

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 9:00 a.m. on
Friday, October 16, 2015.

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VOLUME XXX

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1 Friday Morning Session,
2 October 16, 2015.

3 - - -

4 EXAMINER PRICE: Let's go on the record.
5 Good morning, the Public Utilities Commission has set
6 for hearing at this time and place Case No.
7 14-127-EL-SSO, being in the Matter of the Application
8 Ohio Edison, the Cleveland Electric Illuminating
9 Company, and Toledo Edison Company for Authority to
10 Provide for a Standard Service Offer pursuant to
11 Revised Code 4928.143 in the form of an Electric
12 Security Plan.

13 My name is Gregory Price. With me is
14 Megan Addison, and we are the Attorney Examiners
15 presiding over today's hearing. We will dispense
16 taking appearances.

17 Mr. Beeler.

18 MR. BEELER: Thank you, your Honor.

19 EXAMINER PRICE: Call your next witness.

20 MR. BEELER: Staff calls Gregory Scheck.

21 (Witness sworn.)

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

24 THE WITNESS: My name is Gregory Scheck,
25 and my business address is 180 East Broad Street,

6107

1 Columbus, Ohio, zip code, 432 --

2 EXAMINER PRICE: Let's go off the record.

3 (Discussion off the record.)

4 EXAMINER PRICE: Can you state your name
5 and address again, please.

6 THE WITNESS: Yes, my name is Gregory
7 Scheck. My business address is 180 East Broad
8 Street, Columbus, Ohio, zip code 43215.

9 EXAMINER PRICE: Please proceed,
10 Mr. Beeler.

11 MR. BEELER: Thank you, your Honor. At
12 this time, I would like to mark for identification
13 purposes Staff Exhibit 11, which is the direct
14 testimony of Gregory Scheck on behalf of the staff of
15 the Public Utilities Commission filed on
16 September 18, 2015.

17 EXAMINER PRICE: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. BEELER: Thank you.

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GREGORY C. SCHECK

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

DIRECT EXAMINATION

By Mr. Beeler:

Q. Mr. Scheck, by whom are you employed?

A. I'm employed by the Public Utilities
Commission.

Q. Do you have in front of you what has been
marked as Staff Exhibit 11?

A. Yes.

Q. Please identify that document for the
record.

A. That is my prefiled written testimony in
this case.

Q. And that testimony is prepared by you or
under your direction?

A. Yes.

Q. Do you have any corrections to make to
that document?

A. Yes, I do. I have two.

Q. Okay.

A. The FirstEnergy -- one is on page 8,
question 12. And the first part, strike "the
companies" on the question, and it should read,

1 "Dr. Dennis Goins, in his prefiled written testimony,
2 proposes," and just continue on with the sentence.

3 The second correction will be the answer
4 to question 17 on page 12, and the second paragraph
5 starting with the word "for." It says, "For example,
6 although the companies are willing to commit to
7 perform." It should change "200" to "300 ash rate
8 while the 2 audits presumably to COSE members over a
9 four-year period rather than a three-year period."

10 Q. Thank you. Is that all of your
11 corrections?

12 A. Yes.

13 Q. With those corrections, if I were to ask
14 you the same questions today in Staff Exhibit 11,
15 would your answers be the same?

16 A. Yes.

17 Q. Are those answers true and accurate, to
18 the best of your knowledge?

19 A. Yes.

20 MR. BEELER: Your Honor, at this time,
21 subject to cross-examination, I would move for the
22 admission of Staff Exhibit 1 into the record, and the
23 witness is available for cross.

24 EXAMINER PRICE: Thank you.

25 Mr. Hays?

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1 MR. HAYS: None, your Honor. Thank you.

2 EXAMINER PRICE: Mr. O'Brien?

3 MR. O'BRIEN: No questions, your Honor.

4 EXAMINER PRICE: Ms. Bojko?

5 MS. BOJKO: No. Thank you.

6 EXAMINER PRICE: Ms. Fleischer?

7 MS. FLEISHER: A couple of questions,
8 your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Fleisher:

12 Q. Good morning, Mr. Scheck. Thanks for
13 being here. I just have a couple of questions for
14 you regarding page 12 of your testimony. And so here
15 you discuss the stipulation provisions regarding
16 payments for energy efficiency programs by the
17 Council of Small Enterprises and the Association --
18 Association of Independent Colleges and Universities
19 of Ohio, correct?

20 A. Yes.

21 Q. Okay. And to the best of your knowledge,
22 have the companies or those intervenors provided any
23 information regarding what those energy efficiency
24 programs would entail?

25 MR. KUTIK: Objection.

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1 EXAMINER PRICE: Grounds?

2 MR. KUTIK: Friendly cross.

3 MS. FLEISHER: I can address that, your
4 Honor. I think it's pretty clear in his testimony
5 that Mr. Scheck is suggesting the Commission might
6 approve these parts of this stipulation, and that's
7 actually something that the ELPC is not particularly
8 in favor of, so we are not friendly to his testimony
9 on this point.

10 EXAMINER PRICE: Okay. Overruled.

11 THE WITNESS: Could you restate that
12 question again?

13 MS. FLEISHER: It may be just easier to
14 have it reread, please.

15 EXAMINER PRICE: Reread the question,
16 please.

17 (Record read.)

18 A. Not in specifics.

19 Q. Okay. And on page 13, lines 5 and 6, you
20 state that, "The agreement with ASEU could be made
21 acceptable if there is an explicit showing as to how
22 these customers are going to implement cost-effective
23 energy efficiency." How do you define an "explicit
24 showing" in this context?

25 A. In this case, I would like to see what

1 type of projects the entities would pursue on an
2 ex-ante basis and then follow up on an ex-post basis
3 to see what was actually done.

4 Q. And as described in your testimony,
5 approval of the COSE and AICUO funds would occur
6 outside the companies' portfolio planning process,
7 correct?

8 A. I'm not 100 percent sure about that. I
9 think they've applied to include them in their
10 amended portfolio plan, but they originally were not
11 in the amended portfolio plan.

12 Q. And is it your position that these
13 expenditures would need to be approved as part of the
14 companies' portfolio plan before they could be
15 implemented?

16 A. I don't know.

17 Q. And you also recommend that COSE provide
18 an annual report regarding its -- the implementation
19 of its projects. Would there be any evaluation by
20 the Commission as to whether these projects should,
21 in fact, be funded by ratepayers?

22 A. Well, to the extent -- on an ex-ante
23 basis that we would see what kind of projects were to
24 be done and the measures to be installed. If they
25 were proven at least historically on an ex-ante basis

1 to be cost effective, then I could see they could go
2 forward and recover the funds from all the
3 ratepayers. If not, then no.

4 Q. So are you proposing that before any
5 projects with AICUO or COSE could go forward, that
6 they would have to be approved by the Commission as
7 cost effective?

8 A. Yes. There's an additional part to this,
9 meaning that they have set-aside funds for investment
10 into energy efficiency beyond the unrestricted
11 payments. And the part that's not clear is in the
12 main or in general, you don't fund energy efficiency
13 in the sense of making overpayments for investment.

14 You generally want to make the minimal
15 amount of investment to incentivize customers to
16 install energy efficiency, so I would like to see how
17 the money is going to be spent on a per-project
18 basis. So overspending for a project to get the
19 customer to do something is not in the best interest
20 of all ratepayers.

21 Q. And you are aware that these -- that the
22 companies' current portfolio plan would expire at the
23 end of 2016, correct?

24 A. That is right.

25 Q. And so you are aware that the

1 energy-efficiency projects contemplated under the
2 stipulation would extend into the next portfolio
3 planning period, correct?

4 A. And one year beyond, I believe.

5 Q. And is it your position that during the
6 next portfolio planning process, the Commission would
7 consider these as proposed programs for the portfolio
8 plan?

9 A. Are you talking about the timing of the
10 next filing for portfolio planning? I am not clear
11 about your question.

12 Q. Certainly. I am happy to clarify. So
13 some of these activities would take place in 2017
14 through 2019, correct?

15 A. Yes.

16 Q. Okay. And that would be after the
17 approval of the companies' next portfolio plan,
18 correct?

19 A. It's hard to answer that because the --
20 it's undetermined as to what the elements of that
21 plan would be. It would be up to the company, in my
22 mind, to continue as is unless the legislature
23 changes anything in terms of their report just issued
24 recently, that the company probably could continue
25 with a plan similar to their amended plan, if they

1 want to continue at all. That's my reading of it.
2 I'm not a lawyer, but to me, it's undetermined at
3 this point in time -- at this point in time what, if
4 any, construct the company would have in terms of a
5 portfolio plan post 2016.

6 Q. So given that, you're not taking any
7 position regarding how these stipulation
8 energy-efficiency programs would fit into the
9 portfolio plan process, correct?

10 A. Well, in the sense they may already be
11 ongoing. If the company decided to file a plan
12 voluntarily, I would assume they would include
13 these -- these particular programs into that plan
14 because, obviously, they would want to count the
15 savings from these particular entities that they
16 would invest money in.

17 Q. Do you believe the companies would have
18 to include these programs in a portfolio plan
19 proposal, assuming they are filing one?

20 A. I honestly don't understand your
21 question, but in response, to the best I could, is
22 that if there was a mandate that they needed to reach
23 beyond 2016, then I would think they would include
24 them in order to be able to count it towards the
25 goal.

1 Q. I guess what I am asking, to make sure I
2 am clear, is could the program -- could the companies
3 implement these programs funded under rider DSE
4 without them being part of an approved portfolio
5 plan?

6 EXAMINER PRICE: Isn't that a legal
7 question?

8 MR. BEELEER: Yeah, I will object. He's
9 heard some questions, but now he will be speculating.

10 EXAMINER PRICE: Let me rephrase. What I
11 was trying to say, can you ask that so it doesn't
12 sound like you are asking him for a legal conclusion?

13 MS. FLEISHER: Certainly.

14 Q. (By Ms. Fleisher) Mr. Scheck, you are not
15 a lawyer, correct?

16 A. I would like to be, but I'm not.

17 EXAMINER PRICE: That's funny. I would
18 like to be an economist.

19 Q. But you do -- you are quite involved with
20 implementing -- implementation and regulatory
21 processes regarding energy efficiency programs in
22 Ohio, correct?

23 A. I was.

24 Q. And based on your past experience in that
25 role, do you believe that it would be appropriate for

1 the companies to implement these programs outside of
2 the -- an approved portfolio plan?

3 A. I guess I'll answer you in this way, if
4 the companies and the customers brought forward what
5 I consider a portfolio of projects that were in total
6 cost effective, I don't see how it would be an issue.
7 Whether they included it or not, if it's cost
8 effective and passes the total resource cost test, it
9 would be fine to have it outside of a plan.

10 However, the plans are utilized to count
11 megawatts and megawatt-hours saved towards a goal, if
12 there is one, or if they want to count these
13 particular projects towards earning some sort of
14 shared savings, then I would think they would include
15 it in the plan. So from a logical perspective, I
16 don't see why they would want to exclude them out of
17 their plan.

18 Q. And were you aware of any information in
19 the record regarding whether these projects would be
20 cost effective under the TRC test?

21 A. No. That's sort of what my testimony
22 goes toward, is to actually see viable projects that
23 would pass a total-resource cost test as well as a
24 utility-cost test.

25 MS. FLEISHER: That's all I have, your

1 Honor. Thank you.

2 EXAMINER PRICE: Ms. Henry?

3 MS. HENRY: No questions, your Honor.

4 EXAMINER PRICE: Mr. Petricoff?

5 MR. PETRICOFF: No questions, your Honor.

6 EXAMINER PRICE: Mr. Stinson?

7 MR. STINSON: No questions, your Honor.

8 EXAMINER PRICE: Consumers' Counsel?

9 MR. SAUER: Thank you, your Honor. Just
10 a couple.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Sauer:

14 Q. Good morning, Mr. Scheck. On page 2 of
15 your testimony, you have a discussion regarding the
16 Community Connections program; is that correct?

17 A. I'm sorry, could you restate your
18 question again?

19 Q. Sure. I am just pointing you to page 2
20 of your testimony where you have a discussion
21 regarding the Community Connections program.

22 A. Yeah, I see that.

23 Q. And you recommend that that program be
24 competitively bid?

25 A. Yes.

1 Q. Would you agree that in addition to
2 competitively bidding out the Community Connections
3 program, there should also be specific performance
4 metrics to be used in monitoring and evaluating
5 program such as the number of customers that received
6 audits and the number of consumers who followed
7 through with home improvements?

8 MR. KUTIK: Objection.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: Friendly cross.

11 EXAMINER PRICE: Mr. Sauer, response?

12 MR. SAUER: I will withdraw the question,
13 your Honor.

14 EXAMINER PRICE: Thank you.

15 Q. (By Mr. Sauer) On page 9 of your
16 testimony, Mr. Scheck, you are recommending the
17 companies don't eliminate their time-of-use rates?

18 A. I recommend they do not eliminate their
19 time-of-use rates.

20 Q. And what's the benefit to consumers of
21 time-of-use rates?

22 A. Well, the benefit would be that
23 infrastructure was in place, meaning that customers
24 had a smart meter or interval meter, they could take
25 advantage of wholesale pricing, which is the better

1 choice for customers, in my mind, in terms of how
2 customers pay for their service, which is time
3 differentiated.

4 Q. And have you conducted any analysis
5 review regarding FirstEnergy's time-of-use rates to
6 determine whether participating customers are, in
7 fact, experiencing any savings?

8 A. Yes. About a year ago, under the
9 experimental critical peak pricing rider, the company
10 has for those that are in the Ohio Site Pilot area,
11 which were only six customers, but the savings were
12 rather substantial for just one summer. I think I
13 totaled up \$168 worth of savings for six customers.
14 I think five may have actually saved money, but that
15 amount of savings is actually very substantial for
16 folks that are under critical peak price with a
17 time-of-use rate.

18 MR. SAUER: Okay, your Honor.

19 And thank you, Mr. Scheck. No further
20 questions.

21 EXAMINER PRICE: Ms. Cohn?

22 MS. COHN: I think Mr. Lavanga would
23 prefer to go first.

24 EXAMINER PRICE: Okay.

25 Mr. Lavanga?

1 MR. LAVANGA: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Lavanga:

5 Q. Good morning, Mr. Scheck. My name is
6 Mike Lavanga. I am an attorney for Newport Steel. I
7 have a few questions for you on rider ELR. Now,
8 isn't it the case that rider ELR has been in effect
9 continuously since FirstEnergy's initial ESP case
10 which was approved in 2009?

11 A. Yes.

12 Q. And would you agree that the current ELR
13 customers have been continuously on the rider since
14 that first ESP?

15 A. Well, there's actually a reduction in
16 number of customers that have been on the rider since
17 the first ESP. By the count that I received from the
18 company, I think the first ESP there might have been
19 36 customers. The second ESP, I think it was 33
20 customers, and the current ESP, I believe there is 27
21 customers. And I believe one or two of those
22 customers did not perform in the past year or two.

23 Q. Okay. Mr. Scheck, I understand that
24 there's been a reduction in the number of customers,
25 but the remaining ELR customers, those customers have

1 been on ELR since the first ESP.

2 A. Yes.

3 Q. Okay. And prior to that, because of the
4 conditions in the ELR tariff, the -- the ELR
5 customers had to be taking service under a -- a
6 previous interruptible rate; is that correct?

7 A. I'm sorry. Could you either restate the
8 question or state it over again?

9 Q. I can restate it. There's a condition in
10 rider ELR that in order to qualify to be on rider
11 ELR, the customer would have had to be taking service
12 under a previous interruptible rate.

13 A. I believe that's yes.

14 Q. Okay. Now, you propose to eliminate the
15 \$5 interruptible credit under ELR, under the current
16 ELR; is that correct?

17 A. Yes.

18 Q. Okay. And you also propose to eliminate
19 the \$5 economic development credit that ELR customers
20 would receive.

21 A. Yes.

22 Q. And you state that the rider ELR customer
23 should receive their compensation for providing
24 interruptible service through the PJM demand response
25 tariffs; is that correct?

1 A. Correct. In particular, probably the
2 emergency tariff here.

3 Q. Okay. And under your proposal, the only
4 compensation ELR customers would receive was any --
5 any payment that came from PJM resulting from the
6 bidding of the ELR load into the capacity auctions;
7 is that correct?

8 A. Yes, primarily. I mean, if you want to
9 bid into the emergency market, that's fine as well,
10 but primarily capacity.

11 Q. Okay. So if FirstEnergy for some reason
12 did not bid that interruptible load into the capacity
13 auctions, then there would be no payment, right?

14 A. I think FirstEnergy has already been
15 bidding in the ELR load into the capacity market.

16 Q. Well, I know they have in the past, but
17 going forward, let's assume they don't for one
18 auction. Under that scenario, would the -- would the
19 ELR customers get any compensation for being
20 interrupted?

21 MS. FLEISHER: Objection. Assumes facts
22 that are not in evidence that there is only a single
23 auction that demand resources can be bid into.

24 EXAMINER PRICE: Can you just rephrase
25 your question, just taking into account there are

1 multiple incremental auctions that they might --

2 MR. LAVANGA: I understand.

3 Q. (By Mr. Lavanga) Let's assume for the
4 incremental auction that occurs in 2017 the ELR load
5 is not bid into that auction. Would there be any
6 compensation -- would there be any compensation to
7 the ELR customers in that scenario?

8 A. I don't agree with the premise of your
9 question, and that means that there are many
10 curtailment service providers in -- in the
11 FirstEnergy territories already serving many more
12 megawatts of curtailable load beyond what is the ELR
13 load that exists now in FirstEnergy.

14 So to say it would ever be bid in would
15 be incorrect. I think there would be plenty of
16 providers willing to offer that service into PJM
17 beyond just FirstEnergy distribution companies.

18 Q. But where we are talking about
19 FirstEnergy's ELR tariff --

20 A. Well, we are talking about the current
21 construct. I believe they are required to bid it in
22 according to the Commission order.

23 EXAMINER PRICE: Mr. Scheck, are you
24 proposing to get rid of rider ELR/OLR in its entirety
25 and just leave it to the curtailment service

1 providers or are you proposing the company simply bid
2 in the interruptible savings and pass back to the
3 customers what they receive?

4 THE WITNESS: Well, the construct, the
5 way I have it, is I would get rid of what I call the
6 legacy retail provisions, having other customers
7 subsidize interruptible service for ELR customers,
8 which is quite substantial. And instead, FirstEnergy
9 itself could bid it in because it is a market
10 participant, so it is allowed to bid in that load.

11 If the customers want to nominate
12 FirstEnergy distribution companies to bid it in for
13 them or they could choose another curtailment
14 provider, so it actually opens it up to all the
15 market participants that are qualified as curtailment
16 service providers of PJM of which the FirstEnergy
17 operating companies are one of many.

18 EXAMINER PRICE: Thank you.

19 Q. (By Mr. Lavanga) Mr. Scheck, under your
20 compensation proposal, wouldn't the compensation to
21 the customer, the ELR customer, change from year to
22 year?

23 A. It would depend on the auction price that
24 it cleared at.

25 Q. So it would be dependent on the auction

1 price.

2 A. Generally, yes, but usually the revenues
3 would be shared between whoever the curtailment
4 service provider would be and the customers.
5 Currently, under the arrangement now where it's
6 credited back to the DSE-1 rider, the split is 80/20.
7 I would also propose to get rid of that.

8 There is no reason to have any
9 contribution back to DSE-1 if there is no subsidy
10 that would continue forward. So in this case, then
11 customers would negotiate with whoever their
12 curtailment service provider would be, and that could
13 be a whole array of providers out there, not just the
14 FirstEnergy distribution companies. But this is
15 generation of service, so it should be competitive,
16 and I believe the revenues should be determined on a
17 competitive basis.

18 Q. Mr. Scheck, what I am trying to
19 understand is what the difference is between your
20 proposal and just simply going out into the market.
21 You've said that curtailment service providers
22 provide interruptible service today, correct?

23 A. My proposal is no different than going to
24 the market. It is one and the same.

25 Q. Okay. So under your proposal, would the

1 interruptible customers have to commit to stay on
2 rider ELR for three years?

3 A. There would be no rider ELR at all.
4 Rider ELR is essentially a cross-subsidy to customers
5 that are -- that are qualified for ELR to be
6 subsidized by other customers by a magnitude of
7 anywhere from 5 to 10 times greater than what they
8 might get in the market.

9 EXAMINER PRICE: Mr. Scheck, if you could
10 listen to counsel's question and answer counsel's
11 question, only counsel's question and not circle back
12 to your underlying premise to each answer, it would
13 be helpful.

14 Q. (By Mr. Lavanga) Mr. Scheck, do you
15 understand that under the current ELR, not only PJM
16 but also the operating company or the transmission
17 provider ATSI may call an interruption?

18 A. Correct.

19 Q. Okay. So under your proposal, would the
20 operating company or ATSI continue to be able to call
21 those curtailments?

22 MR. BEELER: Objection. How would he
23 know? It's calling for a legal conclusion, I guess.

24 EXAMINER PRICE: Overruled.

25 A. No, they would not. My historical

1 remembrance is the companies have only called one
2 interruption for distribution purposes in the entire
3 time period, but this is, again, generation service.

4 Q. Okay.

5 MR. KUTIK: Your Honor, may I have the
6 question read, please?

7 EXAMINER PRICE: You may.

8 (Record read.)

9 MR. BEELER: Could I have the answer
10 reread, please?

11 EXAMINER PRICE: Yes.

12 (Record read.)

