
14 bill-quality data?

15 A. I think once the data goes through --  
16 the raw meter data goes through the meter data  
17 management system, it goes through a validation  
18 editing and estimating process, and that's generally  
19 considered bill quality, although bill quality is not  
20 really defined in Ohio in this case, or in this case.

21 Q. And would you agree even if customer  
22 energy usage data was available through the smart  
23 meters, that CRES suppliers would still need to  
24 settle those residential customers' usage with PJM on  
25 a profile basis?

1           A.    A profile, meaning like a customer class  
2 average or --

3           Q.    Yes.

4           A.    I'm not sure.

5           Q.    On page 5 of your testimony, lines 9  
6 through 14, you reference a Finding and Order where  
7 the companies were directed to continue offering the  
8 voluntary two part residential time of use on and off  
9 peak standard service offer rider RCP, correct?

10          A.    Yes, that's in Case 09-1820, and I  
11 believe the companies made a filing of that tariff  
12 already.

13          Q.    That was my next question, is did you  
14 know if the companies complied with that directive?

15          A.    Yes.  I am not sure the date of the  
16 filing, but I've seen it in the docket.

17          Q.    And on page 6 of your testimony, you cite  
18 to Pennsylvania Act 129, correct?

19          A.    Yes.

20          Q.    And Pennsylvania Act 129 only related to  
21 smart meter deployment, correct?

22          A.    Yes.

23          Q.    What is your understanding of the status  
24 of the FirstEnergy utility smart meter deployment in  
25 Pennsylvania?



1           A.    I believe the smart meter deployment plan  
2 has been approved by an order from the Pennsylvania  
3 PUC. I don't know the exact timeline without  
4 actually looking at the FE Pennsylvania company's  
5 deployment plan, which I have reviewed, but I believe  
6 the expectation was to begin deployment around 2016  
7 and complete around 2022, but I don't recall off the  
8 top of my head. That's just my guess. And there was  
9 a supplier web portal included in that deployment  
10 plan.

11           Q.    Turning to page 7 of your testimony, on  
12 lines 7, 8 you state, "Specifically staff envisions  
13 that such a report will identify expenditures on all  
14 components of the companies' expanded deployment plan  
15 that have the potential to benefit their sister  
16 utilities in Pennsylvania and other states and  
17 describe the method through which the companies will  
18 receive credit from FirstEnergy Service Company."

19           A.    Uh-huh.

20           Q.    The expanded deployment plan, are you  
21 referencing Mr. Benedict's recommendation?

22           A.    Yes.

23           Q.    And what components are you discussing on  
24 page 8? Are you discussing more than just smart  
25 meter?

1           A.    Yes.  The expectation is that if such a  
2 report were -- if this recommendation were adopted by  
3 the Commission and such a report were required, it  
4 would be holistic to whatever the final order in the  
5 subsequent case and the deployment associated with a  
6 broader Ohio SmartGrid deployment would be relevant  
7 to that whole portfolio of technologies.

8           Q.    In your testimony, you weren't  
9 specifically addressing a specific technology.  You  
10 were just referring to the whole -- the whole  
11 enchilada, if you will?

12          A.    It would be the approved SmartGrid  
13 deployment if a subsequent case occurs, yes.

14          Q.    And we talked earlier about three  
15 elements that were part of the companies' Ohio site  
16 deployment plan, correct?

17          A.    Yes.

18          Q.    And one of those technologies was  
19 distribution automation, correct?

20          A.    Yes.

21          Q.    Do you know if distribution automation,  
22 if expanded in Ohio, would be compatible with the  
23 companies' sister utilities in other states?

24          A.    Compatible in what way?

25          Q.    In the sense that if distribution

1 automation were expanded or deployed in Ohio, would  
2 that technology be utilized -- be able to be utilized  
3 in another state? Would it be compatible to use in  
4 another state?

5 A. I am not an expert on DA, but I believe  
6 potentially there could be back-end systems that  
7 support that distribution automation deployment, but  
8 DA is a technology that's installed -- I mean, it  
9 would be installed within the geographic confines of  
10 the service territory. So it wouldn't necessarily be  
11 used in more than one state, but the back-end system  
12 that supports that technology may have the capability  
13 of supporting DA that's supported in a multistate  
14 jurisdiction.

15 Q. And relating to smart meters, would  
16 you -- do you believe that the back -- strike that.

17 Why do you believe that the credit that  
18 you reference on page 7 of your testimony should come  
19 from the FirstEnergy Service Company?

20 A. I guess it would depend what the  
21 expectation would be that the corporate parent, if  
22 they say, for instance, IT staff that are involved in  
23 the development of a supplier web portal in  
24 Pennsylvania that's significantly similar to one that  
25 could be developed in Ohio in that IT staff time

1 could be allocated -- I mean, there could be cost  
2 savings and cost sharing of that if it's a similar  
3 platform. It would be the corporate parent. That's  
4 sort of the expectation there. It could be some  
5 other entity, I suppose, within the FirstEnergy.

6 Q. And regarding the interval data that you  
7 recommend be added to the supplier portal, would you  
8 agree that adding interval data to the supplier  
9 portal based on just the pilot program number of  
10 meters would be premature?

11 A. It would depend on the cost. If there  
12 was a minimal incremental cost associated with it,  
13 it's hard to say without seeing the actual costs  
14 associated with adding that component.

15 Q. And then in line with that, you would  
16 agree that building -- if building out the system is  
17 necessary to provide interval metering data for the  
18 pilot meters where cost prohibited, it may not be  
19 necessary to do that for the pilot meters.

20 My testimony and staff's recommendation  
21 is not necessarily to incorporate the pilot data into  
22 a supplier web portal if the recommendation of Staff  
23 Witness Benedict is not accepted or adopted by the  
24 Commission. But it would be hard to say whether that  
25 34,000 and some customer data should be added without

1 seeing a cost associated with it.

2 Q. Are you aware that the AMI pilot  
3 customers do receive unverified interval end-use data  
4 through a software system called Aclara?

5 A. Could you repeat that?

6 Q. Sure. Are you aware that the AMI pilot  
7 customers do receive unverified interval end-use data  
8 through a software called Aclara?

9 A. Yes. I believe I've seen screenshots of  
10 the web-based platform that customers have access to  
11 during the pilot period, the deployment of the pilot  
12 period.

13 Q. Do you know if they are still able to  
14 access that data today?

15 A. I'm not sure.

16 Q. And turning to page 10 of your testimony  
17 relating to the cost recovery for the supplier  
18 portal.

19 A. Yes.

20 Q. Rider AMI today is audited, correct, by  
21 staff?

22 A. Yes, it is.

23 Q. And on page 10, are you -- you are  
24 effectively proposing a cap on the supplier web  
25 portal costs, correct?

1           A.    Yes.

2           Q.    Would you agree that if the costs are  
3 audited either through rider AMI or GDR, that a cap  
4 is not necessary because the companies would only be  
5 permitted to recover prudently incurred costs?

6           A.    I think in this case the companies'  
7 recommended language changes to rider AMI that permit  
8 additional costs flowing through rider AMI that are  
9 related to but not necessarily explicitly linked to  
10 SmartGrid technologies.  So I think if the company  
11 had increased costs above what they had forecasted,  
12 there could be a subsequent filing in the rider AMI  
13 case.

14          Q.    Do you recall a recommendation in the RMI  
15 order that requested that the companies and staff  
16 work together to develop a web-based supplier -- a  
17 web-based supplier registration system?

18          A.    For customer enrollment purposes, I  
19 believe there was that language addressed.

20          Q.    And if the supplier web portal was added  
21 to provide for this customer enrollment registration,  
22 wouldn't a cap impede the ability to work with staff  
23 in developing that -- those additional changes?

24          A.    The supplier web portal, as proposed, by  
25 the company is different than the sort of online

1 enrollment process that was discussed in the 12-3151  
2 case. I would have to reread the entry -- or the  
3 Finding and Order and Entry on Rehearing, but the  
4 supplier web portal as proposed wasn't explicitly  
5 discussed in that case. I believe they talked about  
6 a company hosted website that would allow enrollment,  
7 but I am not sure without reviewing it.

8 Q. And turning to your recommendation -- or  
9 your testimony relating to the partial service  
10 tariff.

11 A. Yes.

12 Q. Would you agree that as part of standard  
13 service offers, staff believes that the companies  
14 have an obligation to provide generation backup?

15 A. Yes. I believe the companies have  
16 eliminated the minimum-stay requirement in this case,  
17 so I believe there is nothing restricting the  
18 customer from switching on and off the SSO generation  
19 service to the CRES service.

20 Q. And I think maybe my question wasn't  
21 really clear, but as part of their obligation to  
22 provide standard service, they do have an obligation  
23 to provide backup or generation backup as part of  
24 that standard service?

25 MR. LINDGREN: Objection. That calls for

1 a legal conclusion.

2 EXAMINER CHILES: Could I have that  
3 question and answer reread, please?

4 (Record read.)

5 MS. DUNN: Your Honor, if I may respond?

6 EXAMINER CHILES: You may.

7 MS. DUNN: It's not calling for a legal  
8 conclusion. It's what is considered part of --  
9 factually part of standard service offer. So I don't  
10 think it calls for a legal conclusion.

11 EXAMINER CHILES: Thank you.

12 Ms. Schaefer, you are not an attorney, are you?

13 THE WITNESS: I am not.

14 EXAMINER CHILES: We will note that for  
15 the record, and you may answer the question, if you  
16 know.

17 A. I believe the company has an obligation  
18 to provide stand-by service for customers that have  
19 backup generation on site, if that's what you are  
20 referring to.

21 Q. (By Ms. Dunn) Yes. Thank you.

22 A. Yes.

23 Q. Personal service customers in the  
24 companies' territory still have the option of  
25 procuring market based generation through either the



1 SSO or from a CRES provider, correct?

2 A. Yes. They have the option of either.

3 Q. Do you know how many customers are on the  
4 companies' partial-service tariff?

5 A. I believe that was in a data request. I  
6 would guess less than 10, 10 to 15 at the most.

7 Q. And do you know that the company's  
8 partial-service tariff allows for customized  
9 agreements with customers that would make sense for  
10 both parties?

11 A. I don't recall without reviewing each of  
12 the companies' tariffs.

13 Q. And do you know that the companies'  
14 partial-service tariffs are not applicable to net  
15 metering customers?