13 MR. KUTIK: Your Honor, I move to strike
14 everything after the words "no, they would not."

15 EXAMINER PRICE: I think Mr. Lavanga
16 asked a fairly broad question. The witness took
17 advantage of that broad question, so we will deny the
18 motion to strike. Actually, let me rephrase that.
19 We are going to grant it in part and deny it in part.
20 We are going to strike the "but this is generation
21 service" phrase which is not remotely germane to the
22 answer.

23 Q. (By Mr. Lavanga) Okay. I believe what
24 you said is you are basically proposing to get rid of
25 rider ELR and send everything out to the market.

1 A. That's correct.

2 Q. Okay. Do you have -- if you do this, if
3 you scrap ELR, do you have any assurance that the
4 current customers that are under ELR are going to
5 remain interruptible?

6 A. Well, I wouldn't be the one that would
7 scrap it. That would be the Commission.

8 EXAMINER PRICE: That's not responsive,
9 Mr. Scheck. Could you answer counsel's question?

10 A. Can you restate that again?

11 Q. My question is simply, if you get rid of
12 ELR, isn't it possible that the current ELR customers
13 are going to decide to no longer be interruptible?

14 A. I don't know that. I don't know their
15 operations.

16 Q. Mr. Scheck, are you aware that there is
17 currently a challenge to the participation of demand
18 response in the wholesale markets going on before the
19 Supreme Court?

20 A. Yes.

21 Q. So isn't it possible that if the court
22 decides that the -- that demand response cannot
23 participate in either the capacity or energy markets,
24 that the market for demand response in PJM could go
25 away?

1 A. It's possible, but I don't -- I think the
2 argument is more jurisdictional rather than just
3 eliminating demand response. I think the question
4 would be whether or not the state would have
5 jurisdiction over who could participate, if at all,
6 in any demand response activities at the wholesale
7 level.

8 MR. LAVANGA: Could I have the answer
9 reread, please?

10 EXAMINER PRICE: Let's have the question
11 and answer back, please.

12 (Record read.)

13 MR. LAVANGA: Your Honor, I move to
14 strike everything after, "It's possible."

15 EXAMINER PRICE: Granted.

16 Q. (By Mr. Lavanga) Now, Mr. Scheck, under
17 the current ELR, if an emergency curtailment is
18 called, the ELR customer is required to curtail its
19 load down to its firm demand; is that correct?

20 A. Yes.

21 Q. And if the ELR customer doesn't curtail
22 its load down to that level, it's subject to pretty
23 severe penalties, wouldn't you agree?

24 A. They are subject to the penalties they
25 have agreed to in the terms and conditions.

1 Q. Under rider ELR.

2 A. Yes.

3 Q. Okay. Do you believe that interruptible
4 load provides a -- a reliability benefit to the
5 system?

6 A. Yes, provided it's an emergency.

7 Q. And you would agree if interruptible load
8 is called to avoid curtailing firm load for some
9 reason, that that's a benefit to the firm customers,
10 correct?

11 A. Can you state the question again?

12 Q. If an emergency curtailment is called in
13 order to prevent the need to interrupt firm
14 customers, that's a benefit to the firm customers,
15 isn't it?

16 A. If that were to occur, yes.

17 Q. Okay. And if interruptible load is
18 called -- if an emergency curtailment is called in
19 order to avoid damage to the transmission or
20 distribution system, that would be a benefit as well?

21 A. I'll answer yes, but with the qualitative
22 answer I'm not sure what damage that you are
23 referring to.

24 Q. And even if interruptible load isn't bid
25 into the PJM markets, it's still -- it can still

1 provide those reliability benefits, correct?

2 A. They could provide reliability benefits
3 but at a cost much higher than that. Did you get the
4 last of my answer?

5 Q. I didn't.

6 A. They could provide reliability benefits
7 but at a value much higher than what customers would
8 value it at.

9 Q. But it would be -- it would still provide
10 that benefit, that reliability benefit.

11 A. That reliability benefit should be priced
12 at the market, I would agree with that, but beyond
13 that, that's not value to customers.

14 MR. LAVANGA: Can I have the answer
15 reread, please?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 MR. LAVANGA: Your Honor, I move to
19 strike the answer. I didn't ask him what the -- what
20 the market value is.

21 MR. BEELER: Your Honor, he is qualifying
22 his response.

23 MR. LAVANGA: I asked him what the
24 reliable value was.

25 EXAMINER PRICE: Overruled -- or denied,

1 I'm sorry.

2 Q. (By Mr. Lavanga) Mr. Scheck, on page 8,
3 you talk about the CONE value. Do you agree that
4 CONE reflects the long-run avoided cost of generation
5 capacity in PJM?

6 A. It represents the long-run avoided costs
7 of capacity for like a CT.

8 Q. And you state that "For purposes of
9 valuing the ELR credit, CONE may be a more
10 appropriate method for those utilities that are still
11 vertically integrated and were intending on building
12 a combustion turbine to meet their jurisdictional
13 customers' peak demand," is that your testimony?

14 A. Yes. That -- in general, yes. Anybody
15 building a CT, that would be the value I would agree
16 with that is administratively determined, but it's
17 not market determined.

18 Q. Understood. But you would agree that
19 even if the companies aren't building generation to
20 meet demand, somebody is?

21 A. I'm not sure I can answer. Somebody is,
22 but somebody being somewhere as it relates to FE
23 distribution customers, I'm not sure it has any
24 relationship at all to them.

25 Q. Well, you would agree that -- you would

1 agree that by bidding demand response into the
2 market, that could help -- into the PJM market now,
3 that could help avoid or defer the need for
4 generation capacity?

5 A. Possibly.

6 EXAMINER PRICE: Mr. Scheck, you indicate
7 on page 8, line 17, "Ohio has left this cost of
8 service model for some time." Isn't it true that the
9 companies could propose and the Commission could
10 authorize the companies to build a CT peaking unit
11 and receive cost -- receive the full cost of service
12 compensation under their ESP -- under an ESP?

13 MS. BOJKO: Objection, respectfully.

14 EXAMINER PRICE: Overruled.

15 THE WITNESS: Yes, they can. I think
16 under provision -- I think it's in Senate Bill 221,
17 it was 143.C, either B or C, a company could propose
18 to build a generating unit to get cost recovery.
19 However, I don't think we've seen any applications
20 regarding fossil fuel units. This may be only those
21 that are like wind or solar.

22 MS. BOJKO: Objection. May I be heard on
23 the objection, your Honor?

24 EXAMINER PRICE: Sure.

25 MS. BOJKO: There's -- it's happened a

1 couple of times through this hearing, there is a
2 misconception or misstatement of that provision of
3 the law. There are limitations and requirements that
4 first must be met before any kind of proposal or
5 approval, so I'm assuming that the question, as well
6 as the response, is taking all those into
7 consideration.

8 EXAMINER PRICE: Of course.

9 MS. BOJKO: Thank you, your Honor.

10 EXAMINER PRICE: I thought that was
11 implicit. Could I have the answer back, please --
12 that's okay. I vaguely remember.

13 But the Commission has approved
14 construction generation facilities, and nothing in
15 the statute precludes the Commission from approving
16 fossil fuel-based facilities.

17 THE WITNESS: That is my understanding,
18 subject to the constraints they would have.

19 EXAMINER PRICE: Yes. Thank you.

20 Thank you, Mr. Lavanga.

21 MR. LAVANGA: Thank you, your Honor.

22 Q. (By Mr. Lavanga) Mr. Scheck, earlier you
23 agreed with me the current rider ELR customers have
24 been -- have been on ELR since the initial ESP which
25 was approved back in 2009, correct?

1 A. Yes.

2 Q. And they will continue to be on ELR
3 through May of 2016 under the current ESP, correct?

4 A. Through May 31st of 2016.

5 Q. So that's seven years, thereabouts.

6 A. Seven and a half, something like that.

7 Q. Okay. And then you also agree that
8 the -- that the interruptible customers under ELR
9 were also on interruptible rates prior to ELR,
10 correct?

11 A. Yes. They were on legacy interval rates.

12 Q. Okay. Wouldn't this indicate to you that
13 customers that -- at least the current ELR customers
14 are willing to make a long-term commitment to being
15 interruptible?

16 MR. BEELER: Objection. That seems like
17 that's not a judgment that he can make, jumping in
18 the minds of what someone else may do. Speculative.

19 EXAMINER PRICE: I don't think he asked
20 if -- to jump into the minds. I think he asked
21 whether he thought that indicated to him that people
22 were willing to make a long-term commitment.
23 Overruled.

24 A. I would agree. If they could calculate
25 the above-market subsidies they would receive, if

1 they were substantially more than what market had
2 been in the past, yes. If not, no.

3 Q. (By Mr. Lavanga) So under the terms of
4 ELR, customers are -- have demonstrated a willingness
5 to remain interruptible long term.

6 A. Generally, yes, even though there has
7 been a dropoff in some, but I think they have mainly
8 stayed on due to the above-market subsidies.

9 MR. LAVANGA: Can I have that answer read
10 back, please?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 Q. Mr. Scheck, have you spoken to any
14 current rider ELR customers about whether they would
15 be willing to continue to make a long-term
16 commitment --

17 A. No, I have not.

18 Q. -- to rider ELR?

19 MR. LAVANGA: I think that's all I have.
20 Thank you, your Honor.

21 Thank you, Mr. Scheck.

22 EXAMINER PRICE: Ms. Cohn?

23 - - -

CROSS-EXAMINATION

By Ms. Cohn:

Q. I am still on that rider recommendation.

Do you regularly review Commission orders?

A. Those that may be pertinent to the work area that I have.

Q. Have you reviewed the Commission's orders in previous ESP cases?

A. Some I have; some I have not.

Q. What about the AEP ones, the most recent ESP cases?

A. I just looked at a small portion of it.

Q. Okay. Do you generally view the Commission's order to be a reliable depiction of its opinion?

A. The Commission speaks for itself.

Q. Okay.

MS. COHN: May I approach, your Honor?

EXAMINER PRICE: You may.

MS. COHN: I am handing the witness an excerpt from AEP's 11-346-EL-SSO case. Do you want me to mark it? I don't plan on introducing it.

EXAMINER PRICE: No.

Q. (By Ms. Cohn) Mr. Scheck, have you seen this language before?

1 A. Yes, I have, at least on page 26.

2 Q. On page 26. Would you turn to that page
3 and read that first full paragraph for me, the one
4 that begins with, "The Commission finds."

5 A. You want me to read the whole paragraph
6 or what?

7 Q. Yes, please.

8 A. Okay. "The Commission finds the IRP-D
9 credit should be approved as proposed at \$8.21 per kW
10 per month. In light of the fact that customers
11 receiving interruptible service must be prepared to
12 curtail their electric usage on short notice, we
13 believe staff's proposal to lower the credit amount
14 to \$3.34 -- \$3.34 per kW per month understates the
15 value interruptible service provides both AEP Ohio
16 and its customers. In addition, the IRP-D credit is
17 beneficial in that it provides flexible options for
18 energy intensive customers to choose their quality of
19 service and is also consistent with state policy
20 under 4928.02.(N), Revised Code, as it furthers
21 Ohio's effectiveness in the global economy. In
22 addition, since AEP Ohio may utilize interruptible
23 service as an additional demand response resource to
24 meet its capacity obligations, we direct AEP Ohio to
25 bid its additional capacity resources into PJM's base

1 residual auctions held during the ESP."

2 Q. Thank you, Mr. Scheck. Now, as a
3 nonlawyer, I might ask you to interpret the language
4 for a second. This language reflects that the
5 Commission approved AEP Ohio's interruptible rider in
6 that case, correct?

7 A. Yes. That was for AEP.

8 Q. And that the Commission established a
9 \$8.21 per kilowatt month interruptible credit despite
10 staff's recommendation that the credit be lowered to
11 \$3.34 per kW a month?

12 A. Yes, that's what it said.

13 Q. Okay. Have you reviewed the Commission's
14 order in AEP's most recent ESP case?

15 A. No, I don't think I have.

16 Q. You haven't. Okay.

17 A. Other than I have heard it retained \$8.21
18 credit kW per month for interruptible.

19 Q. Okay.

20 MS. COHN: May I approach, your Honor?

21 EXAMINER PRICE: You may.

22 MS. COHN: I am handing the witness an
23 excerpt from AEP's most recent ESP case order. This
24 is Case 13-2385-EL-SSO, and this is the opinion and
25 order.

1 EXAMINER PRICE: Thank you.

2 Q. (By Ms. Cohn) So you have not seen this
3 language before, correct?

4 A. No.

5 Q. Okay. Would you turn to page 40 for me.
6 Could you read the last paragraph starting on that
7 page, the last full one that starts with the word
8 "finally"?

9 A. "Finally, the Commission agrees with OEG
10 that the IRP-D offers numerous benefits, including
11 the promotion of economic development and the
12 retention of manufacturing jobs and furthers state
13 policy which we recognized in the ESP II case, ESP II
14 case, opinion and order, August 8, 2012, at 26 and
15 66. We find that the IRP-D should be modified to
16 provide for unlimited emergency response
17 interruptions and that the \$8.21 per kW per month
18 credit should be available to new and existing
19 shopping and nonshopping customers. Consistent with
20 its current practice, AEP Ohio should continue to
21 apply for recovery of the costs associated with the
22 IRP-D through the EE/PDR rider until otherwise
23 ordered by the Commission. AEP Ohio should also bid
24 the additional capacity resources associated with the
25 IRP-D into PJM's base residual auctions held during

1 the ESP term with any resulting revenues credited
2 back to customers through the EE/PDR rider."

3 Q. Thank you, Mr. Scheck. And in your
4 understanding, would this language reflect that the
5 Commission again approve AEP Ohio's interruptible
6 rider with the credit of \$8.21 per kilowatt month in
7 that companies' most recent ESP?

8 A. Yes, that's what it appears.

9 Q. So the credit currently exists in the AEP
10 territory, correct?

11 A. Yes.

12 Q. Have you reviewed the Commission's
13 opinion and orders in Duke's most recent ESP case?

14 A. No, I have not.

15 MS. COHN: May I approach, your Honor?
16 This is the last one, I promise.

17 EXAMINER PRICE: You may.

18 MS. COHN: I handed the witness an
19 excerpt from the Commission's opinion and order in
20 Duke's most recent ESP. This is 14-841-EL-SSO.

21 Q. (By Ms. Cohn) Okay. So you have not seen
22 this language before?

23 A. I believe I have.

24 Q. Oh, you have seen this language before.

25 A. It deals with like 50 percent or half of

1 net CONE.

2 Q. Uh-huh, yeah. Would you turn to page 77.
3 And could you read the last paragraph on that page
4 that begins with "Upon"?

5 MS. BOJKO: Objection, your Honor.

6 EXAMINER PRICE: Grounds?

7 MS. BOJKO: We have been historically not
8 allowing witnesses to just read Commission orders
9 into the record. They stand on their own. Parties
10 can cite to the orders. Testing out Mr. Scheck's
11 reading skills is really not appropriate, and we've
12 done it twice now. I don't think it's necessary to
13 do it a third.

14 EXAMINER PRICE: Actually, she is asking
15 follow-up questions regarding what he reads.

16 MS. COHN: I am. I'm asking him for his
17 understanding and his awareness of these orders.

18 EXAMINER PRICE: Ms. Cohn has sat
19 patiently through 29 days of hearing to ask a handful
20 of questions, so we'll give her a little bit of
21 leeway.

22 MS. COHN: Thank you.

23 A. You want me to read the last paragraph of
24 77, into the top of 78, is that it?

25 Q. Yes, and then I won't test your reading

1 skills anymore.

2 A. All right. "Upon consideration of the
3 issues raised, the Commission finds that the large
4 customer interruptible load program should continue.
5 As OEG discusses, the program offers numerous
6 benefits and furthers state policy. Although Duke
7 will no longer be an FRR entity, the advantages of
8 the program are still available. We accept the
9 modifications proposed by OEG, which makes
10 participating customers subject to unlimited
11 emergency-only interruptions year-round.
12 Furthermore, we find that the level of credit should
13 remain at 50 percent of Net CONE. Rider DR-ECF, we
14 also need to continue -- will also need to continue
15 through which Duke may apply for cost recovery. The
16 company should also bid the additional capacity
17 resources associated with the program into PJM's base
18 residual auctions held during the ESP term with any
19 resulting revenues credited back to customers through
20 rider DR-ECF."

21 Q. Thank you, Mr. Scheck. In your
22 understanding, does this language reflect that the
23 Commission recently approved continuation of Duke's
24 interruptible program in its most recent ESP case as
25 well?

1 A. Yes. Half of Net CONE.

2 Q. So there's an interruptible credit
3 available to customers in Duke's service territory
4 right now?

5 A. Yes.

6 Q. Thank you. You recommend that the ELR
7 program be limited to only nonshopping customers,
8 correct?

9 A. If it were to continue at all, yes.

10 Q. Are you aware that the Commission made
11 interruptible programs available to shopping
12 customers in both AEP and Duke's most recent ESP
13 cases?

14 A. I'm aware of AEP. I don't know about
15 Duke.

16 Q. Could forcing interruptible customers to
17 remain on the SSO in order to participate in the ELR
18 program discourage shopping in FirstEnergy's
19 territory?

20 A. No. I think customers will weigh whether
21 or not they would like to stay on the SSO and receive
22 the value credits under those particular
23 interruptible programs, or the other option is to go
24 to market and then choose a curtailment service
25 provider to receive their interruptible credits.

1 Q. Okay. Can you turn to page 6 of your
2 testimony? Are you there?

3 A. Yes.

4 Q. Okay. On lines 18 through 20, you state
5 that "Staff is not aware of any new jobs being
6 created or retained by the companies by rider ELR
7 customers through the current ESP period," correct?

8 A. Yes.

9 Q. Did staff ask OEG or Nucor for such
10 information in discovery?

11 A. Staff doesn't normally ask intervenors
12 for discovery. We just ask the FirstEnergy operating
13 distribution companies.

14 Q. And so that the answer to my question is
15 "no"?

16 A. No.

17 Q. Did you -- you stated that there are two
18 customers that are currently on rider ELR, correct?

19 A. That's the number I am aware of.

20 Q. Have you spoken to any of those customers
21 about the impacts of retaining or eliminating rider
22 ELR?

23 A. No.

24 Q. Have you performed any independent
25 analysis to determine the economic impact of

1 eliminating the rider ELR?

2 A. No, I haven't.

3 Q. Have you investigated the level of
4 national competition that rider ELR customers face?

5 A. I don't really understand your question,
6 I guess.

7 Q. Have you looked at the rates that various
8 steel makers, for example, are paying -- are paying
9 in different states or nationally?

10 A. No, other than I would qualify I think
11 the competition is global.

12 EXAMINER PRICE: Well, have you looked
13 globally?

14 MS. COHN: That was my next question.

15 THE WITNESS: Well, I see most of the
16 steel or a big part of it comes from China.

17 Q. (By Ms. Cohn) Do you know that they are
18 getting subsidies?

19 A. No, I do not.

20 Q. Okay. Have you investigated any other
21 ways that those customers have to compete
22 internationally?

23 A. No.

24 Q. And do you know the economic impact of
25 ELR customers in Ohio, for example, the taxes they

1 pay, the number of employees?

2 A. No, but I do know the above-market
3 subsidies they receive that come from other
4 customers, and that is a cost to all of those
5 customers.

6 MS. COHN: Your Honor, I would move to
7 strike everything after "no."

8 MR. BEELER: Your Honor, I felt it was a
9 qualified answer. He needed to explain further. It
10 was not a "yes" or "no" answer.

11 EXAMINER PRICE: If he wants to explain
12 further, you can ask him on redirect.

13 MR. BEELER: Thank you.

14 EXAMINER PRICE: Granted.

15 MS. COHN: Thank you.

16 Q. (By Ms. Cohn) Can you turn to page 12 of
17 your testimony. Are you there?

18 A. Yes.

19 Q. Okay. On lines 11 and 12, you state that
20 "Staff could find an acceptable financial agreement
21 with COSE," correct?

22 A. Yes.

23 Q. And at 16 through 18, you say, "With
24 respect to the COSE agreement, staff is cognizant
25 that small businesses create many of the new jobs in

1 Ohio"?

2 A. Yes.

3 Q. And that, "The COSE" -- this is on 18,
4 "The COSE agreement may likely provide benefits to
5 the SE-1 customers."

6 A. Yes.

7 Q. Do those benefits include new jobs?

8 A. Could be.

9 Q. And did COSE provide you with a specific
10 number of jobs that could be created as a result of
11 this financial arrangement?

12 A. No. I just looked up a Small Business
13 Administration report and looked at the percentage of
14 new net jobs created by small businesses.

15 Q. All right. I want to turn to your
16 recommendation on the load factor provision. This is
17 on page -- I am looking at page 11, lines 13 through
18 16 of your testimony first. Actually, sorry, I am
19 backing up. This is on the time-of-use.

20 A. Now, what page is that one on again?

21 Q. It's almost page 11, lines 13 through 16.

22 A. Yes.

23 Q. You state that, "Encouraging low load
24 factor customers to improve their load factor through
25 a time-of-use rate is a positive thing for all

1 customers in the class as well as the participating
2 customer itself," correct?

3 A. Yes.

4 Q. Well, what exactly do you mean by
5 "positive thing"?

6 A. Well, occur -- increasing the load factor
7 means that costs at market will be lower, generally
8 speaking. So if you have a -- basically, a
9 100 percent load factor, generally it could be
10 provided mostly by baseload units instead of having
11 to turn on more expensive midterm or peaker units.