16 A. Net metering is limited to, I believe,  
17 renewable backup generation that is defined as  
18 renewable energy in the Ohio Revised Code.

19 MS. DUNN: Your Honor, if I may have just  
20 a moment to check my notes.

21 EXAMINER CHILES: You may.

22 (Off the record.)

23 EXAMINER CHILES: Let's go back on  
24 record.

25 MS. DUNN: Thank you, Ms. Schaefer. I

1 have no further questions.

2 THE WITNESS: Thank you.

3 EXAMINER CHILES: Thank you, Ms. Dunn.

4 Mr. Lindgren, redirect?

5 MR. LINDGREN: May we have a few minutes  
6 to confer?

7 EXAMINER CHILES: Yes, you may. Let's go  
8 off the record.

9 (Discussion off the record.)

10 EXAMINER CHILES: Let's go ahead and go  
11 back on the record.

12 Mr. Lindgren?

13 MR. LINDGREN: Your Honor, I have no  
14 redirect.

15 EXAMINER CHILES: All right. We have no  
16 questions. Thank you, Ms. Schaefer. You are  
17 excused.

18 THE WITNESS: Thank you.

19 MR. LINDGREN: And, your Honors, I renew  
20 my motion to move that into evidence.

21 EXAMINER CHILES: Are there any  
22 objections to the admission of Staff Exhibit 3?

23 MS. DUNN: No, your Honor.

24 EXAMINER CHILES: Hearing none, Staff  
25 Exhibit 3 will be admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER CHILES: Ms. Dunn.

3 MS. DUNN: I would move into evidence 120  
4 and 121.

5 EXAMINER CHILES: Any objections to the  
6 admission of Companies' Exhibits 120 and 121?

7 MS. BOJKO: Your Honor, may you remind me  
8 of what 120 is?

9 MS. DUNN: I believe that was the market  
10 development working group staff report.

11 MS. BOJKO: Oh, thank you.

12 EXAMINER CHILES: Any objections?

13 Hearing none, Companies' Exhibits 120 and  
14 121 will be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

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

18 (Discussion off the record.)

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

21 Staff may call its next witness.

22 MR. BEELER: Thank you, your Honor. The  
23 staff calls Jacob Nicodemus.

24 (Witness sworn.)

25 EXAMINER ADDISON: Thank you. Please

1 proceed.

2 MR. BEELER: Thank you, your Honors. I  
3 would like to mark for identification purposes Staff  
4 Exhibit 4, which is the direct testimony of Jacob  
5 Nicodemus on behalf of the staff of the Public  
6 Utilities Commission of Ohio filed on September 18,  
7 2015.

8 EXAMINER ADDISON: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 - - -

11 JACOB NICODEMUS

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

14 DIRECT EXAMINATION

15 By Mr. Beeler:

16 Q. Good afternoon. Please state your name  
17 and by whom you are employed.

18 A. Jacob Nicodemus, the Public Utilities  
19 Commission of Ohio.

20 Q. And if you can turn your mic on, too. Do  
21 you have in front of you what has previously been  
22 marked as Staff Exhibit 4?

23 A. Yes.

24 Q. Please identify that document for the  
25 record.

1           A.    It is my prefiled testimony in this case.

2           Q.    That testimony was prepared by you or  
3 under your direction?

4           A.    Yes.

5           Q.    Do you have any corrections to make to  
6 this document?

7           A.    No, I don't.

8           Q.    If I were to ask you the same questions  
9 that are in Staff Exhibit 4 today, would your answers  
10 be the same?

11          A.    Yes.

12          Q.    Are the answers true and accurate, to the  
13 best of your knowledge?

14          A.    Yes.

15               MR. BEELER: Your Honor, at this time,  
16 subject to cross-examination, I would move for the  
17 admission of Staff Exhibit 4 into the record, and the  
18 witness is available for cross.

19               EXAMINER ADDISON: Thank you. We'll  
20 defer ruling on the motion until cross-examination  
21 has been completed.

22               Mr. Hays, do you have any questions?

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

24               EXAMINER CHILES: Ms. Bojko?

25               MS. BOJKO: No, your Honor.

1 EXAMINER CHILES: Mr. Sahli?

2 MR. SAHLI: No questions.

3 EXAMINER CHILES: Ms. Petrucci?

4 MS. PETRUCCI: No questions.

5 EXAMINER CHILES: Mr. Sauer?

6 MR. SAUER: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Sauer:

10 Q. Good afternoon, Mr. Nicodemus.

11 A. Hello.

12 Q. Could you turn to page 9 of your  
13 testimony, please.

14 A. Yes.

15 Q. I am looking at that chart at the bottom  
16 on page 9 where you have the SAIFI and CAIDI  
17 performance standards for the companies. Do you see  
18 that?

19 A. Yes.

20 Q. And when were the standards established?  
21 Do you know what year?

22 A. It was a 2009 case. I believe it was  
23 decided in 2010.

24 Q. And do you know when the companies were  
25 authorized to invest in their distribution system

1 through the distribution capital recovery rider?

2 A. Are you asking when the rider began?

3 Q. Yes.

4 A. No, I am not sure.

5 Q. Are you familiar with the SAIFI and CAIDI  
6 performance records for 2009 through 2013?

7 A. I am familiar with the standard beginning  
8 in 2010 through 2014.

9 MR. SAUER: May I approach, your Honor?

10 EXAMINER ADDISON: You may.

11 MR. SAUER: I have a copy of Jim  
12 Williams' testimony that was admitted into evidence  
13 as OCC Exhibit 27.

14 Q. Are you familiar with Mr. Williams'  
15 testimony, Mr. Nicodemus?

16 A. Somewhat.

17 Q. Is it your understanding that going back  
18 to 2010, the companies have met the SAIFI and CAIDI  
19 standards?

20 A. Yes.

21 Q. And in Mr. Williams' chart for 2009, the  
22 CAIDI reference for CEI was greater than the standard  
23 135; is that correct?

24 MS. DUNN: Your Honor, I am just  
25 requesting that Mr. Sauer, just for clarification on

1 the record, identify which page he is referring to on  
2 Mr. Williams' testimony.

3 Q. (By Mr. Sauer) Mr. Nicodemus, I have  
4 asked you to take a look at Jim Williams' testimony  
5 marked as OCC Exhibit 28. And on page 19 of that  
6 testimony, Table 4, Mr. Williams has displayed  
7 FirstEnergy's historical reliability performance data  
8 from 2009 to 2013, correct?

9 A. Correct.

10 Q. And is that data consistent with your  
11 understanding of what the companies' SAIFI and CAIDI  
12 performance records have through the years shown?

13 A. And just doing a quick spot-check of  
14 his -- of his numbers, going back to 2010, yes, I  
15 would agree with his numbers.

16 Q. Okay. Thank you. On page 10 of your  
17 testimony, question and answer 20, you conclude that,  
18 line 7 through 10, that based on the company's  
19 successful performance against the reliability  
20 standards and the results of their reliability  
21 surveys, staff believes that the companies'  
22 reliability expectations are consistent with those of  
23 the customers, correct?

24 A. Correct.

25 Q. If the reliability standards were made



1 more stringent, do you believe that the companies'  
2 and customers' interests would similarly be in  
3 alignment?

4 MS. DUNN: Objection. Calls for  
5 speculation.

6 EXAMINER CHILES: Mr. Sauer?

7 MR. SAUER: The companies are -- are  
8 spending significant dollars to improve their system  
9 reliability, and the standards have been in place  
10 since 2009. And I am just trying to understand if  
11 those standards were modified, would there be --  
12 would alignment between customers and the companies,  
13 in his opinion, still be in alignment?

14 EXAMINER ADDISON: I am going to sustain  
15 the objection.

16 Q. (By Mr. Sauer) Do you know,  
17 Mr. Nicodemus, will there be -- would there be  
18 another opportunity for the performance standards to  
19 be reviewed?

20 A. No, I don't know.

21 Q. When you mention on page 10 the results  
22 of the liability surveys, are those customer surveys?

23 A. They are the customer perception surveys,  
24 yes.

25 Q. And are there questions within the

1 survey, if you know, that ask customers what they are  
2 willing to spend for improved reliability?

3 A. I'll say subject to check, I believe so.  
4 Yes, there are.

5 MR. SAUER: I have no further questions,  
6 your Honor.

7 EXAMINER ADDISON: Thank you, Mr. Sauer.  
8 Ms. Dunn?

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Dunn:

12 Q. Mr. Nicodemus, just two clarifying  
13 questions based on your responses to Mr. Sauer's  
14 questions. Mr. Sauer showed you page 19 of  
15 Mr. Williams' testimony, the chart.

16 A. Yes.

17 Q. And I believe that you -- I just want to  
18 clarify, you were indicating you had knowledge from  
19 2010 forward but not 2009, correct?

20 A. That's correct. I just don't have the  
21 2009 numbers in front of me.

22 Q. And then referring to the reliability  
23 questions you just responded to, do you have a copy  
24 of the survey or the survey results?

25 A. Yes, I do.

1           Q.    Were you -- when you answered  
2 Mr. Sauer's last question, were you referring to the  
3 optional questions?

4           A.    Yes, ma'am.

5           Q.    And those are questions that discuss  
6 during the specified period of system stress,  
7 correct?

8           A.    I believe so, yes.

9           MS. DUNN: No further questions, your  
10 Honor.

11           EXAMINER ADDISON: Thank you, Ms. Dunn.  
12 Mr. Beeler, redirect?

13           MR. BEELER: One second.

14           EXAMINER ADDISON: Yes. Let's go off the  
15 record.

16                   (Discussion off the record.)

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

19           Mr. Beeler, any redirect?

20           MR. BEELER: No redirect. Thank you.

21           EXAMINER ADDISON: Thank you. I have no  
22 questions.

23           Mr. Nicodemus, you are excused. Thank  
24 you very much.

25           MR. BEELER: And at this time, your

1 Honor, I would renew my motion for admission of Staff  
2 Exhibit 4 into the record.

3 EXAMINER ADDISON: Any objection?

4 MS. DUNN: No, your Honor.

5 EXAMINER ADDISON: Hearing none, Staff  
6 Exhibit 4 will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER CHILES: Let's go off the  
9 record.

10 (Discussion off the record.)

11 EXAMINER CHILES: Let's go back on the  
12 record. Staff may call its next witness.

13 MR. BEELER: Thank you, your Honor. At  
14 this time staff calls Raymond W. Strom.

15 (Witness sworn.)