12 Q. So you think it could be a monetary
13 savings for other customers as well as the
14 time-of-use customers?

15 A. Yeah. There's a residual effect, meaning
16 that as one or a number of customers increase their
17 load factor, the load factor for the area or the
18 region actually increases as well which means all
19 participate in the benefits.

20 Q. All right. Thank you. Okay. Now, I am
21 turning to your load factor recommendation. That's
22 on page 9, I believe. So you recommend that the rate
23 GT provision, the load factor provision, be phased
24 out rather than phased down, correct?

25 A. Yes. I think the company originally

1 characterized it as phasing it out, yes.

2 Q. Are you aware that Duke has a similar
3 load factor provision?

4 A. They do, and I think the recommendation
5 was to phase it out as well.

6 Q. Are you aware that Duke's load factor
7 provision applies to all business customer classes?

8 A. That, I don't know.

9 Q. And are you aware that FirstEnergy's rate
10 -- rate GT provision applies only to rate GT
11 customers?

12 A. Correct.

13 Q. Now, we just discussed this a little, a
14 customer with a high-load factor is a customer whose
15 demand is close to its peak demand most of the time,
16 correct?

17 A. It could approximate that, yes.

18 Q. Which means that that customer is
19 producing goods most of the time?

20 A. I would have to say I don't know. I
21 mean, I am not sure about your question. You mean
22 they're in the manufacturing business and producing
23 goods or what?

24 Q. Yes. For example, a manufacturer that
25 has a high-load factor, would that mean that it's

1 producing -- it's manufacturing its goods most of the
2 time?

3 A. If it's on a three-shift production
4 cycle.

5 Q. And could incentivizing customers to
6 achieve a higher load factor encourage increased
7 production by Ohio industries?

8 A. Well, yes. I mean, encouraging them,
9 they would -- they could absolutely get that benefit
10 in the marketplace.

11 Q. And increased production could be a
12 positive thing for Ohio's economy?

13 A. Yes.

14 MS. COHN: Those are all of my questions.
15 Thank you, your Honor.

16 EXAMINER PRICE: Thank you.

17 Mr. Randazzo?

18 MR. RANDAZZO: Thank you, your Honor.

19 THE WITNESS: Could I take a short
20 two-minute break?

21 EXAMINER PRICE: Sure. Let's go off the
22 record until 10:30.

23 (Recess taken.)

24 EXAMINER PRICE: Let's get back on.

25 Mr. Randazzo.

1 MR. RANDAZZO: Just a few question, your
2 Honor. Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Randazzo:

6 Q. Mr. Scheck, separate and apart from the
7 questions about the level of compensation for ELR
8 customers, do you agree that the measure of
9 reliability in the grid is based upon Hertz,
10 H-E-R-T-Z, if you know?

11 A. I guess I am not familiar with that. I
12 thought it was the additional capacity available
13 above and beyond the current load.

14 Q. So you're not -- For an alternating --
15 you understand that the electric grid that we take
16 electricity from is an alternating current, correct?

17 A. Yes.

18 Q. And what is -- what is the cycle of the
19 alternating current that the grid operators attempt
20 to maintain?

21 A. I think it's 60 cycles.

22 Q. 60-something?

23 A. 60. I don't know exactly.

24 Q. You are not aware of that?

25 A. I think it's 60.

1 Q. So you wouldn't be aware of procedures
2 that exist in FirstEnergy's tariff that deals with
3 what happens in the event that the frequency declines
4 from 60 Hertz?

5 A. Well, it would need some voltage support,
6 I would assume, so whether or not you would call upon
7 additional capacity or call off somebody or invoke
8 capacitors, I am not sure which would be the order as
9 far as what they would do.

10 Q. So you wouldn't be aware that there are
11 provisions in FirstEnergy's electric distribution
12 utility's tariffs that call for automatic load
13 shedding to take place if the decline in frequency is
14 of a magnitude such as to jeopardize the entire
15 affected area, and that automatic load shedding will
16 commence when the frequency drops below 58.9 Hertz?

17 A. That may be.

18 Q. Are you aware of the language in the
19 current tariff?

20 A. I wasn't aware of that specific in terms
21 of 58 and a half Hertz.

22 Q. It's 58.9.

23 A. 58.9.

24 Q. Now, and, again, irrespective of the
25 level of compensation associated with the ELR, do you

1 agree that it would be better to have a system where
2 customers voluntarily agree to offer their demand
3 response capability to help out in emergencies rather
4 than resort to load shedding?

5 A. Yes, I believe there were a lot of
6 customers that helped out during the polar vortex
7 voluntarily.

8 Q. Right. And do you know the extent to
9 which those customers helped out during the polar
10 vortex?

11 A. I don't know the exact magnitude of
12 amount -- megawatt amount, but I know it was a fairly
13 sizable magnitude.

14 Q. I want you to assume that there are
15 manufacturers out there that are melting things in
16 order to make other things that have motors and
17 presses that are operating in a high performance
18 mode. If -- if we were to resort to load shedding,
19 do you think that might create problems, safety and
20 machinery damage types of problems in order to -- if
21 we resort to load shedding in order to resolve an
22 emergency condition?

23 A. It could, but I would think FirstEnergy
24 would or should be aware of the different type of
25 facilities that could have damage problems if they

1 had to come off in 10 minutes or half an hour.

2 Q. All right. And, again, do you think it
3 would be better to have a system where customers who
4 have the ability to rapidly respond to help out in an
5 emergency voluntarily enlist to do that rather than
6 resort to load shedding?

7 A. Yes.

8 Q. Now, a couple of times today you have
9 talked about getting compensation from the PJM market
10 in lieu of having the ELR credit. Do you believe the
11 PJM capacity market is competitive? I will withdraw
12 the question.

13 The demand response compensation that is
14 available to customers by participating in the PJM
15 market is available as a result of qualifying as a
16 capacity resource, correct?

17 A. Yes.

18 Q. If I bid into the base residual auction
19 demand response capability that qualifies as a
20 capacity resource, how far forward am I making a
21 commitment?

22 A. Three years in advance.

23 Q. All right. So a manufacturer today would
24 have to make a commitment to do something three years
25 in advance, correct?

1 A. If they were bidding into the base
2 residual auction.

3 Q. Do you think there is a fair amount of
4 uncertainty for manufacturers at the present moment?

5 A. Is that a question?

6 Q. Yes.

7 A. Uncertainty with respect to what? The
8 market?

9 Q. I will withdraw the question.

10 Now, in order to bid a demand response
11 capability into the PJM market, what kind of
12 conditions does the customer have to satisfy?

13 A. Well, they have to be willing as far as I
14 know in an emergency situation to be able to get off
15 within 30 minutes, unless they filed for an
16 exception, which could take it back to either an hour
17 or two hours' notice.

18 Q. Do you know whether or not they have to
19 be a member of PJM?

20 A. The market participant does.

21 Q. If a customer -- I asked you -- the
22 question was focused on if a customer bids the
23 customer's demand response into the base residual
24 auction, does the customer have to be a customer of
25 PJM?

1 A. I'm not clear about that. The market
2 participant is the one that actually bids it in on
3 behalf of a retail customer, generally speaking.

4 Q. So in your mind, are you referring to a
5 curtailment service provider when you use "market
6 participant"?

7 A. Yes.

8 Q. All right. Now, do you think the
9 market -- the curtailment service providers asked for
10 compensation from the customers with the demand
11 response capability in order to bid the demand
12 response capability into the market?

13 A. Yes, they do.

14 Q. Do you have any idea how much they
15 charge?

16 A. I've heard of a range. Typically between
17 10 and 15 percent of the total amount of revenues
18 received.

19 Q. All right. I actually live in that
20 world, and we would love to have a 10 or 15 percent.

21 A. Well, then it's less than.

22 Q. Hardly the case. All right. So in the
23 PJM context, what other criteria does the curtailment
24 service provider have to satisfy? Are there credit
25 requirements?

1 A. Yes. They would have to provide some
2 sort of a credit.

3 Q. Are there requirements that the
4 curtailment service provider agree to assume
5 responsibility as a result of defaults that occur on
6 other -- from other capacity resources?

7 A. Well, if their resources don't perform,
8 yes, there will be penalties involved.

9 Q. Right. Well, I mean, even if a
10 curtailment service provider does perform, are you --
11 is that curtailment service provider exposed to being
12 responsible for the consequences of other parties
13 that default?

14 A. Collectively, yes, everyone is in the
15 game.

16 Q. Right. And do you think that that
17 responsibility is passed on from the curtailment
18 service provider to the customer?

19 A. I'm not -- I'm not clear about that. I
20 don't know. I would assume that a curtailment
21 service provider would pass all risks and costs on to
22 those customers as much as possible.

23 Q. Do you know what VARs are?

24 A. VARs?

25 Q. Yeah. React --

1 A. Reactive power.

2 Q. Yes. And what is reactive power compared
3 to real power?

4 A. Well, generally, it takes more power to
5 supply a given load than what he actually consumes on
6 site.

7 Q. Do you know whether or not customers can
8 be enlisted to help maintain voltage support?

9 A. That, I don't know.

10 Q. Do you know whether or not reactive power
11 needs to be provided locally as opposed to imported
12 over high-voltage transmission lines?

13 A. My understanding would be locally more
14 so.

15 Q. Right. Now, again, irrespective of
16 the -- how a customer's demand response is
17 voluntarily enlisted, would you agree that reasonable
18 people can differ about the appropriate level of
19 compensation? That a customer with a demand response
20 capability should be provided?

21 A. Are you talking about in a voluntary
22 context?

23 Q. Yes.

24 A. That -- yeah, I don't know what the --
25 there are probably differences of about what the

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1 value of that would be worth. I don't think that I
2 am talking about the voluntary response but rather an
3 agreement made by customers to participate through a
4 curtailment service provider to provide a reduction
5 in load on a given call by PJM which I view
6 differently than someone who is voluntarily providing
7 additional value. I don't know what that value would
8 be.

9 Q. I think I'll stop. Thank you very much.
10 Thank you, Mr. Scheck.

11 EXAMINER PRICE: Thank you.

12 Mr. Kutik?

13 MR. KUTIK: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Kutik:

17 Q. Good morning. I think you said in
18 response to questions from Mr. Lavanga that you
19 understand that rider ELR as it stands now is
20 available to customer -- to certain customers who
21 have historically been on either interruptible
22 tariffs or interruptible contract, correct?

23 A. Previously, yes.

24 Q. Okay. And is it your -- is it your
25 understanding that rider ELR as proposed in the

1 stipulation and supplemental stipulation is available
2 only to those customers who are currently taking
3 service under rider ELR plus an additional customers
4 up to 136,500 kilowatts?

5 A. Yes. I think it was changed from the
6 original stip of 75,000 to 136-and-a-half-thousand.

7 Q. So you would agree with me that the
8 stipulation as modified by the supplemental
9 stipulation actually restricts the eligibility for
10 customers taking service under rider ELR potentially,
11 correct?

12 A. I'm qualifying the answer, restricts
13 eligibility with respect to the amount, and I think
14 there's like an order in terms of subscription. I
15 think it was May 1 of this year you had to get in
16 line to --

17 Q. Right.

18 A. -- to get to the -- before it expired to
19 the additional 136-and-a-half; however, I think it
20 was also opened up to shopping customers; whereas,
21 previously it was just shopping customers --
22 nonshopping customers.

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

24 A. Yes. In part.

25 Q. Okay. Now, you are one of the demand

1 response/peak demand reduction/energy efficient
2 experts on the staff, correct?

3 A. I suppose.

4 Q. And you are aware what the -- the ELR
5 credit is for the proposed rider, correct?

6 A. \$5 per kW per month.

7 Q. And would you agree with me that
8 translates to about \$164 per megawatt-day?

9 A. Very close. Maybe \$164.40.

10 Q. And that's somewhere in the neighborhood
11 of what capacity cleared for in the -- in the
12 2018-2019 BRA, correct?

13 A. I think that's pretty close to that,
14 yeah.

15 Q. And it's about --

16 A. That's only by accident.

17 Q. And that's about half of what capacity
18 goes for currently.

19 A. Yes, coincidentally.

20 Q. Now, customers have the choice, do they
21 not, to participate under rider ELR or to participate
22 in PJM markets directly or through CSPs, correct?

23 A. Correct.

24 Q. And your -- and I think in response to
25 Mr. Lavanga's question, you were aware that there was

1 litigation currently at the U.S. Supreme Court
2 regarding the FERC's jurisdiction to deal with demand
3 response in the PJM capacity market, correct?

4 A. Yes. You are referring to order 745
5 being heard at the Supreme Court, right?

6 Q. Well, I call it the EPSA case.

7 A. The EPSA case, same thing.

8 Q. Okay. And would you agree with me that a
9 result of that case might be that PJM would be
10 restricted from using demand response in the supply
11 side of the capacity market.

12 A. To me, that's not clear yet. It depends
13 on what states do if the determination is upheld that
14 states determine what retail customers do with
15 respect to demand response.

16 Q. What I said was a possibility as an
17 outcome, correct?

18 A. It's possible.

19 Q. And would it also be true that -- I'll
20 back up. You are aware, are you not, since you're
21 one of the demand response experts from the staff,
22 that PJM has made some comments or issued some
23 statements about what it would do if it was
24 restricted from using DLR in the -- on the supply
25 side of capacity market, correct?

1 A. I think that -- I am pretty sure they
2 have, but I can't remember exactly what the comments
3 were.

4 Q. Sure.

5 MR. KUTIK: Your Honor, I would like to
6 have marked at this time a document marked as Company
7 Exhibit 125, a document entitled, "The Evolution of
8 Demand Response in the PJM Wholesale Market" dated
9 October 6, 2014.

10 EXAMINER PRICE: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. KUTIK: And may I approach, your
13 Honor?

14 EXAMINER PRICE: You may.

15 Q. (By Mr. Kutik) Mr. Scheck, I have handed
16 you what has been marked for identification as
17 Company Exhibit 125. Do you recognize that as a
18 report or a document issued by PJM?

19 A. Yes, I do.

20 Q. And is this a document that you have read
21 before?

22 A. Yeah, in fact, I think I read it about a
23 year ago. I think Eileen Mikkelsen sent me a copy of
24 it shortly after it was released, but I haven't
25 reviewed it since then.

1 Q. But you have reviewed it?

2 A. Yes.

3 Q. Thanks to Ms. Mikkelsen. And would it be
4 fair to say that in this document, PJM discusses some
5 of the consequences -- some of the potential
6 consequences of the EPSA decision?

7 A. Yes, it does.

8 Q. And one of the things that it notes is
9 that state programs, of course, could offer added
10 incentives to both wholesale and retail market
11 participants with respect to demand response,
12 correct?

13 A. Could you restate that again? I'm not
14 sure where that occurs in this document.

15 Q. Well, let me refer you to the specific
16 language. Let me refer you to page 5, sir. In
17 particular, are you -- are you there?

18 A. Yes.

19 Q. Particularly the last paragraph,
20 including paragraph No. 1, the last sentence of that
21 paragraph says, "State programs, of course, could
22 offer added incentives to both wholesale and retail
23 market participants," correct?

24 A. Yes.

25 Q. So one of the things I think you

1 indicated earlier is that state programs dealing with
2 demand response could be -- could pick up the slack,
3 so to speak, if PJM could not use demand response in
4 the supply side of the PJM capacity market, correct?

5 A. Correct.

6 Q. Now, would you agree with me that all
7 customers benefit -- get some benefit from rider ELR?

8 A. Not necessarily.

9 Q. Okay. Are you aware that the Commission
10 has previously held that ELR programs benefit all
11 customers?

12 A. They may have stated that in a previous
13 order.

14 Q. Okay. Well, you said "may have."

15 A. I don't know for sure.

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

17 EXAMINER PRICE: You may.

18 Q. Mr. Scheck, I would like to show you the
19 Commission's order in Case 12-1230-EL-SSO.

20 Mr. Scheck, are you aware that Case No. I will call
21 it 12-1230 was the companies' ESP III case?

22 A. Yes, I believe it was.

23 Q. And let me have you turn to page 37,
24 please, and particularly the third paragraph. Do you
25 see the reference to the Commission's acknowledgment

1 that all customer classes benefit from the rates
2 related to ELR and OLR?

3 A. Are you starting with "The Commission
4 agrees"?

5 Q. Yes.

6 A. Well, again, could you repeat your
7 question?

8 Q. Sure. Isn't it true that in this case,
9 the Commission recognized that all classes benefit
10 from the rates related to ELR and OLR?

11 A. I don't see that in there. I see I fail
12 to support the recommendations that the costs related
13 to riders ELR and OLR should not be collected from
14 all customers.

15 Q. Well, let's read the paragraph together,
16 sir. I guess I have to test your reading abilities.

17 A. Okay.

18 Q. "The Commission agrees with FirstEnergy
19 and Nucor that OCC/CP have failed to support their
20 recommendations that costs related to riders ELR and
21 OLR should not be collected from all customers and no
22 reason is apparent in light of the fact that all
23 customer classes benefit from the rates related to
24 ELR and OLR." Have I read that correctly?

25 A. Yes.

1 Q. Now, it's true, is it not, that customers
2 benefit from reliability from the participation of
3 these interruptible customers' load in the PJM
4 capacity market?

5 A. They do receive benefits, however --

6 MR. KUTIK: I was going to move to
7 strike. We got cut off anyway, your Honor.

8 EXAMINER PRICE: Well, let's go ahead.
9 Let's go off the record.

10 (Discussion off the record.)

11 EXAMINER PRICE: Let's go back on the
12 record. Finish your answer.

13 MR. KUTIK: Did the court reporter get
14 the full answer?

15 EXAMINER PRICE: I don't think so.
16 Repeat your answer, Mr. Scheck, and then we'll --

17 MR. BEELER: Can we have the question
18 repeated too, please.

19 EXAMINER PRICE: Yes.

20 (Record read.)

21 A. However, they may have overcompensated
22 those same customers for that reliability benefit.

23 MR. KUTIK: Move to strike everything
24 after the first sentence starting with "however."

25 EXAMINER PRICE: Mr. Beeler?

1 MR. BEELER: Your Honor, I believe that's
2 a necessary part of the answer.

3 EXAMINER PRICE: I think that's something
4 you might want to take up on redirect but not
5 necessarily part of the answer.

6 MR. BEELER: Okay.

7 EXAMINER PRICE: Granted.

8 Q. (By Mr. Kutik) And, you agree with me,
9 sir, that in addition to PJM being able to call on
10 this interruptible load that's under rider ELR, ATSI
11 and the companies can call on the load as well,
12 correct?

13 A. Yes.

14 Q. And would it be fair to say having this
15 load, this ELR load, participate in the capacity
16 market, keeps capacity prices lower than if these
17 resources had not been participating in the market?

18 A. The answer is a qualified yes. The
19 customers were ordered by the Commission -- I should
20 say ELR load was ordered by the Commission to be bid
21 into the capacity market. I'm not sure what would
22 have happened in the absence of that.

23 Q. Your answer is "yes," correct?

24 MR. BEELER: Objection. Asked and
25 answered.

1 EXAMINER PRICE: Overruled.

2 A. Yes.

3 Q. And customers also get a benefit with
4 respect to the ELR load by virtue of the 80 percent
5 of the revenues that the company obtains from bidding
6 this DR into the market as well, correct?

7 A. Yes.

8 Q. Now, you would also agree with me, would
9 you not, that there is an economic development
10 benefit from rider ELR?

11 A. Not that I am aware of.

12 Q. Okay. Are you aware that the Commission
13 has held that these programs promote economic
14 development?

15 A. I think they stated such in orders in the
16 past.

17 Q. Well, you say you think, or is it that
18 they have stated that?

19 A. I believe they have.

20 Q. Okay. And, in fact, would you be
21 surprised, sir, they have stated that with respect to
22 rider ELR?

23 A. No.

24 Q. In fact, would you agree that they have
25 stated that with respect to rider ELR?

1 A. I said I would agree to that.

2 Q. I'm sorry?

3 A. You are saying I would agree that they
4 stated that, right?

5 Q. Yes.

6 A. The answer is yes.

7 Q. Thank you. Now, it's also true that
8 rider ELR customers have demonstrated at some time in
9 the past that they needed special rates for economic
10 development purposes, correct?

11 A. I'm not sure what you refer to by special
12 rates for economic development.

13 Q. Well, are you familiar -- you have been
14 with the Commission 30 years; is that right?

15 A. Right.

16 Q. Okay. Did you ever review any of the
17 companies' interruptible riders?

18 A. I have looked at them in the past.

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

20 EXAMINER PRICE: You may.

21 MR. KUTIK: May we go off the record,
22 your Honor?

23 EXAMINER PRICE: We may. Off the record.

24 (Discussion off the record.)

25 EXAMINER PRICE: Let's go back on.

1 Q. (By Mr. Kutik) Mr. Scheck, I would like
2 to show you Interruptible Rider-Incremental
3 Interruptible Service, General Service rider from
4 Ohio Edison effective January 1, 2001. Mr. Scheck,
5 have you ever seen that rider before?

6 A. Yes. It's been quite a while ago,
7 though.

8 Q. Okay. And would you agree with me that
9 under service, it says, "This service is" available
10 -- "is only available to either a customer who is
11 adding substantial new electrical load that is
12 associated with a major capital investment and that
13 is interruptible or to a customer who has added such
14 load in the past and was being served under an
15 incremental interruptible special contract." Do you
16 see that?