16 EXAMINER CHILES: Thank you. You may be  
17 seated.

18 Mr. Beeler, you may proceed.

19 MR. BEELER: Thank you. At this time, I  
20 would like to mark for identification purposes Staff  
21 Exhibit 5, which is the direct testimony of Raymond  
22 W. Strom on behalf of the staff of the Public  
23 Utilities Commission of Ohio filed on September 18,  
24 2015, in this docket.

25 EXAMINER CHILES: So marked.

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(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

RAYMOND W. STROM

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

DIRECT EXAMINATION

By Mr. Beeler:

Q. Please state your name and by whom you  
are employed.

A. Raymond W. Strom.

Q. And who are you employed by?

A. I'm employed by the Public Utilities  
Commission of Ohio.

Q. Do you have in front of you what has been  
marked as Staff Exhibit 5?

A. Yes, I do.

Q. Please identify that document for the  
record.

A. That's my prefiled testimony in this  
case.

Q. That testimony was prepared by you or  
under your direction?

A. Yes.

Q. Do you have any corrections to make to  
this document?

1           A.    No, I do not.

2           Q.    If I were to ask you the same questions  
3 in Staff Exhibit 5 today, would your answers be the  
4 same?

5           A.    Yes.

6           Q.    Are the answers true and accurate, to the  
7 best of your knowledge?

8           A.    Yes.

9           MR. BEELER: Your Honor, at this time,  
10 subject to cross-examination, I would move for the  
11 admission of Staff Exhibit 5 into the record, and the  
12 witness is available for cross.

13           EXAMINER CHILES: Thank you. We will  
14 defer ruling on the motion for admission of Staff  
15 Exhibit 5 until cross is complete.

16           Mr. Hays?

17           MR. HAYS: No questions. Thank you.

18           EXAMINER CHILES: Ms. Bojko?

19           MS. BOJKO: No questions.

20           EXAMINER CHILES: Mr. Sahli?

21           MR. SAHLI: No questions.

22           EXAMINER CHILES: Ms. Petrucci?

23           MS. PETRUCCI: No questions.

24           EXAMINER CHILES: Mr. Sauer?

25           MR. SAUER: No questions, your Honor.

1 EXAMINER CHILES: Mr. Burk?

2 MR. BURK: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Burk:

6 Q. Good afternoon, Mr. Strom.

7 A. Good afternoon.

8 Q. Let me first refer you to page 5, line 1  
9 of your testimony. And there you recommend that the  
10 companies advertise each auction by placing at least  
11 one advertisement in an appropriate publication,  
12 correct?

13 A. That's correct.

14 Q. Now, you would agree that the costs of  
15 any such advertising are properly recovered through  
16 rider GCR or another appropriate rider of the  
17 companies similar to other bid-related costs; would  
18 you agree to that?

19 A. Assuming they were prudently spent, then,  
20 yes, I would agree.

21 Q. Okay. And now let me refer you to page  
22 3, line 8 of your testimony. Now, here you refer to  
23 the AEP order in 13-23-EL-SSO regarding language  
24 included in that order regarding the ability of the  
25 Commission to make changes to AEP's competitive

1 bidding process; is that correct?

2 A. I'm sorry. Apparently I am at the wrong  
3 spot. Where did you refer me?

4 Q. Page 3, line 8.

5 A. Yes.

6 Q. Okay. Are you aware that a provision  
7 providing the Commission the ability to make changes  
8 to the competitive bid process is part of the  
9 companies' application in this proceeding?

10 A. I don't recall that. I don't dispute it,  
11 but I don't recall it.

12 Q. Okay. Now, you would agree that  
13 consistency in the terms, conditions, and timing from  
14 one auction to the next would be helpful in  
15 attracting potential bidders and in retaining bidders  
16 that have participated in past auctions, correct?

17 A. I would agree with what you are saying to  
18 an extent. I don't think I would recommend the  
19 consistency be maintained if problems are found with  
20 the process that need to be rectified.

21 Q. But generally speaking, if bidders know  
22 what the terms and conditions are from one auction to  
23 the next, that would, you know, support their  
24 participation in the process.

25 A. Certainly.



1           Q.    And you would agree that more bidders  
2           leads to more competition and, therefore, potentially  
3           lower prices for customers?

4           A.    Yes.

5           Q.    Now, your proposal, as you set forth  
6           generally on page 3 of your testimony, contemplates  
7           that the Commission would be permitted to change any  
8           aspect of the bidding process at any time and as  
9           often as it chooses without limitation; is that  
10          correct?

11          A.    I think your characterization is correct,  
12          but maybe a little misleading.  I am not intending to  
13          say that the Commission should issue an order every  
14          other week saying here we have got new ideas about  
15          the auction, let's do this, let's do that, but I  
16          think if something important were to come up and rise  
17          to the attention of the Commission, the Commission  
18          should be able to address it.

19          Q.    But it's correct that your prefiled  
20          testimony contains no such limitation on Commission  
21          changes to the bidding process; is that right?

22          A.    That's correct.

23          Q.    And you are not aware of any  
24          circumstances that occurred where the Commission  
25          wanted to change the competitive bidding process such

1 as to address something that you talked about, but  
2 was prohibited from doing so due to the lack of the  
3 type of provision you are recommending in this  
4 proceeding; is that correct?

5 A. That's correct.

6 Q. And it's correct that the companies have  
7 conducted 11 auctions since starting their present  
8 auction process, that is, as a part of arising out of  
9 an ESP case; is that correct?

10 A. I will have to take your word for the  
11 number, but it sounds about right.

12 Q. I wasn't sure if you would know that off  
13 the top of your head.

14 A. No.

15 Q. And the Commission -- and you have been  
16 involved with the auction process for a number of  
17 years, correct?

18 A. That's correct.

19 Q. And the Commission has accepted the  
20 results of all of the auctions that the companies  
21 have held I will say during the ESP -- ESP's  
22 timeframe; is that correct?

23 A. During the time of the companies' ESPs  
24 under the current regulatory regime, yes, that's  
25 correct.

1           Q.    And those auctions would -- the first one  
2 would have been in May of 2009 and the last one  
3 concluding in January of 2015, to the best of your  
4 recollection?

5           A.    I recall the last one.  I don't recall  
6 the date for the first one, but that sounds about  
7 right.

8           Q.    Okay.  And to the best of your knowledge,  
9 all of the auction delivery periods have all ended  
10 within the period of the ESP within which the auction  
11 process itself was approved, correct?

12          A.    Something about the phrasing you used,  
13 it's kind of throwing me, but all of the auction  
14 results have been administered during the ESP period.  
15 I think that's what you are asking about.

16          Q.    Yes.

17          A.    Yes.

18          Q.    Okay.  And on at least one occasion, both  
19 the companies and the Commission have shown  
20 flexibility to modify the auction products or process  
21 when circumstances have warranted, correct?

22          A.    You may need to mention what your example  
23 might be.

24          Q.    For example, in the companies' ESP III  
25 filing, where the auction time period was proposed to

1 change from a one-year product to a three-year  
2 product and that was approved by the Commission, do  
3 you recall that?

4 A. That was the -- it characterizes a  
5 two-year extension.

6 Q. Okay.

7 A. That's -- if that's the one you are  
8 referring to, yes.

9 Q. Right.

10 A. Yes.

11 Q. So that would be an example of when the  
12 Commission and the companies have shown flexibility  
13 to address circumstances that arise under the current  
14 bidding regime?

15 A. That was a fairly significant filing,  
16 though. It wasn't simply tweaking a piece of the  
17 auction, but, yes, there is some flexibility that was  
18 shown there.

19 Q. Now, your proposal would change the  
20 process that's been used since 2009 by extending the  
21 auctions and auction delivery periods beyond the end  
22 of the ESP under consideration in this proceeding,  
23 correct?

24 A. Okay. You are referring now to page 4 of  
25 my testimony?

1 Q. Yeah, page 4, starting on line 8.

2 A. Yes. The recommendation I am making  
3 would -- would revise that, yes.

4 Q. Now, referring back to your exhibit,  
5 Exhibit RWS-1, the last page of your testimony, your  
6 proposal would extend -- I am sorry, are you there?

7 A. I am.

8 Q. Your proposal would extend the auctions  
9 and the delivery periods into the future ESP V period  
10 and as well as the delivery periods into the ESP VI  
11 time periods; is that correct?

12 A. That's partially correct. This is not  
13 exactly a proposal. This is an example. So there  
14 are other types of auction processes that would work  
15 that wouldn't necessarily do what you are saying,  
16 except that there would be some overlap between -- at  
17 least between the current -- currently proposed ESP  
18 and the next proposed ESP at some point in order to  
19 accomplish that blending.

20 Q. But if the Commission were to adopt  
21 what's reflected on Exhibit RWS-1, what might -- what  
22 I said would be correct, that the auction and  
23 delivery periods would extend into the ESP V period  
24 and the delivery period would extend into the ESP VI  
25 period, correct, assuming three-year ESPs? I'll add

1 that.

2 A. If you are talking about like auction 9  
3 and auction 10 extending into ESP VI, is that your  
4 reference?

5 Q. Yes.

6 A. Actually, I think this was auction 10.  
7 That wasn't my intent in putting this together to  
8 overlap multiple ESP periods. I wasn't recommending  
9 that that -- that this exact type of a process be  
10 selected by the Commission and go two ESPs out. It  
11 was just an example of a way that we could set up a  
12 scenario for conducting these auctions and  
13 overlapping the ESPs. The outer years are just there  
14 for filling out the rest of the example.

15 Q. Yeah. Thank you for that clarification.

16 A. Okay.

17 Q. Because as it's shown on your exhibit for  
18 delivery years, PJM delivery years 2022 and 2023, if  
19 you add up the tranches, they don't add up to a  
20 hundred, correct?

21 A. No, they wouldn't, because the  
22 overlapping would continue on. I just didn't extend  
23 it farther down.

24 Q. And is your testimony that this type of  
25 process would continue indefinitely?

1           A.    Until revised.

2           Q.    Yeah.  And it's correct under your RWS-1,  
3   referencing specifically auction 7 and 8, and again,  
4   if this were adopted by the Commission, that bidders  
5   would be bidding to provide power wholly during the  
6   ESP V period, but the auction will occur potentially  
7   before the Commission issues an order in the ESP V  
8   case, correct?