17 A. Yes, I do.

18 Q. And a customer who had received service
19 under this rider would be eligible for rider ELR,
20 correct?

21 A. It would transfer to that at some point
22 in time.

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

24 A. Yes, but the current ELR rider doesn't
25 have that provision that I recall.

1 Q. My question is simply that a customer
2 under this rider, taking service under this rider
3 would be eligible for rider ELR as it currently
4 stands, correct?

5 A. Again, that would have been a period of
6 time that was in the past when it transferred to ELR.

7 Q. Is the answer to my question "yes," sir?

8 A. Yes.

9 MR. KUTIK: May I approach again, your
10 Honor?

11 EXAMINER PRICE: You may.

12 Q. Mr. Scheck, I would like to show you
13 another rider -- Interruptible Rider, General
14 Service-Large and High Use Manufacturing from Ohio
15 Edison dated -- or effective January 1, 2001.
16 Mr. Scheck, have you seen this rider before?

17 A. I probably have, but I can't recall all
18 the details of it.

19 Q. Okay. There is an availability provision
20 in this rider; is there not?

21 A. Yes, there is.

22 Q. And this provides that, in the second
23 sentence, which is about four lines down in the
24 availability section, "With the exception of any
25 incremental load or new economic development load

1 added after November 1, 1996, total realizable
2 interruptible capacity for all customers served under
3 an interruptible service tariff rider or special
4 contract in the companies' corporate control system
5 is limited to 300,000 kilowatts." Do you see that?

6 A. Yes, I do.

7 Q. So would it be fair to say that
8 incremental load or new economic development load
9 could be served under this contract?

10 A. Yes.

11 Q. And that this rider or customers taking
12 service under this rider would be eligible for
13 service under rider ELR as it currently stands,
14 correct?

15 A. Yes.

16 Q. Now, would it be fair to say that --
17 well, strike that. You are familiar with a rider
18 that the companies offered last summer called rider
19 RCP; are you not?

20 A. Yes.

21 Q. That stands for Residential Critical Peak
22 Pricing rider, correct?

23 A. Yes.

24 Q. And the companies were, in fact, ordered
25 to continue this rider in Case No. 09-1820-EL-ATA,

1 et al. on May 28, 2015, correct?

2 A. Yes, they were.

3 Q. And, in fact, the companies made a
4 compliance filing in that case on September 18, 2015,
5 correct?

6 A. They may have, but I have not seen it
7 yet.

8 MR. KUTIK: Your Honor, I would like to
9 have marked at this time as Company Exhibit 126 a
10 multi-page document which -- or two-page document
11 which begins with a letter from Eileen Mikkelsen to
12 Barcy McNeal, Commission Secretary, dated September
13 18, 2015.

14 EXAMINER PRICE: It will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. KUTIK: May I approach?

17 EXAMINER PRICE: You may.

18 Q. I have handed you what has been marked
19 for identification as Company Exhibit 126. Do you
20 see that?

21 A. Yes, I do.

22 Q. Does this appear to be a compliance
23 filing made by the companies in response to the
24 Commission's Finding and Order dated May 18, 2015, in
25 Case No. 09-1820?

1 A. Yes.

2 Q. And this is -- this is the filing they
3 made for rider RCP going forward, correct?

4 A. Yes.

5 Q. So would you agree with me that the
6 companies have, in fact, made a compliance filing?

7 A. Yes, they have, other than the
8 information for the pricing is not filled in.

9 Q. Now, you are also aware, are you not,
10 that the companies have a -- well, I will back up.

11 Rider RCP is a -- is a
12 time-differentiated rate?

13 A. Yes.

14 Q. And you are aware also that the companies
15 have a time-differentiated rate for commercial and
16 industrial customers as part of their rider GEN; are
17 you not?

18 A. Yes, they do.

19 Q. And would it be fair to say there are
20 very few customers taking service under that rider?

21 A. That is correct.

22 Q. I want to switch gears for a second now.
23 And I want to talk to you about the Community
24 Connections program. Isn't it true that the
25 Commission and the staff also have available to them

1 an evaluation of that program?

2 A. They have what was filed by the
3 companies, a status report I think filed in May of
4 2015. I think it's filed in May 15 of every --
5 May 15 of every year looking back over the
6 performance of the energy efficiency programs.

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

8 A. Yes.

9 Q. And I think in your testimony you refer
10 to a report by an outfit called ADM Associates, Inc.,
11 correct?

12 A. Yes.

13 MR. KUTIK: Your Honor, at this time, I
14 would like to have marked as Company Exhibit 127 a
15 report by ADM Associates entitled, "Low Income
16 Program Evaluation Measurement and Verification
17 Report, 2004" prepared for the FirstEnergy Ohio
18 Companies.

19 EXAMINER PRICE: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. KUTIK: And may I approach, your
22 Honor?

23 EXAMINER PRICE: You may.

24 Q. (By Mr. Kutik) Mr. Scheck, I have handed
25 you what has been marked for identification as

1 Company Exhibit 127. Do you recognize this as the
2 report you referred to in your testimony?

3 A. Yes.

4 Q. And this is a report by this ADM firm,
5 and this is a third-party evaluator; is it not?

6 A. Yes, it is.

7 Q. And ADM evaluated the Community
8 Connections program particularly, correct?

9 A. One of several.

10 Q. But the Community Connections program was
11 evaluated by ADM in this report, correct?

12 A. Yes.

13 Q. And this report measures and verifies the
14 savings obtained by that program, correct?

15 A. Yes, it does.

16 Q. And the ADM report compared the ex-ante
17 savings versus the ex-post savings, correct?

18 A. Yes, it does.

19 Q. And we can see that on page 2 of this
20 report, the page that's numbered 2, correct?

21 A. Yes.

22 Q. And that appears in Table 1-2, correct?

23 A. Yes, it is.

24 Q. And would it be fair to say that the
25 realization rate that is the realization rate here is

1 100.02 percent?

2 A. For the total, yes, that would be right,
3 about 100 percent.

4 Q. Okay. So would that mean that ex-post
5 savings were within .02 percent of ex-ante savings;
6 is that how we read this report?

7 A. Yes.

8 Q. And would it also be fair to say one of
9 the observations that ADM had about the Community
10 Connections program was that the program operates
11 smoothly?

12 A. Yes, we do.

13 Q. Would it also be fair to say that nothing
14 in the report recommends that the administrator of
15 the program needs to be more cost effective, correct?

16 A. No, but in general, low income programs
17 are not cost effective on a TRC test basis.

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

20 MR. BEELER: Your Honor, it's the truth
21 of how the witness views how the Community
22 Connections works.

23 EXAMINER PRICE: Fair enough, but it's
24 not responsive. Granted.

25 Q. The information that's in this report is

1 reviewed by the staff, correct?

2 A. It can be, yes.

3 Q. All right. Well, you've seen it before,
4 correct?

5 A. Yes.

6 Q. And you are one of the energy efficiency
7 people on the staff, right?

8 A. Well, I am no longer in the energy
9 efficiency division.

10 Q. All right. You indicate as part of your
11 responsibility in your testimony that you are
12 responsible for energy efficiency matters, correct?

13 A. In the past.

14 Q. Okay. And would it be fair to say that
15 if the staff had issues with ADM's report or how ADM
16 evaluated the Community Connections program, the
17 staff had the opportunity to make its concerns known
18 to the companies, correct?

19 A. Sure.

20 Q. And would it be fair to say that up until
21 the time of your testimony, the staff had never
22 indicated that it had any problem with ADM's report
23 and evaluation, correct?

24 A. No.

25 Q. What I said was correct.

1 A. What you said was correct, yes.

2 Q. And would you agree with me the report is
3 used as part of the basis for the companies'
4 compliance with energy efficiency and peak demand
5 reduction requirements?

6 A. Yes, it is.

7 Q. Now, you've also received, have you not,
8 specific information about the savings that OP has
9 received -- has achieved as an administrator of the
10 Community Connections project other than this ADM
11 report, correct?

12 A. Yes, I have.

13 MR. KUTIK: Your Honor, I would ask to
14 have marked at this time as Company Exhibit 128 a
15 multi-page document which begins with an e-mail from
16 Brandon S. McMillen to Gregory Scheck dated
17 November 7, 2014, and, your Honor, I would note that
18 the attachments are confidential, so I don't know if
19 I should mark this as 128 Confidential. I just -- I
20 don't mean to get into any confidential material. I
21 would -- I do intend to move it into evidence
22 assuming I can lay a foundation.

23 EXAMINER PRICE: Let's mark it as 128
24 Confidential just to be safe.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. KUTIK: May I approach?

2 EXAMINER PRICE: You may.

3 Q. (By Mr. Kutik) Mr. Scheck, I have handed
4 you what has been marked for identification as
5 Company Exhibit 128 Confidential. Do you recognize
6 that e-mail?

7 A. Yes, I do.

8 Q. And does the attach -- and this e-mail
9 was sent to you by Mr. McMillen.

10 A. Yes, yes, it was.

11 Q. And it has several attachments, does it
12 not?

13 A. Yes.

14 Q. And the last attachment we can see on
15 this -- in this document is an attachment that has
16 some information with respect to the Community
17 Connections program for the years 2009 through 2014,
18 correct?

19 A. Yes.

20 Q. And we can see on this in the right-hand
21 most columns -- I don't want to talk about the
22 specific numbers, but what we can see is program
23 totals listing megawatt-hours and megawatts
24 representing savings achieved by Community
25 Connections programs for those years, correct?

1 A. Yes.

2 Q. This information also contains -- or this
3 e-mail also contains information relating -- or
4 similar information relating to other program
5 administrators, correct?

6 A. Yes.

7 Q. Such as the Council of Small Enterprises.

8 A. Yes.

9 Q. And the Association of Independent
10 Colleges? If you look at the second page of the
11 second attachment.

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

13 A. I see it. Actually, it's on my third
14 page, I think after the E group, is that what you are
15 talking about?

16 Q. Yes.

17 A. Yeah, I see it on the third page.

18 Q. This is, again, information you had
19 received, correct?

20 A. Yes.

21 Q. Now, with respect to the issue of
22 competitively bidding the Community Connections
23 program, would it be fair to say that when we are
24 setting up an RFP process, we want to have criteria
25 for the RFP that are clear and objective, fair to

1 say?

2 A. Yes.

3 Q. And would it also be fair to say that in
4 dealing with low income customers and where they
5 live, sometimes these programs don't necessarily deal
6 with the most cost-effective or cost-efficient
7 measures because there are other things to be
8 considered like safety and health, correct?

9 A. In part, yes, but I think that's reduced
10 over time.

11 Q. Okay. Well, for example, a -- for a
12 particular customer living in a low income area and
13 is a low income customer, their home may need roof
14 repair and/or electrical system repairs because the
15 roof is unsafe, the family is unsafe, those type of
16 things, correct?

17 A. Yes.

18 Q. And those aren't things that can be
19 easily measured as being cost efficient, correct?

20 A. They are more difficult.

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

23 EXAMINER PRICE: You may.

24 MR. KUTIK: I have no further questions.

25 Thank you, Mr. Scheck.

1 EXAMINER PRICE: Mr. Scheck, I just have
2 a couple of questions before we go on to redirect.
3 Were you in the hearing room when Dr. Rose testified
4 on behalf of OCC?

5 THE WITNESS: No, I was not.

6 EXAMINER PRICE: No, you were not, okay.
7 Would you agree as an economist that subsidies are
8 neither inherently good nor bad?

9 THE WITNESS: That depends. That depends
10 on the level of the subsidy.

11 EXAMINER PRICE: It depends on the level
12 of the subsidy?

13 THE WITNESS: Yes.

14 EXAMINER PRICE: Could you explain?

15 THE WITNESS: Well, take, for instance,
16 you want to incentivize energy efficiency, as I was
17 speaking to earlier in my cross-exam. You give a
18 million dollars to an entity and they've got three
19 projects that cost a million dollars, but I didn't
20 need a million dollars to incentivize them to do the
21 energy efficiency, I only needed \$500,000, and they
22 would have paid for the rest.

23 So sometimes you may need subsidies to
24 incentivize people to take better actions, but how
25 much do you need to incentivize them to do it, that's

1 the question. So for like the ELR, the compensation
2 that occurs with both the interruptible credit as
3 well as the development credit is substantially a lot
4 higher than what market prices have produced in the
5 last five, six years.

6 EXAMINER PRICE: Okay. Fair enough.

7 Mr. Beeler, redirect?

8 MR. BEELER: A few minutes, your Honor?

9 EXAMINER PRICE: You may. Let's go off
10 the record until 25 after.

11 (Recess taken.)

12 EXAMINER PRICE: Let's go back on the
13 record.

14 Mr. Beeler.

15 MR. BEELER: No redirect, your Honor.

16 EXAMINER PRICE: Thank you.

17 MR. BEELER: At this time, I would renew
18 my motion for the admission of Staff Exhibit 11.

19 EXAMINER PRICE: Any objection to the
20 admission of Staff Exhibit 11?

21 Seeing none, it will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MR. KUTIK: Your Honor, we move for the
24 admission of Company Exhibits 125, 126, 127, and 128
25 Confidential.

1 EXAMINER PRICE: Any objection to the
2 admission of Company 125, 126, 127 and 128
3 Confidential?

4 MR. BEELEER: No objections.

5 EXAMINER PRICE: Seeing none, it will be
6 admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER PRICE: Mr. McNamee, you may
9 call your next witness.

10 Mr. Scheck, you are excused.

11 You may call your next witness.

12 MR. MR. McNAMEE: At this time, staff
13 would call Dr. Hisham Choueiki.

14 (Witness sworn.)

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

17 THE WITNESS: Hisham Choueiki, 180 East
18 Broad Street, Columbus, Ohio 43215.

19 EXAMINER PRICE: Please proceed,
20 Mr. McNamee.

21 - - -
22
23
24
25

1 HISHAM CHOUEIKI, PH.D, P.E.

2 being by me first duly sworn, as hereinafter
3 certified, deposes and says as follows:

4 DIRECT EXAMINATION

5 By Mr. McNamee:

6 Q. Dr. Choueiki, by whom are you employed
7 and in what capacity?

8 A. By the Public Utilities Commission of
9 Ohio as a senior energy specialist.

10 MR. MR. McNAMEE: Your Honor, at this
11 time, I would ask to have marked for identification
12 as Staff Exhibit 12 a multi-page document filed in
13 this case on September 18 denominated prefiled
14 testimony of that Hisham Choueiki.

15 EXAMINER PRICE: It will be so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. (By Mr. Mr. McNamee) Dr. Choueiki, do you
18 have before you what has been marked for
19 identification as Staff Exhibit 12?

20 A. Yes.

21 Q. What is it?

22 A. That's my prefiled testimony.

23 Q. Is it prepared by you or under your
24 direction?

25 A. Yes.

1 Q. Do you have any corrections that you need
2 to make to that document this morning?

3 A. Just one typo on page 18, question 19.

4 Q. What is that?

5 A. Instead of "do," it should be "does."

6 Q. Okay.

7 EXAMINER PRICE: So close to the end.

8 THE WITNESS: And this is not the first
9 time this has happened.

10 Q. With that correction as noted, did you --
11 was this testimony prepared you or under your
12 direction?

13 A. Yes.

14 Q. Okay. With the correction that you
15 noted, are the contents true, to the best of your
16 knowledge and belief?

17 A. Yes.

18 Q. Okay. If I were to ask you the questions
19 contained in what's been marked for identification as
20 Staff Exhibit 12 again here this morning, would your
21 answers today be as they appear therein?

22 A. Yes.

23 Q. Okay. And you adopt what's been marked
24 for identification as Staff Exhibit 12 as your direct
25 testimony in this case?

1 A. Yes.

2 MR. MR. McNAMEE: With that, your Honor,
3 the witness is available for cross-examination.

4 EXAMINER PRICE: Mr. Hays -- Ms. Bojko?

5 MS. BOJKO: We have a proposed order.
6 OCC has agreed to go first on this witness.

7 EXAMINER PRICE: Let's go off the record.
8 (Discussion off the record.)

9 EXAMINER PRICE: Back on the record.
10 Consumers' Counsel.

11 MS. WILLIS: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Willis:

15 Q. Good morning, Dr. Choueiki.

16 A. Good morning.

17 Q. Dr. Choueiki, you currently serve as a
18 senior energy specialist for the PUCO; is that
19 correct?

20 A. Yes.

21 Q. Okay. And you indicate that you serve in
22 the rates and analysis department of the PUCO?

23 A. Yes.

24 Q. And the director of the rates and
25 analysis, would that be Mr. Patrick Donlon?

1 A. Yes.

2 Q. And is that who you report to in your
3 position as a senior energy specialist?

4 A. Yes.

5 Q. Now, in your current position, you advise
6 the federal advocate for the PUCO on technical
7 matters; is that correct?

8 A. Yes.

9 Q. Now, if we go to page 2 of your
10 testimony, specifically line 10, you indicate that
11 you are a technical policy adviser on any related
12 matters. Do you see that?

13 A. Yes.

14 Q. Am I correct that in that role you
15 provide technical and policy advice directly to the
16 PUCO commissioners and to senior staff of the PUCO?

17 MR. MR. McNAMEE: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. MR. McNAMEE: This has no relevance
20 to the recommendations he is making in this case.

21 EXAMINER PRICE: We'll allow this one
22 question.

23 MS. WILLIS: Thank you, your Honor.

24 THE WITNESS: Anyone who asks for my
25 advice, I offer it.

1 MR. KUTIK: Touche.

2 Q. So that would include tech -- that would
3 include PUCO commissioners and senior staff, correct?

4 A. Anyone, including everyone, everyone is
5 included.

6 Q. Now, you also serve as an Ohio member on
7 the Staff's Steering Committee in the Organization of
8 PJM States, correct?

9 A. That is correct.

10 Q. And you are the co-chair of the Staff
11 Modeling Working Group in the Eastern Interconnection
12 States Planning Council, correct?

13 A. Used to be, now EISPC, the states
14 interconnection -- Eastern Interconnection States
15 Planning Council is no longer active.

16 Q. Okay.

17 A. So I am -- I am an adviser now on
18 technical matters to the Council, but there is no
19 more -- there is no more modeling work group.

20 Q. Okay. Have I missed any other
21 engagements that you were involved in with respect to
22 PJM?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: Friendly cross.

1 MS. WILLIS: I'm sorry?

2 MR. KUTIK: Friendly cross.

3 MS. WILLIS: Well, it's part of
4 establishing a foundation as to the familiarity of
5 the witness and the background and experience.

6 EXAMINER PRICE: I don't think that --
7 Number one, I am not convinced that OCC's position is
8 not adverse to the staff's with respect to this
9 matter, but in any event, we will allow it.

10 MS. WILLIS: Thank you, your Honor.

11 THE WITNESS: I'm sorry, what was the
12 question again?

13 MS. WILLIS: Could it be reread?

14 EXAMINER PRICE: Yes.

15 (Record read.)

16 A. I mean, I talk to PJM all the time, but I
17 don't know from terms of -- are there any formal
18 engagements? Any times the states talk to PJM, we
19 generally talk to either independently, so I would
20 communicate with PJM or through OPSI, the
21 Organization of PJM States.

22 Q. Thank you, Dr. Choueiki. Now, in your
23 position as senior energy specialist, are you
24 sometimes asked to review information given to third
25 parties on electric regulation in Ohio?

1 A. Information given to third parties?

2 EXAMINER PRICE: I think that question is
3 kind of vague, so I would ask you to rephrase it. I
4 certainly didn't understand it.

5 Q. In your position as senior energy
6 specialist, have you been asked to review electric
7 regulation information that has been given to members
8 of the Ohio legislature?

9 MR. KUTIK: I'll object.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: Relevance. And, again, this
12 is friendly cross. She is trying to burnish his
13 credentials.

14 EXAMINER PRICE: One second. You will
15 need to address the friendly cross because he is
16 going to win on the relevance. Sustained.

17 MS. WILLIS: Your Honor, this is
18 foundational.

19 EXAMINER PRICE: I understand, but it's
20 still sustained.

21 Q. Do you have --

22 MS. WILLIS: Your Honor, may I approach
23 the witness?

24 EXAMINER PRICE: You may.

25 MS. WILLIS: Your Honor, at this time, I

1 would ask to mark for identification purposes as OCC
2 Exhibit 29, a multi-page-document entitled "House
3 Public Utilities Committee Briefing" dated March 4,
4 2015.

5 EXAMINER PRICE: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Dr. Choueiki, do you recognize this
8 document?

9 A. I mean, this specific document in this
10 format, I can't recall if I have looked at it or not
11 in this format.

12 Q. Have you reviewed this document before if
13 you can recall?

14 A. I don't recall, I'm sorry.

15 Q. Can I direct your attention to page --
16 the page -- it should have a yellow tab on it that
17 says Patrick Donlon, director of rates and analysis.
18 Do you see -- have that page?

19 A. I mean, his name is on the cover page.

20 Q. Yes.

21 A. Is that another page?

22 Q. No, that's the first page I am directing
23 your attention to.

24 A. Okay.

25 Q. And that, again, is who you directly

1 report to, correct?

2 A. Correct.

3 Q. Now, if we go to the page following that
4 page, can you look at that page for a moment.

5 A. The "Over 100 years"?

6 EXAMINER PRICE: This is your second
7 question on a document he has never seen before, so I
8 am just warning you if you are going to get to
9 foundation, you better get there fast.