9           A.    Which auctions were you referring to  
10   again?

11          Q.    Auction No. 7 for October 2018 and  
12   Auction No. 8 for January 2019.

13          A.    Yes.  Under this example, then that's the  
14   case.

15          Q.    And so in that case the bidders would  
16   have signed contracts to provide SSO supply, correct?

17          A.    Yes.

18          Q.    But under your -- under this, again,  
19   RWS-1, changes could be made to the auction process  
20   by the Commission in the ESP V order after the  
21   bidders had signed the contracts to provide SSO  
22   supply; is that correct?

23          A.    Could I have that question reread,  
24   please?

25          Q.    Yeah.  Under Exhibit RWS-1, changes could

1 be made to the auction process by the Commission in  
2 the ESP V order after the bidders had signed  
3 contracts to provide SSO supply during the ESP V  
4 period; is that correct?

5 A. I don't believe so. That's not the way  
6 that I envision this operating. If the Commission  
7 would rule on and accept or reject results, those  
8 auctions, at the time that they are held and then  
9 they would not be revisited, those would be blended  
10 in with whatever other types of auction process or  
11 whatever other process is adopted pursuant to the ESP  
12 under consideration.

13 Q. But there would be no order yet in the  
14 ESP V and the auction would be for the ESP V period;  
15 is that correct?

16 A. That's correct.

17 Q. And to the extent that bidders or bidding  
18 for an ESP period for which no order had yet been  
19 issued, would you agree that such a situation would  
20 impose a risk on bidders?

21 A. There may be some amount of risk  
22 associated with this. I don't know for sure how much  
23 and maybe some bidders would be able to provide  
24 information to us about that. The -- this process  
25 would be adopted in the context of the current ESP in



1 which the Commission would tell the company to go  
2 ahead and continue this auction blending process  
3 regardless of the termination of the ESP period; so  
4 the bidders would have some certainty that the  
5 auction process would be maintained.

6 I think their uncertainty would come in  
7 the context of what precisely is the company going to  
8 propose for its next ESP, or maybe not even ESP,  
9 maybe MRO. It's hard to say. We could deal with  
10 some of that uncertainty by revising this outline  
11 that's diagrammed here in a way that is the last  
12 auction or two that procures the generation for the  
13 next ESP period without incur -- occur until at least  
14 after the company had filed its proposal, and that  
15 would give the bidders some understanding of what the  
16 company's proposing to do in its next rate plan, ESP  
17 or SSO.

18 Q. Well, that would give bidders an idea of  
19 what the companies proposed, but they wouldn't know  
20 what the Commission approved, correct?

21 A. Exactly, exactly.

22 Q. And the risk we were just talking about,  
23 that's a risk that bidders do not face today under  
24 the current regime, correct? Because all the  
25 delivery periods conclude within the ESP period,

1 correct?

2 A. I don't know if that's entirely correct.  
3 That exact risk may not be faced by them, if they did  
4 face a similar kind of risk, that is, not knowing for  
5 sure what -- what the load is going to be if they are  
6 going to have supply.

7 I mean, they -- they have some  
8 anticipation of what it might be, but they don't know  
9 what may happen, how shopping may change over the  
10 period of time where the supply and the load, whether  
11 it may be in or may be out, during that time period  
12 various kinds of things or uncertainties that they  
13 face now. And I think they might be similar in  
14 nature, but, again, I am not a bidder, and so I don't  
15 know for sure how their minds work and how they --  
16 how they would consider this.

17 Q. But today they know what the Commission  
18 order is, so they don't have a risk of not knowing  
19 what's in the Commission order. Under your proposal,  
20 potentially they would not know what was in the  
21 Commission order. That's the risk I'm talking about.  
22 Do you see?

23 A. Yes. I believe you are correct.

24 Q. Okay. Thank you. And so if, in fact,  
25 there is additional risk, would it be reasonable that

1 such risk may lead to the inclusion of additional  
2 risk premium by bidders as part of their bids?

3 A. I think that's possible.

4 Q. And such a risk may potentially  
5 discourage bidders from participating in a bid  
6 process due to that very uncertainty, correct?

7 A. I think that is also possible.

8 Q. Would you agree that the -- any  
9 additional risk premiums or fewer bidders that -- if  
10 that were to occur, would not be a positive  
11 development for customers and that higher clearing  
12 prices may be the result?

13 A. Yes, I believe that is a possibility.

14 Q. And you would agree that your proposal to  
15 extend the auction schedule would have the impact of  
16 reducing the flexibility of the companies to modify  
17 auction products or structure in future ESPs to  
18 respond to evolving market conditions and rules,  
19 correct?

20 A. I think it would make, you know, like  
21 changing course on a dime kind of thing more  
22 difficult, certainly, but we have had the blending in  
23 of auction processes in companies' ESPs, and  
24 similarly, I think if it was an appropriate thing to  
25 do, we could have the blending out of auction

1 procedures in the ESPs also in this context.

2 Q. Have you investigated whether a CRES  
3 provider would be able to accommodate the situation  
4 where the CRES provider is responsible for certain  
5 PJM charges for some portion of the load they are  
6 serving but is responsible for different PJM charges  
7 in other portions of the load they serve? Is that an  
8 investigation that you undertook as part of your  
9 testimony?

10 A. No, I did not.

11 Q. Let me refer you to page 4, lines 13 and  
12 14 of your testimony. Are you there?

13 A. Yes, I am.

14 Q. Okay. Now, your proposed change -- or  
15 you propose your change based on your view that there  
16 could possibly be rate volatility associated with the  
17 structure of the currently approved process; is that  
18 correct?

19 A. Yes, at the sudden end of all the SSO  
20 supply and then the sudden restart.

21 Q. But you include in your testimony no  
22 study or analysis demonstrating that such volatility  
23 has actually occurred in the past, correct?

24 A. I didn't see the point in doing such a  
25 thing because this is a theoretical concept and

1 nobody knows when market prices may suddenly change.  
2 A lot of people make predictions, but I don't think  
3 anybody really knows. And so I don't know that you  
4 could say that at some point in time the rate will  
5 change and then this will be the result. I don't  
6 think that's worth our investigating.

7 Q. So your recommendation isn't based upon a  
8 problem that you observed from the past, correct?

9 A. Not a problem that has occurred, but it's  
10 based on a concern of a problem that could occur.

11 Q. But, again, you offer no study or  
12 analysis in your testimony that supports the  
13 proposition that volatility may occur in the future  
14 using the CBP process proposed by the company in the  
15 application -- in their application, correct?

16 A. I did not provide any study, no.

17 Q. And under the companies' proposal, while  
18 the auction schedule would quote-unquote restart, as  
19 you used that term on page 4 at line 14, for the next  
20 ESP period, that does not mean that there would only  
21 be a single auction that established the generation  
22 price for the first year of the next ESP, correct?

23 A. I don't know. It does happen.

24 Q. Well, I mean, in fact, as proposed, in  
25 the companies' proposal, the auctions to establish a

1 generation price for the first year of the ESP IV  
2 would be derived from two separate auctions taking  
3 place, involving three products in each auction, and  
4 with the auctions being conducted several months  
5 apart, correct?

6 A. That is the companies' proposal, but I  
7 don't know if that's exactly what's going to happen.

8 Q. And I believe you stated before that your  
9 Exhibit RWS-1 is not making a recommendation to the  
10 Commission that they must adopt that specific  
11 schedule, correct?

12 A. Oh, certainly not, and that's why I say  
13 in my testimony, my prefiled testimony, that it's  
14 provided as an example.

15 Q. And you submitted testimony in the AEP  
16 case that you cited in your testimony, 13-2385?

17 A. Yes, I did.

18 Q. And that testimony included a  
19 recommendation of AEP's -- that AEP's ESP period be  
20 five years and that the auction schedule be  
21 established for the same five-year period, correct?

22 A. That is correct.

23 Q. But the Commission did not accept your  
24 recommendation to go to either the five-year ESP or  
25 the five-year auction schedule, correct?

1           A.     That's correct.

2           Q.     In fact, in that order they went with an  
3 auction process where auctions were established to  
4 require SSO supply for the approved ESP period over  
5 three years, correct?

6           A.     That is correct.

7           Q.     And the process approved by the  
8 Commission in that case is actually similar to the  
9 one currently being used by the companies in this  
10 proceeding and similar to what the companies have  
11 proposed to be used for ESP IV, correct?

12          A.     Which one was ESP IV?

13          Q.     This one.

14          A.     This one, the one we are in now?

15          Q.     Yes.

16          A.     Yes.

17          Q.     All right. Thank you. Just to clarify,  
18 Mr. Strom, we are actually in the ESP III period now.  
19 The case is proposing for the ESP IV period.

20          A.     Okay. I might need to rehear the  
21 question then.

22          Q.     Okay. The process approved by the  
23 Commission in the AEP case is similar both to the one  
24 currently being used by the companies during their  
25 ESP III period and similar to what the companies have

1 proposed to be used for their ESP IV period, correct?

2 A. Yes, I believe that's correct.

3 MR. BURK: Okay. Thank you. I think  
4 that's all, your Honor.

5 Thank you, Mr. Strom.

6 EXAMINER CHILES: Thank you, Mr. Burk.  
7 Mr. Beeler, redirect?

8 MR. BEELER: One minute to confer,  
9 please.

10 EXAMINER CHILES: You may. Let's go off  
11 the record.

12 (Discussion off the record.)

13 EXAMINER CHILES: Let's go back on the  
14 record.

15 Mr. Beeler, redirect?

16 MR. BEELER: No redirect, your Honor.

17 EXAMINER CHILES: All right. I have no  
18 questions, so thank you, Mr. Strom. You are excused.

19 THE WITNESS: Thank you.

20 MR. BEELER: At this time, I would renew  
21 my motion for the admission of Staff Exhibit 5 into  
22 the record.

23 EXAMINER CHILES: Are there any  
24 objections to the admission of Staff Exhibit 5?

25 MR. BURK: No objection.



1 EXAMINER CHILES: Hearing none, it will  
2 be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER CHILES: Let's go off the record  
5 for a minute.

6 (Discussion off the record.)

7 EXAMINER CHILES: Let's go ahead and go  
8 back on the record. At this time, we will end for  
9 today. We will reconvene at 9:00 a.m. tomorrow.  
10 Thank you.

11 (Thereupon, at 5:29 p.m., the hearing was  
12 adjourned.)

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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 14, 2015, and carefully compared with my original stenographic notes.

---

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-6102)

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**in**

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

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 10/14/15 - Volume XXVIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.