10 MS. WILLIS: Understood, your Honor.
11 Thank you for the warning.

12 A. The second page.

13 Q. I'm sorry, the second page following the
14 page we just discussed which says "Electric
15 regulation."

16 A. My second page says "Over 100 years PUCO
17 has..."

18 EXAMINER PRICE: The second tabbed page.

19 Q. (By Ms. Willis) Yes, the yellow tabs are
20 meant to help.

21 MR. KUTIK: Actually, it's the page after
22 the first yellow tab.

23 MS. WILLIS: Yes. Thank you.

24 EXAMINER PRICE: Mine has a tab,
25 Mr. Kutik.

1 A. Okay. There's a page that says,
2 "Electric regulation title and flow chart."

3 Q. Yes, that's what -- that's what my
4 question is going to.

5 A. Okay.

6 Q. Are you familiar with the information
7 contained on this page?

8 A. Yes.

9 Q. And would this have been information that
10 you reviewed?

11 A. Yes.

12 Q. And by reviewing it, what would -- let me
13 strike that. Would this also have been information
14 that you would have provided or assisted in providing
15 to Mr. Donlon?

16 A. Actually, this -- this page precedes
17 Mr. Donlon. I mean, this is a page we've used
18 before, our previous director has used too, so it's
19 existed for a while.

20 Q. And would you have had a role in creating
21 this document or providing the information that is
22 the foundation of this document?

23 A. I did not create this flow chart, but
24 I've reviewed this flow chart.

25 Q. And you've approved of the flow chart,

1 correct?

2 A. I am not the one who approves things.

3 The director approves these matters.

4 Q. And do you believe this flow chart is an
5 accurate representation of the electric regulation as
6 it occurs with respect to the Ohio legislature and
7 the United States Congress?

8 A. Yeah, it looks reasonable to me.

9 Q. Mr. Choueiki, do you know -- have you
10 been involved with -- or let me strike that.

11 Going back to the title of this document,
12 the "House Public Utilities Committee Briefing," is
13 that something that you are aware of or familiar
14 with?

15 A. I think every year, every two years, the
16 director goes there and gives a summary of what we do
17 and a history.

18 Q. And is it your understanding that that's
19 part of the Public Utilities Commission's of Ohio
20 obligations or responsibility to the legislature, to
21 report or to brief the House Public Committee --
22 House Public Utilities Committee?

23 A. I think so.

24 Q. And would you understand that the
25 briefing would be a synopsis of the PUCO's activities

1 with respect to public utilities, if you know?

2 A. I mean, I don't know what this
3 presentation has in it, but in general, that's
4 correct. We say how many cases, you know, complaint
5 cases, summaries, statistics, lots of statistics.

6 Q. Now, let's go to the next tabbed page.
7 It's entitled "FERC Oversight and State Oversight."
8 Do you see that? Do you have that page before you?

9 A. Yes.

10 Q. And can you tell me, does this -- are you
11 familiar with this information?

12 A. Yes.

13 Q. And would this have been information that
14 you had reviewed prior to it being presented to the
15 public utilities -- the House Public Utilities
16 Committee?

17 A. Yes.

18 Q. And do you understand that the
19 information contained here is correct?

20 A. To my knowledge, it's correct.

21 Q. Okay. Let's go to the next yellow tabbed
22 page, Mr. Choueiki, and that is entitled, "Ohio's
23 Electric Generation Resource Mix." Do you have that
24 page?

25 A. Yes.

1 Q. And are you familiar with the information
2 that's contained on that page?

3 A. Yes.

4 Q. And would that have been information that
5 you reviewed prior to it being presented to the House
6 Public Utilities Committee briefing?

7 EXAMINER PRICE: Are you asking him if he
8 has ever seen this information or are you asking him
9 if he reviewed this specific slide?

10 MS. WILLIS: If he reviewed the specific
11 slide.

12 EXAMINER PRICE: Before this specific
13 briefing?

14 MS. WILLIS: Correct.

15 MR. KUTIK: And, your Honor, I guess I
16 object because I don't think this witness has
17 testified he was aware of this particular briefing.
18 In fact, I think he's testified just the opposite.

19 EXAMINER PRICE: He testified he had a
20 vague recollection that we actually do briefings,
21 but, I agree he did not testify he was present at
22 this briefing or he knew this briefing was happening.
23 That's why I was trying to narrow her question.

24 MR. KUTIK: Or the contents of the
25 briefing.

1 EXAMINER PRICE: That's why I am asking
2 her --

3 MS. WILLIS: I believe -- your Honor, if
4 I may? I believe he has indicated he reviewed this
5 information, and I think that's --

6 EXAMINER PRICE: Let's let him answer the
7 question.

8 MS. WILLIS: That would be great to
9 clarify.

10 MR. KUTIK: I guess I am not sure what
11 the question is at this point. Is it generally since
12 he wasn't aware --

13 EXAMINER PRICE: I have a pending
14 question, and I'll ask him.

15 MR. KUTIK: Okay.

16 EXAMINER PRICE: Dr. Choueiki, did you
17 review this slide in preparation for the March 25
18 briefing?

19 THE WITNESS: That exact slide?

20 EXAMINER PRICE: Yes.

21 THE WITNESS: Probably not.

22 Q. (By Ms. Willis) Dr. Choueiki, did you
23 review the information contained in this slide?

24 A. So -- so my team generally prepares these
25 types of information, you know, so it could have been

1 run by me or it could have been not given. This is a
2 very simple, basically going to the EIA, downloading
3 the data and giving it to the director.

4 Q. So is it -- are you testifying that this
5 information would have been provided to Mr. Donlon
6 for purposes of his -- let me strike that.

7 Are you testifying, Dr. Choueiki, that
8 the information -- that your team or someone working
9 on your team would have provided the information to
10 Mr. Donlon and then it would have been presented in a
11 slide or format such as what we see in front of us?

12 MR. KUTIK: Objection, calls for
13 speculation.

14 EXAMINER PRICE: You need to narrow it
15 down to his personal knowledge. You can ask him if
16 the slide was prepared by him or at his direction,
17 but you can't just ask him if it's possible somebody
18 in his team prepared it.

19 Q. (By Ms. Willis) Was this slide prepared
20 by you or someone working under you?

21 EXAMINER PRICE: No, that's -- again,
22 that's speculation. He doesn't -- why don't you try
23 by you or at your direction. Then he would have
24 knowledge of it.

25 Q. Dr. Choueiki --

1 MS. WILLIS: Thank you, your Honor.

2 Q. -- was this slide prepared by you or at
3 your direction?

4 A. I cannot recall. We provide these types
5 of slides all the time. So I can't -- I can't recall
6 whether this specific slide was provided under my
7 direction or by me or was reviewed by me.

8 Q. But the -- can you -- can you testify,
9 Dr. Choueiki, that the information contained in this
10 slide would have been prepared by you or someone
11 working under your direction or supervision?

12 MR. KUTIK: Objection.

13 MR. MR. McNAMEE: Objection.

14 MR. KUTIK: Asked and answered.

15 EXAMINER PRICE: Mr. McNamee?

16 MR. MR. McNAMEE: It is indeed asked and
17 answered, and he said he doesn't -- he hasn't seen
18 this. He can't speculate about it.

19 MS. WILLIS: Your Honor, my question went
20 to the information that's shown on the slide, not the
21 slide itself.

22 MR. KUTIK: Well, that's even more
23 improper since he said he wasn't familiar with this
24 slide at all.

25 EXAMINER PRICE: The objection is

1 sustained. Let's move on to the next one.

2 Q. (By Ms. Willis) Does the information
3 contained in this -- the Ohio Electric Generation
4 Resource Mix appear to be correct?

5 MR. KUTIK: Objection.

6 MR. MR. McNAMEE: Objection.

7 EXAMINER PRICE: Grounds?

8 MR. KUTIK: No foundation, your Honor.
9 He said he wasn't familiar with this slide.

10 MR. MR. McNAMEE: This is exactly the
11 same thing we just did.

12 MS. WILLIS: Your Honor, if I may?

13 EXAMINER PRICE: You may.

14 MS. WILLIS: Mr. Choueiki would certainly
15 have knowledge of Ohio's Electric Generation Resource
16 Mix, so if you want, I can rephrase it and we can go
17 at it that way.

18 EXAMINER PRICE: That doesn't lay a
19 foundation for this document.

20 MS. WILLIS: Correct.

21 EXAMINER PRICE: That's the problem we
22 are running into, so the objections are sustained.

23 Q. (By Ms. Willis) Dr. Choueiki, do you have
24 an understanding of Ohio's Electric Generation
25 Resource Mix, what it consists of?

1 A. Yes.

2 Q. And is it -- would you agree that the
3 Ohio Generation Electric Resource Mix consists of
4 68 percent coal, 1 percent petroleum, 17 percent
5 natural gas, 12 percent nuclear, and 2 percent
6 renewables as of -- for the calendar year January
7 through November 2014?

8 MR. KUTIK: Now I'll object. Friendly
9 cross.

10 EXAMINER PRICE: We'll overrule the
11 friendly cross objection. He can answer this
12 question.

13 A. Yes, that's about right.

14 Q. Thank you. Dr. Choueiki, let's turn to
15 the next page with the yellow tab entitled, "Ohio
16 Coal Fired Electric Generation Facilities." Do you
17 have that before you?

18 A. Yes.

19 Q. And to your knowledge, is this -- is the
20 information contained in this present -- or in this
21 slide correct and accurate?

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: Again, to forestall what
24 we went through again, I think it's fair for you to
25 ask him if the slide was prepared by him or at his

1 direction, but you can't ask him on the stand to
2 verify all the information in the slide.

3 MS. WILLIS: Thank you, your Honor.

4 Q. (By Ms. Willis) Dr. Choueiki, we are
5 looking again at this slide entitled, "Ohio Coal
6 Fired Electric Generation Facilities." Can you tell
7 me if that slide was prepared by you or at your
8 direction or supervision if you can recall?

9 A. No, I can't recall. This was not
10 prepared by me or under my direction.

11 Q. Can we go to the next slide which is
12 entitled, "Ohio Natural Gas-Fired Generation
13 Facilities."

14 A. I'm there.

15 Q. And with respect to the slide that is
16 contained there, was that slide prepared by you or at
17 your direction or supervision?

18 A. No.

19 Q. And if we go to the following slide
20 entitled, "Ohio Coal Retirement -- Retirements and
21 Potential New Natural Gas Generation," can you tell
22 me if that slide was prepared by you or at your
23 direction or supervision?

24 A. It was not prepared by me.

25 Q. Can you tell me, Mr. Choueiki, who would

1 have prepared such information if you know?

2 MR. KUTIK: Objection.

3 EXAMINER PRICE: I am going to allow it.
4 If you know.

5 A. Generally the Power Siting folks prepare
6 these presentations, again, continuously as things
7 happen, announced retirements, come and go.

8 Q. And are you familiar with the information
9 that the Power Siting Board provide -- or the Power
10 Siting folks provide with respect to the existence of
11 generation, its coal-fired generation facilities?

12 A. Yes.

13 Q. And are you familiar with the information
14 that the Ohio Power -- or the Siting Board folks that
15 work for the PUCO provide with respect to the Ohio
16 natural gas-fired electric generation facilities?

17 A. Yes.

18 MR. MR. McNAMEE: Objection. Drat.

19 Q. And, Dr. Choueiki, are you familiar with
20 the information that the Ohio Power Siting PUCO folks
21 provide with respect to the Ohio coal retirements and
22 potential new natural gas generation?

23 MR. MR. McNAMEE: Now I object.

24 EXAMINER PRICE: Object. Grounds for
25 your objection?

1 MR. MR. McNAMEE: This doesn't relate to
2 the -- this just isn't relevant to anything that's
3 going on here in the case. What he knows or doesn't
4 know about what somebody else may or may not do in
5 terms of general reporting does not advance the ball
6 here.

7 MR. KUTIK: Your Honor, I would object.
8 The question is vague. What information are we
9 talking about? This is a backhanded way of trying to
10 establish some fuzzy foundation for this document.
11 Further, you know, even if it is, it is friendly
12 cross. I am not sure what the adversity here is with
13 respect to OCC and this witness.

14 EXAMINER PRICE: With respect to the
15 foundation argument, I agree she has not established
16 a foundation for the admission of these slides. With
17 respect to the relevancy, let's let Ms. Grady respond
18 to that.

19 MS. WILLIS: Your Honor, in terms of the
20 relevancy, I believe there has been plenty of
21 testimony presented in this proceeding as to what
22 will happen if the rider RRS is not approved and if
23 Davis-Besse and Sammis are retired. And so clearly
24 the existence or nonexistence of other facilities,
25 including coal fired, natural gas, and potential new

1 generation, is very relevant to this proceeding. In
2 fact, we have had many witnesses testify to that.

3 EXAMINER PRICE: In which case you are
4 simply acknowledging that Mr. Kutik is correct, this
5 is friendly cross for this witness.

6 MS. WILLIS: Your Honor, I would not say
7 it's friendly cross. OCC is certainly not in the
8 same boat as Dr. Choueiki, respectfully, with respect
9 to rider RRS. We are philosophically opposed to
10 rider RRS.

11 I don't believe Dr. Choueiki has that
12 position in this case as he is -- he has in his
13 testimony testified that it may be conceivable to
14 approve the rider RRS under a -- under certain
15 conditions, and we are certainly not in the same boat
16 with Dr. Choueiki, respectfully.

17 EXAMINER PRICE: If I gave you the power
18 for free, you wouldn't be in favor of it? You are
19 saying it's -- he is saying it's conceivable, but he
20 is conditionally opposed to it. Mr. Kutik is
21 correct. It's just friendly cross.

22 MS. WILLIS: Your Honor, there was a
23 question pending.

24 MR. KUTIK: I think the objection was
25 sustained.

1 EXAMINER PRICE: The objection was
2 sustained to this line of questioning.

3 Q. (By Ms. Willis) Dr. Choueiki, would you
4 agree with me the reliability of the electric power
5 grid and the wholesale electric market is not in the
6 hands of the PUCO?

7 MR. KUTIK: Objection.

8 EXAMINER PRICE: Grounds?

9 MR. KUTIK: Friendly cross.

10 EXAMINER PRICE: Ms. Grady, is this a
11 foundational question leading up to where you
12 disagree with him?

13 MS. WILLIS: Your Honor --

14 EXAMINER PRICE: If you tell me this is a
15 foundational question and the next question is going
16 to be something adverse to this witness, I will allow
17 it.

18 MS. WILLIS: Then it's a foundational
19 question.

20 MR. KUTIK: Well, can we revisit? Your
21 Honor, I move to strike if it is not.

22 EXAMINER PRICE: If it is not, you can
23 move to strike.

24 MR. KUTIK: Thank you.

25 EXAMINER PRICE: You can answer the

1 question if you know.

2 THE WITNESS: May I have the question?

3 EXAMINER PRICE: Can we have the question
4 back, please.

5 (Record read.)

6 A. Well, part of it is, I mean, we look at
7 reliability to ourselves. Now, it depends what you
8 are looking -- if you are looking at resource
9 adequacy. That is a PJM responsibility, not a PUCO
10 responsibility.

11 EXAMINER PRICE: Before you ask your next
12 question, I apologize. I have been saying Ms. Grady
13 for the last 15 minutes.

14 MS. WILLIS: And I have been taking it.

15 EXAMINER PRICE: It was not an insult, by
16 any stretch, but I will endeavor to do better,
17 Ms. Willis.

18 MS. WILLIS: Thank you, your Honors.

19 MR. KUTIK: It's okay, she has been
20 calling him Mr. Choueiki.

21 THE WITNESS: That's okay.

22 MS. WILLIS: Can we have the last
23 question and answer reread? Thank you.

24 EXAMINER PRICE: We may. Had you
25 completed your answer?

1 (Record read.)

2 Q. (By Ms. Willis) Now, Dr. Choueiki, you
3 are familiar with the PJM base residual auction,
4 correct?

5 A. Yes.

6 Q. And that PJM base residual --

7 MR. KUTIK: Well, your Honor, I guess I
8 move to strike.

9 EXAMINER PRICE: You promised me the next
10 question was going to be adverse.

11 MR. KUTIK: I move to strike the last
12 question and answer.

13 MS. WILLIS: Your Honor, it is difficult
14 to understand all the idiosyncrasies of the position,
15 but OCC's position is that the rider RRS does not
16 need to address or should -- does not have anything
17 to do with reliability, and that rider RRS should not
18 be a double payment made by consumers for reliability
19 that is already ensured by PJM.

20 Dr. Choueiki, by his testimony and his
21 acceptance of a -- his alternate position which
22 accepts the rider RRS, would, in essence, agree that
23 a reliability payment by customers for rider RRS is
24 needed on top of what is already paid for by
25 customers as part of the PJM base residual auction.

1 So I do believe, your Honors, there is a
2 difference here. I understand it might not be a big
3 difference, but it is a philosophical difference and
4 one of the reasons that OCC is philosophically
5 opposed to rider RRS.

6 And Dr. Choueiki obviously is not
7 philosophically opposed, and there is no
8 quantification or necessary condition that he has
9 placed on rider RRS and his alternative
10 recommendation that has to do with reliability.

11 MR. KUTIK: May I be heard?

12 EXAMINER PRICE: You may.

13 MR. KUTIK: Your Honor, I disagree with
14 the notion that Dr. Choueiki is not philosophically
15 opposed to rider RRS. His recommendation is that it
16 not be accepted. If counsel wants to ask him
17 questions specifically about his alternate proposal,
18 then let her go ahead and do that, but general
19 questions about reliability, those -- those are the
20 same issues and the same points of view that OCC has
21 and shares with this witness.

22 EXAMINER PRICE: I agree. If you want to
23 ask him about his -- questions that are adverse to a
24 position taken in his testimony, that's fine. But
25 it's not that the last question wasn't innocuous. I

1 suspect he does understand the basis of residual
2 auction process, but, you know, I don't -- I think
3 you are spending a lot of time on foundational
4 questions, and we need to get after where you are
5 adverse to this witness.

6 Q. (By Ms. Willis) Let's go to your
7 testimony, Dr. Choueiki. And specifically I am going
8 to direct you to page 9 through 11, and there you
9 discuss previous Commission orders. Do you see that?

10 A. Yes.

11 Q. Now, specifically you've identified the
12 ordering in Case No. 13-2385 and 14-841; is that
13 correct?

14 A. Correct.

15 Q. And those were standard service offer
16 cases involving Duke and Ohio Power, correct?

17 A. Yes.

18 Q. Is it your understanding, Dr. Choueiki,
19 in both of those proceedings, the utilities requested
20 what you call PPA rider charges?

21 A. Yes.

22 Q. And in Ohio Power, the request was
23 specifically called a purchase power agreement rider;
24 is that correct?

25 A. I think so. I can't recall exactly what

1 the formal name of the rider was.

2 Q. Okay. In Duke, the request was called a
3 price stability rider, if you recall?

4 A. Another abbreviation it was, I recall
5 that.

6 Q. And you have an understanding of the
7 proposals of both Duke and Ohio Power in those cases,
8 I take it?

9 A. Yes.

10 Q. Would you characterize the proposals of
11 Duke and Ohio Power as similar to the proposal that
12 FirstEnergy has made in this proceeding for its rider
13 RRS?

14 A. So in Ohio Power's SSO, each one of them
15 asked for a PPA rider with its entitlement with each
16 one of the respective entitlements to the Ohio Valley
17 Electric Corporation. So it was a smaller amount of
18 megawatts than this one, but the concept is similar.

19 Q. The concept is similar. Do you -- do you
20 understand that the concept in Ohio Power and Duke
21 was a financial hedge?

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. KUTIK: Friendly cross.

25 EXAMINER PRICE: Sustained.

1 Q. Can you tell me how the Ohio Power and
2 Duke proposals are different, if at all, from the
3 proposal that FirstEnergy has made in this case?

4 MR. KUTIK: Same objection, your Honor.

5 EXAMINER PRICE: I'll allow this one.

6 A. So with the first issue was the amount of
7 megawatts. I would say -- I can't recall if the Ohio
8 Power originally asked for a three-year PPA or a
9 longer period. I remember Duke asked also for a
10 longer period, more than three years originally. But
11 the recovery mechanisms were similar too. Although
12 the other two, Ohio Power and Duke also, their PPAs
13 were tied to generation that they -- the wires
14 companies owned. This one is a PPA between the
15 companies, the wire companies, and an affiliate.

16 Q. Okay.

17 A. So that would be a nuance difference.

18 Q. Is there any other difference that you
19 can think of between the proposal that FirstEnergy
20 has presented in this proceeding and the proposal
21 that -- the proposals that were presented by Duke and
22 Ohio Power in those proceedings?

23 A. There could be. I just can't come up
24 with one right now.

25 Q. Now, in both the Ohio Power proceeding

1 and the Duke proceeding, you presented the staff's
2 position through written testimony, correct?

3 A. I did, I did.

4 Q. And you testified in AEP's -- let me
5 strike that. In those cases -- strike that.

6 MS. WILLIS: Your Honor, at this time, I
7 would like to mark for identification purposes OCC
8 Exhibits 30 and 31 the testimony of Dr. Hisham
9 Choueiki in Case No. 14-841-EL-SSO and the testimony
10 of Dr. Hisham Choueiki in Case No. 13-2385. Your
11 Honor, just for the record, 30 would be
12 Mr. Choueiki's testimony in the Duke case, and
13 Exhibit 31 would be Dr. Choueiki's testimony in the
14 Ohio Power case.

15 (EXHIBITS MARKED FOR IDENTIFICATION.)

16 Q. (By Ms. Willis) Dr. Choueiki, do you have
17 what has been marked for identification purposes as
18 OCC Exhibits 30 and 31?

19 A. Yes.

20 Q. And do you recognize that as your
21 prefiled testimony in those proceedings?

22 MR. KUTIK: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. KUTIK: Friendly cross.

25 EXAMINER PRICE: Well, she is just asking

1 if he has seen it, so let's go ahead and see if he
2 has seen it.

3 MR. KUTIK: I object to any questions
4 relating to this document, relating to what his
5 testimony was from this -- from this Council.

6 EXAMINER PRICE: Ms. Grady, care to
7 respond?

8 MS. WILLIS: Your Honor, I think many
9 witnesses in this proceeding have been cross-examined
10 on prior testimony that they submitted. I am asking
11 Mr. Choueiki about his prior testimony. I do believe
12 there has been a change in Mr. Choueiki's testimony,
13 as I will get to, and this is foundational,
14 Dr. Choueiki was philosophically opposed --

15 EXAMINER PRICE: Okay. Let me follow up
16 with that.

17 Dr. Choueiki, do you work as a member of
18 the staff of the Public Utilities Commission?

19 THE WITNESS: Yes.

20 EXAMINER PRICE: As a member of the
21 staff, are you obligated to follow the broad policy
22 outlines enumerated by the Commission?

23 THE WITNESS: Yes.

24 EXAMINER PRICE: His testimony has no
25 relevancy. He has to follow what the Commission

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1 says. Commission sets its policy in these cases. It
2 is prejudicial. It's unfair to hold that against
3 him. None of the other parties in this case are in
4 the unique situation of the staff which is
5 independent from the staff who ultimately has to
6 follows the staff -- follow the Commission's policy
7 guidance.

8 MS. WILLIS: Understood, your Honor;
9 however, Mr. Choueiki as a staff member presented a
10 staff position on issues that --

11 EXAMINER PRICE: I understand that, and
12 the Commission did not agree. You struck the key
13 five minutes ago when you said he was philosophically
14 opposed. The bottom line is, he is a member of the
15 staff: The staff has to follow the Commission's
16 broad policy outcomes.

17 MS. WILLIS: And, your Honor, I would be
18 cross-examining Mr. Choueiki on his opinions that the
19 staff's position on specific issues related to the
20 purchase power agreement.

21 EXAMINER PRICE: Which I just indicated
22 would be unfair and irrelevant.

23 MS. WILLIS: Your Honor, are you ruling I
24 may not --

25 EXAMINER PRICE: Yes.

1 MS. WILLIS: I would like to have a
2 proffer at this point, your Honor. I object.

3 EXAMINER PRICE: Be my guest.

4 MS. WILLIS: Would your Honors like me to
5 go through all the questions and answers for the
6 proffer?

7 EXAMINER PRICE: No, you can proffer his
8 testimony. It's fine.

9 MR. KUTIK: May I be heard on your
10 ruling?

11 EXAMINER PRICE: You may.

12 MR. KUTIK: Your Honor, I don't think
13 it's unfair or improper for a counsel to question the
14 witness about inconsistencies in positions. What
15 I -- what my objection is based upon is that this --
16 she has not set up in any way an inconsistency with
17 his testimony.

18 She needs to establish first that there
19 is -- there is a position that he's taken. And then
20 if she wants to try to impeach him, that would be I
21 think the proper procedure. So I am not sure -- I
22 didn't want you to think that my objection was based
23 upon relevance. It is based upon friendly cross.

24 EXAMINER PRICE: I did not think your
25 objection was based on relevance, and I may have

1 jumped the gun, but I can see where this is going and
2 I know how this chapter's going to end. It is going
3 to end with the same ruling from me which is, as a
4 staff member, he is obligated to follow the policy
5 guidance of the Commission, and the Commission made
6 its policy call in AEP and in Duke.

7 So I believe it's unfair to this witness
8 to try to impeach him for doing his job. Once again,
9 the staff is in a unique position. They are
10 independent from the Commission, but at the same
11 time, they have to follow the Commission's policy
12 guidance, and that's all Mr. -- that's all
13 Dr. Choueiki has done in this case.

14 MR. KUTIK: Well, I guess, your Honor, we
15 may have to revisit this when it's my turn.

16 EXAMINER PRICE: Fair enough.

17 MS. WILLIS: And I would note, your
18 Honor, that indeed was my -- my line of cross was
19 going to the change in position and was delving into
20 the reason for the change in position, and if the
21 reason for the change in position is, as you say,
22 because of the Commission order, then I'll accept
23 that, but I would like to --

24 EXAMINER PRICE: You can ask him that one
25 question.

1 Q. (By Ms. Willis) Dr. Choueiki --

2 MS. WILLIS: Your Honor, I would have to
3 ask a couple to get there, I'm afraid.

4 Q. (By Ms. Willis) Dr. Choueiki, in your --

5 EXAMINER PRICE: Let me cut it off then.
6 Let me try to ask it in a succinct way.

7 Dr. Choueiki, would any perceived change in your
8 opinion of your testimony from the previous cases to
9 today be based upon the Commission's findings in the
10 Duke SSO and the AEP SSO case?

11 THE WITNESS: That was the only reason
12 that it changed.

13 Q. (By Ms. Willis) So but for --

14 MS. WILLIS: If I may, your Honor.

15 Q. (By Ms. Willis) But for the Commission's
16 order, you would still have maintained a position in
17 this case that was consistent with the opinions that
18 you --

19 EXAMINER PRICE: Now you are asking
20 friendly cross. Now you are asking friendly cross.
21 You got your answer.

22 Q. Let me turn to your testimony on page 9,
23 lines 15 through 17.

24 MR. KUTIK: 15 through 17?

25 Q. Oh, I'm sorry. That would be page --

1 page 7, lines 9 through 12. You testify there as the
2 status of retail competition, correct?

3 A. Yes.

4 Q. Would you agree with me that it took a
5 decade for the Commission to transition the four Ohio
6 utility -- Ohio EDUs to a fully competitive retail
7 electric market?

8 MR. KUTIK: Objection.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: Friendly cross.

11 EXAMINER PRICE: Sustained.

12 Q. Can you tell me, Dr. Choueiki, what the
13 impetus was for the transition to a fully competitive
14 retail market?

15 MR. KUTIK: Same objection.

16 EXAMINER PRICE: Sustained.

17 Q. Is it the staff's position that if the
18 PUCO were to grant FirstEnergy's request for rider
19 RRS, it would be a move away from a fully competitive
20 market?

21 MR. KUTIK: Objection.

22 EXAMINER PRICE: Sustained.

23 Q. Is it the staff's position that if the
24 PUCO were to grant its alternative recommendation,
25 which is for a three-year rider RRS with specific

1 conditions, that that would represent a move away
2 from a fully competitive market?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Overruled.

5 A. So we are talking about the alternative
6 recommendation here because staff's position is
7 denied, the rider?

8 Q. Correct.

9 A. That's our first option. The alternative
10 is to -- to the extent that the Commission finds that
11 it is in the public interest, and this is a very
12 general, broad statement, but to the extent the
13 Commission finds that it is in the public interest,
14 the Commission would then -- must have weighed the
15 issue of supporting the generators that are in the
16 application versus a large number of other factors
17 and have reached a conclusion that even with all
18 that, it's still in the public interest.

19 Q. I'm not sure, Dr. Choueiki, you answered
20 my question. My question simply was would you
21 believe that if the PUCO were to allow the rider RRS
22 under the staff's alternative recommendation, that
23 that would represent in your mind a move away from
24 fully -- a fully competitive generation market?

25 A. Yes, if we are having a theoretical

1 discussion, I would agree with that statement.

2 Q. Is it your understanding that the
3 electric distribution utilities are no longer in the
4 business of selling generation?

5 MR. KUTIK: Objection.

6 EXAMINER PRICE: Grounds?

7 MR. KUTIK: Friendly cross.

8 EXAMINER PRICE: Sustained.

9 Q. Referring to your testimony on page 9,
10 lines 4 through 5, you have that -- the testimony
11 there, "In other words, the companies provide wires
12 only services," do you see that reference?

13 A. I see that reference.

14 Q. And you have that italicized, correct?

15 A. Yes.

16 Q. Can you tell me why you italicized that?

17 MR. KUTIK: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. KUTIK: Friendly cross.

20 EXAMINER PRICE: Sustained.

21 Counsel, there are several pages back
22 from page 15, 16, 17, all fertile ground for
23 non-friendly cross, but I suspect if you keep asking
24 questions on the front half where he is not adverse
25 to your position, Mr. Kutik is going to make the same

1 objections, and I'm going to be consistent in my
2 rulings.

3 MS. WILLIS: Understood, your Honor.

4 EXAMINER PRICE: Thank you.

5 Q. Now, on page 10 and 11 of your testimony,
6 you identify what you call "necessary but not
7 sufficient conditions for granting a PPA that the
8 PUCO would find to be in the public interest." Do
9 you see that reference?

10 A. Yes.

11 Q. Can you explain to me what you mean by
12 "necessary but not sufficient"?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. KUTIK: Friendly cross.

16 EXAMINER PRICE: I'll allow it.

17 MS. WILLIS: Thank you, your Honor.

18 EXAMINER PRICE: You're welcome.

19 A. Okay. So in general, if you want to
20 grant event A, you need conditions B, C, and D, all
21 right? So what the Commission is saying is B must be
22 satisfied, C must be satisfied, and D must be
23 satisfied to grant D; however, there could be others,
24 E, F, G, H conditions.

25 Right now, those conditions the

1 Commission articulated in its opinion and order are
2 necessary for granting a PPA, but that doesn't mean
3 if the companies satisfy every single one of them,

4 A. That the Commission will grant the PPA.
5 That's why the sufficiency is not -- is a condition
6 actually.

7 MR. KUTIK: Are you done? Are you done,
8 sir?

9 THE WITNESS: Yes.

10 MR. KUTIK: I move to strike, your Honor,
11 both the question and answer as friendly cross.

12 EXAMINER PRICE: I am going to deny the
13 motion to strike.

14 MS. WILLIS: Thank you, your Honor.

15 Q. (By Ms. Willis) Now, Dr. Choueiki, you
16 list in your testimony starting on page 12 through 14
17 conditions or -- you list what you call "necessary
18 conditions for approval of the rider RRS under your
19 alternative approach." Do you see that?

20 A. I list what the concerns are.

21 Q. Oh, I'm sorry. It's later on in your
22 testimony that you identify starting on page 15
23 conditional terms, the staff's recommendation for
24 conditional terms, and it runs through 17, correct?

25 A. Yes.

1 Q. Okay. Now, with respect to the
2 conditional terms that you identify on pages 15
3 through 17, are those necessary concerns or are there
4 additional concerns that you would have as necessary
5 and sufficient conditions?

6 A. Okay. So I looked over the necessary
7 conditions that the Commission articulated, and then
8 I looked at the companies' application, and then I
9 articulated the concerns from the application to what
10 conditions are met, what conditions are not met. So
11 those would be the conditions that were not met from
12 the necessities.

13 Q. But from -- I guess my question really
14 goes to the sufficient -- sufficiency standard. Are
15 these the -- are these conditions that you set forth
16 in your alternative recommendation sufficient for the
17 Commission to approve the rider RRS under your
18 alternative recommendation?

19 A. No, I did not address the sufficiency.
20 The Commission may have three other concerns that I'm
21 not aware of, so those would be -- that's why in the
22 opinion and order it's made sure those were
23 necessary, but they are not bound by these
24 conditions. There could be more.

25 Q. Thank you. Now, going to page 11 of your

1 testimony, you indicate at the top that "One of the
2 necessary conditions identified that -- by the
3 Commission is an independent assessment of the impact
4 of the closure of a generating plant on grid
5 reliability and nonpricing." Do you see that?

6 A. Yes.

7 Q. Are you referring there to a study by an
8 independent third party selected by the PUCO?

9 MR. KUTIK: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: Friendly cross.

12 EXAMINER PRICE: Sustained.

13 MS. WILLIS: Your Honor, if I may be
14 heard.

15 EXAMINER PRICE: You may.

16 MS. WILLIS: This witness, Dr. Choueiki,
17 is recommending rider RRS be adopted. OCC is not in
18 any way, shape, or form recommending that there are
19 any modifications that would make rider RRS --

20 EXAMINER PRICE: You know, Ms. Willis --

21 MS. WILLIS: Yes.

22 EXAMINER PRICE: -- that's not my
23 recollection, and maybe I am wrong, but I thought
24 there was testimony by OCC witnesses on if the
25 Commission should proceed, there should be limits on

1 return on equity. There should be caps. Wasn't that
2 in one --

3 MS. WILLIS: Your Honor, I don't believe
4 that that's quite correct. Dr. -- Mr. Wilson
5 recommended a risk sharing mechanism if the PPA -- if
6 a PPA rider was to be adopted.

7 EXAMINER PRICE: That's what I was
8 referring to, thank you.

9 MS. WILLIS: But that is not a
10 recommendation. If you recall, your Honor, Dr. Rose
11 indicated there are legal obstacles and there is a
12 philosophical opposition to adopting that cannot be
13 overcome, those conditions cannot be overcome --

14 EXAMINER PRICE: Then why did your
15 witness recommend a risk sharing mechanism?

16 MS. WILLIS: So that the Commission has
17 before it alternative options.

18 EXAMINER PRICE: And that is what this
19 witness is doing exactly.

20 MS. WILLIS: But, your Honor, this
21 witness testifies that with the adoption of these
22 conditions, if that -- that rider RRS may be in the
23 public interest. OCC did not indicate in it -- as
24 its position that if you adopted risk sharing or you
25 adopted a rate of return, that that would be in the

1 public interest. We continue to believe it is not in
2 the public interest.

3 EXAMINER PRICE: You are making a
4 distinction without a difference.

5 MS. WILLIS: Your Honor, I would
6 respectfully disagree with that.

7 EXAMINER PRICE: I appreciate that.

8 MS. WILLIS: And I am not sure where we
9 are now.

10 EXAMINER PRICE: His objection is
11 sustained.

12 MS. WILLIS: Okay.

13 Q. (By Ms. Willis) Now, on page 11 of your
14 testimony, you indicate that it is possible that
15 rider RRS, if properly conceived, may be in the
16 public interest. Do you see that?

17 A. Yes.

18 Q. Can you explain to me what the public
19 interest is and how you define that?

20 A. The Commission will decide what's in the
21 public interest. I cannot. However, the Commission
22 did state in its opinion and order it may be in the
23 public interest. So I'm basically implementing
24 policy here.

25 Q. So you are repeating the Commission's

1 standard, and you do not have an independent opinion
2 of what -- what is meant by public interest as used
3 by the Commission?

4 A. That is correct.

5 Q. Do you know what the Commission meant
6 when you used the term that the RRS -- that it could
7 look at a determination whether the RRS was in the
8 public interest?

9 EXAMINER PRICE: Are you asking what was
10 in the Commissioners' minds?

11 MS. WILLIS: I'm asking if he understands
12 the term that was used by the Commission, yes, not in
13 their minds, but ...

14 Q. But do you understand what the Commission
15 meant by using the term "public interest" in respect
16 to the AEP PPA?

17 A. I understand the conditions that the
18 Commission listed in its opinion and order that those
19 conditions would need to be met for it to be in the
20 public interest, but I have no understanding of what
21 they meant by the public interest in that situation.

22 Q. Now, in your testimony at page 15, you
23 indicate that one of the conditional terms that you
24 recommend to the position -- to the PUCO if it adopts
25 rider RRS is a rigorous review of rider RRS. Do you

1 see that reference?

2 A. Yes.

3 Q. Is it your understanding that proposed
4 rider RRS -- let me strike that.

5 Is it your understanding that under rider
6 RRS as proposed by the utility, that expenses passed
7 through to customers could only be challenged at
8 FERC?

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

11 (Record read.)

12 A. So here is my understanding to the extent
13 the FES, the owner of the generation facilities,
14 bills the companies, and the companies agree to the
15 cost because the companies -- there is a committee
16 that reviews these costs. On that hand, to the
17 extent the company turns around and charges its
18 customers, then the Commission will look at the
19 arithmetic calculations, and to the extent the
20 Commission would like to disagree on specific costs,
21 then -- and deems them not prudent, then the company
22 is still stuck with these costs under the PPA. So
23 the Commission may disallow these costs; however, to
24 the extent the company is in financial trouble and we
25 need to challenge these -- these costs, we have to go

1 to FERC.

2 Q. Now, I want to follow up on your answer
3 there, if you give me a moment. More than a moment.

4 MS. WILLIS: Thank you, your Honor.

5 Q. (By Ms. Willis) Now, the audit that you
6 recommend, and I am going to direct your attention to
7 page 16 and actually it goes from 15 to 16, you talk
8 about an audit approach or a rigorous review of rider
9 RRS and full information sharing. Do you see
10 those --

11 A. Yes.

12 Q. -- those sections?

13 Under the -- under those conditions that
14 you put on rider RRS, would you be looking at market
15 participation and the behavior of FirstEnergy and
16 FirstEnergy Solutions?

17 MR. KUTIK: Well, I object. There is
18 nothing in the companies' proposal with respect to
19 looking at the behavior of FirstEnergy Solutions and
20 its behavior in the marketplace.

21 MS. WILLIS: That's what I am trying to
22 determine, how Dr. Choueiki --

23 EXAMINER PRICE: It's in this witness's
24 testimony. I will allow the question.

25 MS. WILLIS: Thank you, your Honor.

1 A. Okay. It's not in the companies'
2 application, that's correct. I am recommending --

3 Q. Yes.

4 A. -- that not only we look at the
5 companies', we look at FES. And not only do we look
6 at the two power plants that are -- three -- three,
7 OVEC, Davis-Besse, and Sammis, not only these power
8 plants but every power plant that is in FES's fleet.

9 Q. And you would be looking at -- can you
10 explain that a little further? You would be looking
11 at what with respect to those power plants?

12 A. Ensuring these power plants are not being
13 disadvantaged over others in the fleet.

14 Q. And how would they be disadvantaged over
15 others?

16 A. Examples could be in the bidding behavior
17 and fuel contract, you know, to the extent more
18 expensive contracts are on the power plants that are
19 being recovered through a PPA. So that will give us
20 a big picture instead of just looking through the
21 keyhole and making statements. I mean, right now,
22 there is not enough information for us to make sure
23 that power plants are not being disadvantaged over
24 others. And we would want FES to accept that
25 commitment, not the companies, FES.

1 Q. FES to accept a -- a commitment to share
2 information with respect to bidding strategy as well
3 as market participation of the FES units?

4 MR. KUTIK: At this point, your Honor, I
5 will object. Now we are into friendly cross.

6 EXAMINER PRICE: Ms. Grady?

7 MS. WILLIS: Your Honor, I am trying to
8 understand Dr. Choueiki's recommendations. I don't
9 think it's clear in his testimony that he's making
10 those specific recommendations, so I am trying to
11 draw that information out. It's a clarification.
12 These are clarification questions which are not
13 friendly cross.

14 MR. KUTIK: It is clarification of a
15 position which is consistent with Ms. Willis's
16 client's participation -- client's position in this
17 case, and it's consistent with this witness's, so
18 there is no adversity here.

19 EXAMINER PRICE: Sustained.

20 Q. (By Ms. Willis) Now, I would like to go
21 through a hypothetical with you, Dr. Choueiki. And
22 we sort of got there when you were several answers
23 ago, but I couldn't find my questions at that point,
24 so we are going to go through it again. The PUCO
25 approves rider RRS under the staff's conditional

1 recommendation, and that conditional recommendation
2 entails an audit and acceptance by the companies and
3 FES of the results of the audit. Are you following
4 me so far?

5 A. Yes.

6 Q. And FE accepts the PUCO's modification
7 and implements an ESP which includes rider RRS.
8 Let's further assume that FES approves a very
9 expensive environmental control for Sammis, and let's
10 assume it's a \$10 billion environmental control and
11 the Ohio Commission conducts an audit and does not
12 agree with the expenditure and the Ohio PUCO orders a
13 disallowance of that expenditure. Are you following
14 me so far?

15 A. Yes.

16 Q. Per the staff's conditional
17 recommendation, the companies and FES would have to
18 accept the disallowance; is that correct?

19 MR. KUTIK: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: Two, your Honor. First, it's
22 friendly cross. Second, there's no basis in the
23 record for this hypothetical that the companies would
24 be on the hook for, quote, \$10 billion of anything.

25 MS. WILLIS: It's a hypothetical,

1 Mr. Kutik.

2 MR. KUTIK: Even that, it assumes the
3 companies would have any burden or the customers
4 would have burden with respect to anything other than
5 depreciation that was set forth in the term sheet,
6 and it's also --

7 EXAMINER PRICE: I'll sustain the
8 objection on that ground.

9 MS. BOJKO: On which grounds, your Honor?

10 EXAMINER PRICE: It assumes facts that
11 are not in evidence. It misconstrues the testimony
12 we have heard so far.

13 MS. WILLIS: It's a hypothetical, your
14 Honor.

15 EXAMINER PRICE: I understand, but it's
16 based upon a fallacy. The fallacy, as Mr. Kutik has
17 pointed out, is they are not proposing to recover a
18 \$10 billion capital expense in one year. They are
19 simply proposing to collect the depreciation.

20 MS. WILLIS: We can change that, your
21 Honor. I can change my hypothetical.

22 Q. (By Ms. Willis) Let's assume in my
23 hypothetical, Dr. Choueiki, that the \$10 billion is
24 associated with depreciation expense and the
25 Commission then conducts an audit and does --

1 EXAMINER PRICE: Do you want a trillion
2 dollar scrubber?

3 Q. We can go down to 10 million. I thought
4 10 billion sounded really -- whatever amount. Let's
5 say we can reduce it to 10 million. We can say 10
6 million for the purposes. So we have a \$10 million
7 depreciation expense and the Ohio Commission conducts
8 an audit and doesn't agree with the level of that
9 expenditure and -- or level of that depreciation
10 expense and the PUCO orders that the \$10 million be
11 disallowed, okay? Are you following me so far?

12 A. I'm following.

13 Q. Per the staff's conditional
14 recommendation, the companies and FES would have to
15 accept that disallowance, is that correct, under your
16 conditions?

17 MR. KUTIK: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. KUTIK: Friendly.

20 EXAMINER PRICE: I'll allow it.

21 A. Okay. So FES -- yeah, under our
22 condition, under staff's recommended condition,
23 basically if FES wants to spend that money --

24 EXAMINER PRICE: One second. I want to
25 follow up. I'm still not sure that your hypothetical

1 makes sense. I followed you up until the Commission
2 order.

3 MS. WILLIS: Yes.

4 EXAMINER PRICE: Now, when you say
5 Commission order, do you mean a final, non-appealable
6 order, or are you saying they don't get the free
7 rehearing, they don't get an appeal, they just have
8 to accept it?

9 MS. WILLIS: I'm not sure, your Honor,
10 that that makes a difference for purposes of my
11 questioning, but if you would like me to put a
12 condition on it, I would be happy to if you will
13 allow the witness to answer.

14 EXAMINER PRICE: Well, we are not
15 bargaining, but I do think it makes sense to be clear
16 whether you're -- whether you are asking him whether
17 they have a state court appeal or not. Do you
18 understand what I am saying?

19 MS. WILLIS: I'm not sure that I do.

20 EXAMINER PRICE: If the Commission issues
21 an order, they can ask for a rehearing. If they are
22 dissatisfied with the rehearing, they can take it to
23 the Supreme Court. It's not clear to me that you
24 are -- your hypothetical includes that part of the
25 process or you are simply saying they have to accept

1 the Commission order or they get no state court
2 appeal.

3 MS. WILLIS: I guess it really goes to
4 Dr. Choueiki's testimony. He does testify that --
5 and I believe the gist of his testimony is that the
6 FES and the companies would have to accept the --
7 what the Commission determined was a disallowance of
8 the depreciation expense and so --

9 EXAMINER PRICE: But he is a systems
10 engineer, not a lawyer. That's not a question.
11 Jurisdiction is not within his realm of expertise.
12 So are you asking him on a nonlegal basis?

13 Q. (By Ms. Willis) On a nonlegal basis based
14 upon your recommendation.

15 EXAMINER PRICE: Okay.

16 THE WITNESS: May I answer?

17 EXAMINER PRICE: You can answer.

18 MR. KUTIK: Well, I guess, your Honor, I
19 am not sure what the question to the witness is at
20 this point.

21 EXAMINER PRICE: I think we are just --
22 at Ms. Willis's request, we are ignoring my entire
23 dissertation there, and he can answer the question
24 she has posed.

25 A. What I intended is not to take away all

1 the companies' rights to appeal a Commission order.
2 So in my mind, it would be -- and in staff's mind, it
3 would be the final decision. That is the official
4 decision after they have taken it all the way to the
5 Ohio Supreme Court.

6 Q. So they take it all the way to the Ohio
7 Supreme Court, they lose, we are going to assume in
8 my hypothetical, would the companies and FES --

9 MR. KUTIK: This is really speculative.

10 Q. -- have to accept the disallowance?

11 A. Yes. Actually, it's FES -- the
12 companies -- the companies should be, since they are
13 revenue neutral, in staff's mind they should be risk
14 neutral. That means with or without a PPA, the level
15 of risk on the companies that we regulate, that the
16 Commission regulates, does not change.

17 Q. Okay. So under your recommendation, FE
18 would not have to pay FES the \$9 million -- I think
19 we said \$9 million depreciation disallowance,
20 correct?

21 A. It was 10 million.

22 Q. 10 million.

23 A. Yes. So basically the FES wouldn't bill
24 the companies the \$10 million.

25 Q. So in that hypothetical, where would the

1 loss be recorded? Would it be recorded at the
2 distribution company level or at FES's level?

3 A. The distribution company is risk neutral
4 and revenue neutral, so nothing gets recorded on the
5 distribution side. It will be FES.

6 EXAMINER PRICE: Dr. Choueiki, your
7 recommendation is at this point, according to the
8 evidence we heard so far, the company bears the
9 disallowance risk. Your recommendation is the
10 Commission modify the ESP so the Commission -- so the
11 company no longer bears a disallowance risk; is that
12 correct?

13 A. That is correct.

14 EXAMINER PRICE: Thank you.

15 MS. WILLIS: Thank you, your Honor. Your
16 Honor, if I may have 5 minutes to regroup and see if
17 there is anything further.

18 EXAMINER PRICE: You may. It's time for
19 a break. Let's go off the record for 5 minutes.

20 (Recess taken.)

21 EXAMINER PRICE: Let's go back on the
22 record.

23 Ms. Willis.

24 MS. WILLIS: Thank you, your Honor.

25 Q. (By Ms. Willis) Good afternoon now,

1 Dr. Choueiki.

2 A. Good afternoon.

3 Q. Now, under the staff's alternative
4 recommendation, you indicate that one of the
5 conditional terms is limiting the term of rider RRS,
6 and do you see that reference on page 15, lines 11
7 through 13?

8 A. Yes.

9 Q. Is it your understanding that if the term
10 of the rider RRS is no longer than the term of the
11 ESP IV, that according to the companies' calculation,
12 the cost, the net cost to customers, will be
13 \$420 million?

14 MR. KUTIK: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. KUTIK: Friendly cross.

17 EXAMINER PRICE: Sustained.

18 Q. Let's go to the severability provision
19 which you discuss on page 17, lines 7 through 9. You
20 indicate there that "The companies would have to
21 commit to a severability provision should a court of
22 competent jurisdiction invalidate rider RRS in whole
23 or in part." Do you see that reference?

24 A. Yes.

25 Q. Can you tell me if the challenge that is

1 made in a court of competent jurisdiction is
2 successful, how the severability provision works?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. KUTIK: Friendly cross.

6 EXAMINER PRICE: Overruled. In your mind
7 as a nonlawyer.

8 A. Exactly, it would be in my mind. I don't
9 generalize that about anyone else.

10 Q. I appreciate that.

11 A. It is -- actually that means the ESP will
12 continue with nothing changing. It's not like the
13 companies can come in and say, "Oh, then we pull the
14 ESP."

15 Q. I guess my question really meant -- went
16 toward what happens to the customers who have paid
17 rider RRS. Let's say they have paid \$420 million for
18 three years, and in year three and a half years out,
19 the court of competent jurisdiction invalidates the
20 rider. Under your approach, what happens to the
21 ratepayer's contribution during that period?

22 MR. McNAMEE: Objection.

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds, Mr. McNamee?

25 MR. McNAMEE: I would say it's very

1 clearly a Keco application question. It's a legal
2 matter, and this witness is not a lawyer.

3 EXAMINER PRICE: Mr. Kutik?

4 MR. KUTIK: I had the same thought.

5 MS. WILLIS: I am not asking for a legal
6 opinion. I am asking under his severability
7 provision that he has included as a term of the
8 staff's alternative approach what would happen.

9 EXAMINER PRICE: Well, he gave you his
10 definition what would happen under the severability
11 provision, but I do think you asked him a Keco
12 question, and the objection will be sustained.

13 Q. (By Ms. Willis) Under the staff's
14 alternative approach, you -- you have conditions
15 listed on page 15 through 17. Do you have any
16 conditions that address the subsidy between -- the
17 subsidy that customers will be provided under the
18 alternative approach?

19 MR. KUTIK: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: Friendly cross and
22 argumentative.

23 EXAMINER PRICE: I am going to overrule
24 the objection. You can answer.

25 A. So it depends. I mean, those conditions

1 are all in total and there may be others together
2 that the subsidies may be outweighed by other
3 benefits to the public, to the consumer. So I'm not
4 going to say, you know, whether the subsidies alone.
5 I won't answer the question alone because it's
6 actually a set of conditions, all of them, plus
7 whatever the Commission deems appropriate to add.
8 All of them have to be together where they are in the
9 public's interest.

10 Q. And so under your conditions, under the
11 staff's alternative recommendation, would you agree
12 with me that customers would be subsidizing the
13 generation units, Sammis and Davis-Besse?

14 EXAMINER PRICE: Ms. Willis, it's always
15 your follow-up ones that go right into friendly
16 cross. That's friendly. The question will be
17 disallowed.

18 Q. Dr. Choueiki, would you agree that under
19 the staff's alternative recommendation, you do not
20 address a condition -- let me strike that. Would you
21 agree under the staff's alternative recommendation,
22 that the PUCO would be authorizing the utility to
23 sell insurance to the end user when the end user may
24 not want it?

25 A. If the Commission grants the PPA, that

1 means -- that means it deemed it was in the public
2 interest. Now, the product is an insurance that
3 everyone has to pay. It's an insurance, a financial
4 hedge, that everyone has to pay.

5 Q. And it's an involuntary financial hedge;
6 is that correct?

7 A. It's not bypassable to everyone.

8 Q. Is it your opinion it is appropriate to
9 collect a generation-related charge through a
10 nonbypassable rider?

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

13 EXAMINER PRICE: You may.

14 (Record read.)

15 MR. KUTIK: Objection to the extent it
16 calls for a legal conclusion.

17 EXAMINER PRICE: Sustained.

18 Q. Is it your understanding that customers
19 may have already provided their own hedge by entering
20 into fixed rate contracts or long-term contracts with
21 CRES providers?

22 MR. KUTIK: I'll object.

23 EXAMINER PRICE: Can I have the question
24 back?

25 (Record read.)

1 EXAMINER PRICE: Grounds, Mr. Kutik?

2 MR. KUTIK: Friendly.

3 EXAMINER PRICE: Sustained.

4 Q. (By Ms. Willis) Under the staff's
5 alternative's recommendation, you talk -- or you have
6 as a condition a sharing mechanism of the risks
7 associated with rider RRS. Do you see that
8 testimony?

9 A. Yes.

10 Q. Do you believe that under the staff's
11 alternative recommendation that the risks of FE's
12 Sammis and Davis-Besse units is being shifted to
13 customers?

14 A. So as -- as -- as filed by the company,
15 the risk is with the customers.

16 Q. And you are attempting to -- by including
17 the condition of risk, of a sharing mechanism of
18 risks, you are attempting to counterbalance the risk
19 sharing; is that correct?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Friendly.

23 EXAMINER PRICE: Ms. Grady?

24 MS. WILLIS: Your Honor, I am trying to
25 understand the terms of his sharing mechanism that's

1 presented as his alternative recommendation. I don't
2 believe it's friendly cross.

3 MR. KUTIK: It sounds like she is trying
4 to support the grounds for the alternative proposal,
5 your Honor.

6 MS. WILLIS: Well, your Honor, we do not
7 support the alternative proposal as in our filed
8 position says. We are philosophically opposed to
9 RRS.

10 EXAMINER PRICE: Mr. Wilson had a risk
11 sharing mechanism.

12 MS. WILLIS: That's correct, your Honor.
13 It is not the same risk sharing mechanism. It is
14 different, and it is not a primary proposal.

15 MR. KUTIK: Neither is Dr. Choueiki's.

16 EXAMINER PRICE: Nor is Dr. Choueiki's.
17 Sustained. Now, if you want to ask him questions
18 that relate to why Mr. Wilson's risk sharing
19 mechanism is superior to his, that would not be
20 friendly cross.

21 MS. WILLIS: I appreciate the suggestion,
22 your Honor, but I may not take you up on that one.

23 EXAMINER PRICE: I am just trying to
24 help.

25 MS. WILLIS: Understood. I have no

1 further questions.

2 Thank you, Dr. Choueiki.

3 EXAMINER PRICE: Thank you. Let's work
4 our way up.

5 Mr. Kurtz?

6 MR. KURTZ: I do want to clarify.

7 MR. KUTIK: Well, your Honor, might it be
8 more appropriate for the signatory parties to go
9 after the nonsignatory parties?

10 EXAMINER PRICE: Well, that's probably
11 fair.

12 Mr. Stinson?

13 MR. STINSON: No questions, your Honor.

14 EXAMINER PRICE: Mr. Settineri?

15 MR. SETTINERI: No questions, your Honor.

16 EXAMINER PRICE: Ms. Henry?

17 MS. HENRY: No questions, your Honor.

18 EXAMINER PRICE: Ms. Fleisher?

19 MS. FLEISHER: No questions, your Honor.

20 EXAMINER PRICE: Ms. Bojko?

21 MS. BOJKO: Yes, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Bojko:

25 Q. Thank you. In light of the Bench's

1 rulings, I just have a few follow-up questions
2 regarding the alternative approach, and I'll note
3 that OMAEG in no way recommended an alternative
4 approach or supports an alternative approach.

5 Mr. Choueiki, could we -- I am going to
6 focus on the three recommendations starting on the
7 bottom of page 15 to 16, and I think you said this in
8 response to the first recommendation of rigorous
9 review or the Bench stated it for you, but just so
10 the record is clear, with regard to your alternative
11 approaches, specifically the three that reference
12 FES, you are not providing a legal opinion today on
13 whether this method -- whether these alternatives are
14 legally possible; is that correct?

15 A. That is correct.

16 Q. Okay. And in your regulatory opinion, do
17 you believe that the Commission has existing
18 authority to order FES to accept audit findings which
19 is in one of your recommendations?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Friendly cross.

23 EXAMINER PRICE: Ms. Bojko?

24 MS. BOJKO: Your Honor, this is in no way
25 friendly cross. We are allowed to challenge the

1 alternatives that he put before the Commission and to
2 say whether these are even possible for the
3 Commission's consideration.

4 EXAMINER PRICE: Okay. I'll allow it.

5 MS. BOJKO: Thank you.

6 A. FES would have to accept it. The
7 Commission does not have authority in my nonlegal
8 mind to order FES for this. FES would have to
9 upfront agree to it.

10 Q. Okay. And would your response be the
11 same with regard to the next recommendation regarding
12 providing staff access to information or the
13 Commission access to information?

14 A. Yes. FES would have to agree to these
15 conditions.

16 Q. And would your response be the same with
17 regard to the last bullet on page 16 with regard to
18 the sharing of risk?

19 A. That is correct. FES would have to agree
20 to carry part of the risk, not the companies.

21 Q. And, sir, in your regulatory experience,
22 is it your understanding that except for consumer
23 protections with regard to retail shopping, that the
24 Commission does not currently regulate FirstEnergy
25 Solutions?

1 MR. KUTIK: May I have the question read,
2 please?

3 EXAMINER PRICE: Please.

4 (Record read.)

5 A. That's correct, the Commission does not
6 regulate FirstEnergy Solutions.

7 Q. And so you said that FirstEnergy
8 Solutions would have to accept these things, but do
9 you believe that FirstEnergy Solutions would have to
10 subject itself to the Commission's jurisdiction?

11 A. No. In -- in our mind, it will be FES --
12 the contract between the companies and FES would have
13 to address that.

14 Q. Okay. And in response to the Examiner
15 Price's question, he said that your recommendation is
16 to modify the ESP, but in reality, the actual PPA
17 contract between the -- the companies and FirstEnergy
18 Solutions would have to be modified; is that correct?

19 A. That is correct.

20 Q. And on the last bullet regarding the risk
21 associated, does your alternative methodology
22 eliminate the risk to customers?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: Friendly cross.

1 EXAMINER PRICE: Overruled.

2 A. It shares the risk. It doesn't eliminate
3 the risk. It shares it.

4 MS. BOJKO: And, your Honor, I have no
5 further questions, but I would like to support the
6 proffer of Dr. Choueiki's testimony in the other two
7 prior ESPs. I think that our position on prior
8 testimony, as well as you may hear from Mr. Kutik,
9 are maybe a little different than the Bench's, and we
10 would like to join in that proffer.

11 EXAMINER PRICE: I guess I am not sure
12 what you mean, but okay. It's noted for the record.

13 MS. BOJKO: I don't think you want me to
14 reask the same questions or go through and get the
15 same objections, so that's why I am joining in, but I
16 had the same questions.

17 EXAMINER PRICE: Okay. Fair enough.

18 MS. BOJKO: Okay. Thank you, your Honor.
19 Thank you, Dr. Choueiki.

20 EXAMINER PRICE: Mr. O'Brien?

21 MR. O'BRIEN: No question, your Honor.

22 EXAMINER PRICE: Mr. Hays?

23 MR. HAYS: No questions, your Honor.

24 EXAMINER PRICE: Mr. Royer?

25 MR. ROYER: Thank you, your Honor, just a

1 couple.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Royer:

5 Q. Good afternoon, Mr. Choueiki.

6 A. Good afternoon.

7 Q. Just a couple of questions. Am I correct
8 even under the most optimistic forecast scenarios
9 offered in this case, that the likelihood that within
10 the three years of the ESP, that the -- the rider
11 will generate a net benefit to customers is
12 essentially zero?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. KUTIK: Friendly.

16 EXAMINER PRICE: Sustained.

17 MR. ROYER: I didn't hear --

18 EXAMINER PRICE: Friendly cross.

19 MR. BOYER: I'm setting a foundation for
20 asking why he's trying to eliminate three years when
21 there's no benefit to the customer from a financial
22 standpoint over that time. That is certainly a fair
23 question.

24 EXAMINER PRICE: Why don't you pose it
25 that way.

1 MR. ROYER: Well, I had to ask him and
2 set up the question, right?

3 EXAMINER PRICE: Well, actually the
4 testimony is -- I mean, the projections are what they
5 are, and they are in the record.

6 Q. (By Mr. Royer) If the projections show
7 that there is no net benefit -- no net financial
8 benefit to customers over the initial three years of
9 the ESP of the -- of the rider, what is the basis for
10 your recommendation that the rider should be cut off
11 at the end of three years?

12 A. Because I'm not sure -- I have zero --
13 the level of comfort and the forecast past three
14 years, the error on uncertainty is over a hundred
15 percent in my mind that I -- although there might be
16 a cost the first three years, I see more danger in
17 future years. So I'm not weighing anything on the
18 credits that would be -- would show up in the future.
19 So I am limiting the exposure by three years.

20 Q. All right. Thank you. So by the same
21 token then, when you looked at the considerations
22 that the Commission set out in the orders in AEP and
23 Duke, did you pay any attention to the findings that
24 the Commission -- of the Commission, that the
25 likelihood it was very unlikely there would be a

1 benefit in the first three years of those riders and
2 that any benefit would -- any possible benefit would
3 only come on the out years of the rider?

4 MR. KUTIK: Friendly cross, your Honor.

5 EXAMINER PRICE: I overruled it. I
6 overruled it.

7 Q. (By Mr. Royer) Okay. Thank you.

8 A. I don't recall the Commission saying that
9 the benefits of the riders in the previous two orders
10 come later on. I recall the Commission saying that
11 the rider is not in the public interest as filed.

12 Q. Okay. Well, if you will indulge me, and
13 if you accept, subject to check, I am quoting from
14 page 24 of the AEP opinion where the Commission
15 states, "On balance, the record reflects that during
16 the three-year period of the ESP, the PPA rider would
17 in all likelihood result in a net cost to customers
18 and that only over a longer timeframe would customers
19 perhaps benefit from a credit under the rider." Do
20 you recall that language?

21 A. You just reminded me that perhaps makes a
22 lot of sense in my mind because basically what they
23 are saying is the forecast, if they are wrong, then
24 it could be even worse.

25 Q. Right. Exactly.

1 A. But it could be right too.

2 Q. Okay. When you read the order in these
3 cases in preparing your testimony, you gave no
4 consideration -- you don't think it's important to
5 consider whether the -- whether the projections show
6 that the rider will produce any net financial benefit
7 to the customers, and you are simply looking at these
8 other considerations that the Commission should take
9 into account in any event?

10 A. Okay. So in my mind, the first three
11 years I can give you a forecast within plus or minus
12 3 percent. My group does that all the time, and I
13 commend them on that. Their accuracy is very well in
14 predicting SSO clearing prices. The minute you go
15 past or we don't know anything about what their
16 transparent capacity price is, the error goes up by
17 100 percent. So I am not willing to go past that.

18 MR. ROYER: Thank you very much.

19 EXAMINER PRICE: Mr. Stinson?

20 MR. STINSON: No.

21 EXAMINER PRICE: Mr. Lavanga?

22 MR. LAVANGA: No questions.

23 EXAMINER PRICE: Mr. Randazzo?

24 MR. RANDAZZO: No, your Honor.

25 EXAMINER PRICE: Mr. Kurtz?

1 MR. KURTZ: I have no cross.

2 EXAMINER PRICE: Mr. Kutik?

3 MR. KUTIK: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Kutik:

7 Q. Good afternoon, Doctor. Would it be fair
8 to say, Dr. Choueiki, that you are philosophically
9 opposed to riders like rider RRS?

10 A. Me personally? That's not staff's
11 position?

12 Q. You personally.

13 A. I represent staff.

14 MR. McNAMEE: Object.

15 Q. You personally, sir.

16 EXAMINER PRICE: Grounds?

17 MR. McNAMEE: I object. His personal
18 opinions doesn't matter. He's testifying as a
19 representative of the staff and in that capacity
20 alone.

21 EXAMINER PRICE: Sustained.

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

23 EXAMINER PRICE: You may.

24 MR. KUTIK: Your Honor, we believe that
25 Mr. -- Dr. Choueiki's interpretations of the AEP

1 order are influenced by his personal philosophy, and
2 that that's fair game for us to explore.

3 EXAMINER PRICE: Mr. McNamee, care to
4 respond?

5 MR. McNAMEE: He is here simply to
6 represent the staff's position. The staff's position
7 is laid out in this testimony. He's -- he's already
8 indicated that he has adjusted prior positions to
9 reflect the Commission policy. His -- his personal
10 opinions, if he has any, just don't matter.

11 EXAMINER PRICE: I have no idea what the
12 staff's review procedure is for developing
13 Dr. Choueiki's testimony, but I'm sure it's thorough
14 and that his testimony reflects the collective wisdom
15 of the staff rather than his own personal opinions,
16 and so I will sustain the objection.

17 Q. (By Mr. Kutik) Isn't it true, sir, you
18 indicated in the AEP case that you were
19 philosophically opposed to the rider that was
20 proposed in the PPA rider?

21 A. Staff was opposed philosophically until
22 the Commission spoke in the AEP orders.

23 Q. Didn't you say that you were
24 philosophically opposed?

25 A. Any time I am taking the witness stand,

1 if I say "I," it's staff. It's not I.

2 Q. Well, didn't you use the word "I" in
3 this?

4 A. I may have.

5 MR. McNAMEE: Object.

6 EXAMINER PRICE: Grounds?

7 MR. McNAMEE: He has already answered
8 this question. This is merely argumentative.

9 MS. WILLIS: Your Honor, if I may also be
10 heard. I believe your Honor's ruling against using
11 the filed testimony was that it was not fair to the
12 staff to allow that -- us to ask questions on filed
13 testimony. This is just another extension of that.
14 So to be consistent, this line of questioning should
15 also be excluded.

16 EXAMINER PRICE: And Mr. Kutik noted his
17 objections to my ruling. Nonetheless, I am going to
18 sustain Mr. McNamee's objection.

19 MR. KUTIK: Your Honor, and the grounds
20 was what that you are sustaining it on?

21 EXAMINER PRICE: Well, number one, the
22 witness already answered your question. He said when
23 he said "I," he was speaking in terms of the -- I
24 suppose it might have been more appropriate to say
25 "we" but he spoke and he said he intended to say that

1 "I" is the speaking on behalf of the staff, and he
2 already gave you that answer, so there's no need to
3 follow up.

4 MR. KUTIK: Well, I guess, your Honor,
5 what I heard was "when I speak on the stand, I speak
6 for the staff." My question was didn't you use the
7 word "I?" That's a different question.

8 MR. McNAMEE: He already said --

9 EXAMINER PRICE: Okay. I will allow that
10 question, and then we will move on. Did you use the
11 word "I," Dr. Choueiki?

12 Q. When you are talking about the
13 philosophical opposition to rider PPA in the AEP
14 case.

15 THE WITNESS: Your Honor, any one of us
16 whenever we are here representing staff, and
17 sometimes we often make a mistake when we say "I,"
18 but it's always staff's position.

19 EXAMINER PRICE: Because saying "we"
20 would sound odd as if you were using the royal "we."

21 THE WITNESS: That's correct.

22 MR. KUTIK: Well, I don't know that I got
23 an answer to my question.

24 Q. Didn't you use the word "I"?

25 A. When? Refresh my memory. When did I use

1 the word "I"?

2 Q. Didn't you use the word "I" when
3 referring to your philosophical opposition to rider
4 PPA in the AEP ESP case?

5 A. I --

6 MR. McNAMEE: Objection.

7 EXAMINER PRICE: Grounds?

8 MR. McNAMEE: Again, the question is
9 assuming he has a philosophical position here and
10 that is not relevant to --

11 EXAMINER PRICE: I think we are spending
12 a lot of time on a very minor point that has no
13 probative value. Dr. Choueiki, can you simply answer
14 whether it was possible you used the word "I" in the
15 sentence where you used philosophical opposition?

16 THE WITNESS: I may have. I don't
17 remember.

18 EXAMINER PRICE: He doesn't remember.

19 THE WITNESS: I may have.

20 MR. KUTIK: May I refresh him, your
21 Honor?

22 EXAMINER PRICE: You may refresh. Please
23 proceed, Mr. Kutik.

24 MR. KUTIK: Yes, your Honor. Thank you.

25 Q. (By Mr. Kutik) Let me refer you, sir, to

1 page 20 -- well, first I have handed you, have I not,
2 Volume XXII from the AEP ESP transcript?

3 A. Yes.

4 Q. And let me refer you to page 2854. Are
5 you there, sir?

6 A. Not yet. Okay.

7 Q. You were asked this question at line 20.
8 "Question: Okay. And the same on reliability. If
9 you knew an expanded PPA would add an additional
10 layer of reliability in addition to feathering and
11 layering the auction, you would still philosophically
12 oppose an expanded PPA?

13 "Answer: I disagree with that completely
14 because I don't think an additional PPA brings us the
15 reliability. Reliability is not in the hands of the
16 EDU. Reliability is not in the hands of PJM." The
17 plan for reliability, Ohio Power no longer procures
18 capacity for its load starting June 1, 2015, correct?

19 A. Correct.

20 MR. McNAMEE: Object.

21 EXAMINER PRICE: Grounds?

22 MR. McNAMEE: We have already gone
23 through an explanation of what his role and indeed
24 what any witness staff's role is when they get on the
25 stand. They represent the staff's position, that's

1 what they represent. We've already gone through the
2 exercise of explaining from time to time a staff
3 witness will mistakenly say "I" when they mean to say
4 "we." There is no probative value to this.

5 EXAMINER PRICE: I understand your
6 objection, but I think Mr. Kutik has made his point,
7 and I think we need to move on.

8 MR. KUTIK: Your Honor, I would like to
9 show him one more document on this line. I would
10 like to show him his testimony from the DEO ESP.

11 MR. SETTINERI: Your Honor, I thought
12 these documents were being used to refresh his
13 recollection. I didn't hear a question after the
14 last time that went to refreshing -- or asking if he
15 refreshes his recollection.

16 MR. KUTIK: I am just trying to shortcut
17 this, your Honor, given your rulings, that's all.

18 EXAMINER PRICE: I mean, there's no -- he
19 has -- where are we on the record on this?

20 MR. KUTIK: Let me just ask the question.

21 EXAMINER PRICE: Why don't you ask the
22 question, yes.

23 Q. (By Mr. Kutik) Dr. Choueiki, do you
24 recall using the word "I" in discussing a
25 philosophical objection to the PPA rider proposal in

1 the Duke Energy ESP case?

2 A. I may have. I don't recall exactly what
3 I said in the Duke case.

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

5 EXAMINER PRICE: You may.

6 Q. Dr. Choueiki, let me hand you Volume XII
7 from the Duke Energy Ohio, Case No. 14-841. Let me
8 refer you, sir, to page 3431. Strike that. I'll
9 just move on.

10 Now, is it your view, sir, that --

11 A. I'm sorry?

12 Q. Yes, I am moving on.

13 EXAMINER PRICE: He is moving on.

14 THE WITNESS: Oh, okay.

15 Q. Isn't it true, sir, that even if you knew
16 for certain that rider RRS -- that the rider was
17 going to result in a credit on customers' bills, you
18 would still oppose rider RRS?

19 MS. WILLIS: Objection.

20 EXAMINER PRICE: Grounds?

21 MS. WILLIS: Your Honor, he is reading
22 from the transcript of -- that Mr. Choueiki testified
23 in the cases. He is reading from one of the
24 transcripts. This is the same information that I
25 tried to get into through direct -- by putting his

1 exhibits -- Mr. Choueiki's testimony as -- marking
2 them as exhibits. Your Honor shut down the
3 cross-examination that I had on the basis that it was
4 unfair given that the Commission had issued a ruling
5 and that the witness -- it would be unfair to
6 cross-examine the witness on those prior statements
7 that were made with respect to his testimony on rider
8 RRS. I believe to be consistent this line of
9 cross-examination should not be allowed.

10 MR. KUTIK: Well, to be clear, your
11 Honor, I am reading again from my notes.

12 EXAMINER PRICE: Which I suspected.
13 Mr. McNamee, do you have a --

14 MR. McNAMEE: No. I have nothing to add.

15 EXAMINER PRICE: Okay. He doesn't have
16 an exhibit. We will go ahead and allow the question.
17 He is not trying to introduce an exhibit here. We
18 will allow the question.

19 MS. BOJKO: May I have the question,
20 please?

21 EXAMINER PRICE: You may.

22 (Record read.)

23 A. Okay. Staff -- Staff's position right
24 now is the Commission has already expressed its
25 opinion in its opinion and order stating that a

1 rider, a PPA rider, may be in the public interest.

2 So with that in mind, it's no longer the
3 case that just if you are to look at what rider --
4 even if rider RRS is a credit, the Commission has
5 expressed that the rider -- a PPA associated rider
6 could be in the public interest.

7 Q. All right. So I'm not sure you answered
8 my question. Would you oppose rider RRS if you knew
9 for certain that the rider was going to result in a
10 credit on customers' bills?

11 A. We are.

12 EXAMINER PRICE: I think he answered the
13 question, Mr. Kutik. He gave you the response to
14 your question. Let's move on.

15 MR. KUTIK: I'm sorry, your Honor, I
16 don't know what his answer is. Was it "yes"? Was it
17 "no"?

18 EXAMINER PRICE: His answer was there are
19 times that the Commission has determined that it
20 might be in the public interest and that might be one
21 of those times.

22 MR. KUTIK: Well, I don't believe he
23 addressed my question. I think he said generally
24 that might be the case, but now I am asking him
25 specifically.

1 MR. McNAMEE: And I think he has already
2 answered that.

3 EXAMINER PRICE: He already answered
4 that.

5 MR. McNAMEE: It depends.

6 EXAMINER PRICE: I agree. Asked and
7 answered.

8 Q. (By Mr. Kutik) If you knew for certain
9 Mr. -- Dr. Choueiki, that rider RRS would provide
10 additional stability to customer rates in addition to
11 the feathering and layering, would you still oppose
12 rider RRS?

13 MS. BOJKO: Objection.

14 EXAMINER PRICE: Grounds?

15 MS. BOJKO: Well, the question is trying
16 to elicit friendly cross. If that's what he is
17 getting at, he is eliciting friendly cross.

18 EXAMINER PRICE: I don't think -- I don't
19 think it was friendly at all.

20 MR. KUTIK: I don't know what universe
21 that is, your Honor. I don't know.

22 MS. BOJKO: It's friendly cross.

23 MS. FLEISHER: I have an additional
24 objection. Incomplete hypothetical, you know,
25 stability may come at a cost or there might be other

1 impacts and so.

2 MR. KUTIK: Certainly this witness can
3 qualify his answer as you allowed him to do.

4 EXAMINER PRICE: You can answer the
5 question.

6 A. If the -- if the companies and FES
7 guarantee with 100 hundred probability that there
8 will be a credit, that's different than the way it's
9 applied right now.

10 Q. That's not my question. My question is,
11 if you knew for certain that rider RRS would
12 improve -- would provide additional stability to
13 consumer rates, in addition to feathering and
14 layering, would you still oppose rider RRS?

15 A. If that's the only condition, yes, I
16 would oppose it.

17 MS. BOJKO: Objection. Your Honor, I
18 move to strike the question and response just as you
19 did for Dr. Hill when the question posed ended up
20 eliciting friendly -- a friendly response, you struck
21 it.

22 EXAMINER PRICE: I don't think there is
23 anything friendly about Mr. Kutik's cross-examination
24 today.

25 MS. BOJKO: I disagree.

1 MR. KUTIK: Nor was his answer friendly,
2 your Honor.

3 EXAMINER PRICE: Nor was his answer
4 friendly.

5 MR. SETTINERI: Your Honor, I couldn't
6 hear the last part of the answer. Could we have that
7 reread?

8 EXAMINER PRICE: Yes. Let's have the
9 answer back again.

10 (Record read.)

11 MS. BOJKO: Sorry, I misheard the
12 response, your Honor. I withdraw my motion.

13 Q. (By Mr. Kutik) And with respect to
14 this -- the question about certainty of credit,
15 wasn't the staff's position in the AEP case and your
16 position in the AEP case that you would oppose the
17 rider PPA in that case even if you knew for certain
18 that the rider would result in a credit?

19 MR. McNAMEE: I object.

20 EXAMINER PRICE: Grounds?

21 MR. McNAMEE: This goes to attempting to
22 put this witness in a difficult position because he
23 is doing his job.

24 MR. KUTIK: Your Honor, I don't think
25 staff gets a pass because they have changed their

1 position case to case even if it's based upon the
2 Commission's decision.

3 EXAMINER PRICE: And yet when Mr. Scheck
4 didn't change his position case to case, you brought
5 out -- you and the other intervenors brought out
6 other instances where the Commission disagreed with
7 Mr. Scheck which is exactly the impossible situation
8 that Mr. McNamee is referring to.

9 Mr. -- Dr. Choueiki is following the
10 broad guidance, policy guidance of the Commission,
11 and that's all he is doing in his testimony. The
12 objection is sustained. You're impeaching -- you are
13 attempting to impeach a witness for something that is
14 not impeachable. How's that?

15 Q. Dr. Choueiki, with regard to RPM, would
16 you agree that there have been aspects of the rules
17 that have led to price suppression?

18 A. Previously, yes.

19 Q. Those issues that you are thinking of,
20 they may have led or might actually have led to
21 premature economic -- uneconomic retirements,
22 correct?

23 A. I am not quite sure. Economic
24 retirements probably came based on environmental
25 compliance or inefficiencies of power plants rather

1 than because of like demand response or imports into
2 PJM.

3 Q. Well, isn't it true, sir, that the
4 Commission has taken the position that there have
5 been aspects of the rules that have led to price
6 suppression that may lead to premature and
7 uneconomical retirements?

8 A. It could have. I mean, the Commission
9 could have taken that position --

10 Q. Okay.

11 A. -- in filing at FERC.

12 Q. Is it your recollection they, in fact,
13 did take that position?

14 A. You would have to refresh my
15 recollection, certainly, sir.

16 MR. KUTIK: May I approach?

17 EXAMINER PRICE: You may.

18 MR. KUTIK: Your Honor, I would like to
19 have marked at this time as Company Exhibit 29 --
20 129, excuse me, a document entitled, "Comments
21 Submitted on Behalf of the Public Utilities
22 Commission" in the docket for the Federal Energy
23 Regulatory Commission Docket No. ADE14-8-000.

24 EXAMINER PRICE: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MS. FLEISHER: Are there any copies for
2 the intervenors?

3 Q. Dr. Choueiki, have you seen this before?

4 EXAMINER PRICE: Mr. Kutik, do you
5 have -- oh, thank you. They are working their way
6 down that way. Sorry to interrupt.

7 Q. (By Mr. Kutik) Have you seen this before,
8 sir?

9 A. I believe so.

10 Q. In fact, you were shown this in the AEP
11 ESP hearing; were you not?

12 A. I can't recall.

13 Q. Well, you see that little AEP sticker at
14 the top?

15 A. Yes.

16 Q. Does that refresh your recollection?

17 A. I still can't recall.

18 Q. All right. Let me have you look to page
19 6.

20 MS. BOJKO: Are there additional copies,
21 your Honor?

22 MR. KUTIK: These are all the copies I
23 have, your Honor. They can share.

24 MR. HAYS: Thank you.

25 EXAMINER PRICE: The Bench will share.

1 MR. HAYS: No, I'm fine, your Honor.

2 EXAMINER PRICE: No, it's fine.

3 MR. HAYS: It was merely a response to
4 the guy I gave cookies to this morning.

5 EXAMINER PRICE: Ms. Bojko, do you want
6 this copy?

7 MS. BOJKO: I would for our records.

8 EXAMINER PRICE: One second.

9 You may proceed.

10 Q. (By Mr. Kutik) Let me direct you to page
11 6, sir. Second sentence on this page says, "We agree
12 with the concerns raised by FirstEnergy Solutions'
13 representative Donald Schneider that price
14 suppression may lead to premature and uneconomic
15 retirements." Do you see that?

16 A. Yes, I see that.

17 Q. Does that refresh your recollection?

18 A. Yes, and that's not inconsistent with
19 what I answered earlier.

20 Q. You said -- You didn't recall. And now I
21 am asking if your recollection was refreshed.

22 A. Now I am talking about what would be
23 conditions for uneconomic return -- for retirements,
24 premature retirements.

25 Q. Sir, you agreed with FES's -- this

1 Commission agreed with FES's statements in that
2 regard, correct?

3 A. That was one, that's correct. May lead.

4 EXAMINER PRICE: One second.

5 Dr. Choueiki, please don't be argumentative with
6 counsel. He asked you a question. Just answer that
7 question and only that question. If you have
8 additional information you think the Commission needs
9 to know, Mr. McNamee will ask you that question on
10 redirect.

11 THE WITNESS: Yes, your Honor.

12 Q. Would you agree with me, sir, that fuel
13 diversity is of great importance to the Commission?

14 A. Yes.

15 Q. Would you also agree with me that a
16 significant portion of retiring megawatts being
17 replaced by natural gas resources, we could not
18 afford to forget about protecting our current
19 resources and hedging against unforeseen natural gas
20 curtailments?

21 A. Could you guide me where you are reading
22 from?

23 Q. Do you agree with that proposition?

24 A. Most of it. Could you repeat it again
25 one more time?

1 Q. Sure. That with a significant portion of
2 retiring megawatts being replaced by natural gas
3 resources, we cannot afford to forget about
4 protecting our current resources that help in hedging
5 against any unforeseen natural gas curtailments.

6 A. Yes.

7 Q. Do you agree with that?

8 A. Yes.

9 Q. Do you also agree that diversity is
10 important, so there is value in having a coal plant,
11 a nuclear plant, and a gas plant?

12 A. Yes.

13 Q. Do you agree that plant retirements can
14 cause reliability issues that have to be addressed
15 through means such as transmission upgrades that have
16 costs associated with them?

17 A. Sometimes they cause transmission
18 upgrades.

19 Q. Sometimes yes?

20 A. Sometimes yes.

21 Q. Would you agree with me coal prices are
22 generally more stable than natural gas prices?

23 A. Yes.

24 Q. Would you agree that wholesale capacity
25 prices have been volatile?

1 MS. HENRY: Objection, vague. Volatility
2 is any change in price. You have to define
3 volatility.

4 EXAMINER PRICE: He can answer if he
5 understands it.

6 A. The phenomenon of going up from 110 --
7 down from \$110 to \$16, that's very volatile. We have
8 not seen that lately.

9 Q. Okay. But they have been volatile,
10 correct?

11 A. They have been in the past, yes.

12 Q. Now, with regard to staggering and
13 laddering, would you agree with me that staggering
14 is, for example, having auctions for a particular
15 product at different times?

16 A. Yes.

17 Q. And laddering is layering different
18 products, 12 months, 24 months, 36 months, and
19 blending purchases to serve SSO load?

20 A. Yes.

21 Q. With staggering and laddering, would it
22 be fair to say you're not eliminating a price premium
23 or price risk; you are managing the volatility over
24 time by levelizing it or smoothing it out?

25 A. We are reducing the volatility by -- over

1 time by staggering and laddering, that's correct.

2 Q. So what I said was correct?

3 A. I can't recall what you said. Will you
4 please repeat it?

5 Q. Sure. With staggering and laddering, you
6 are not eliminating price premiums or price risk.
7 You are managing the volatility over time by
8 levelizing it or smoothing it out; you would agree
9 with that, correct?

10 A. Yes.

11 Q. Now, even with staggering or laddering,
12 there may be some price volatility, correct?

13 A. The volatility would be a lot less than
14 if we didn't stagger and laddering.

15 Q. But there may still be price volatility,
16 correct?

17 A. Yes, some, some volatility.

18 Q. Right. And would it be correct to say
19 that among the things that you look at from time to
20 time are the results of the companies' competitive
21 bid processes?

22 A. Yes.

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

24 EXAMINER PRICE: You may.

25 Q. Dr. Choueiki, I would like to show you

1 what's previously been marked for identification and
2 admitted as Company Exhibits 9 -- 109A through F.

3 MR. SETTINERI: Mr. Kutik, do you have
4 extra copies for counsel?

5 MR. KUTIK: I do not.

6 MR. SETTINERI: Is that going to be the
7 rest of the way for the exhibits?

8 MR. KUTIK: I will give you whatever
9 copies I have.

10 Q. (By Mr. Kutik) Dr. Choueiki, you have
11 seen these reports before?

12 A. Yes, I have seen these reports.

13 Q. And let me direct you to two of the
14 reports, specifically I guess 109C, which is the
15 report that begins with a cover letter February 19,
16 2014. Do you see that?

17 A. Yeah.

18 Q. And then the report behind it, which is
19 109D, begins with a cover letter dated November 13,
20 2013, correct?

21 A. Yes.

22 Q. And these deal -- these report the
23 results of the auctions that were held in January,
24 2014, and October, 2013, correct?

25 A. What are you referring? I'm sorry, if

1 you could help me here.

2 Q. Well, do you know that the companies have
3 auctions in January and October?

4 A. Yes. I am trying to look at the dates, I
5 mean, subject to check, unless you can show me where
6 the dates are.

7 Q. Sure, sure. Let me show on the letter
8 that's dated February -- the document that has the
9 initial letter February 14, 2014 the next page is
10 another letter dated January 28, 2014, and it refers
11 to an auction that began on January 28, 2014. Do you
12 see that?

13 A. Oh, I see that now, yes.

14 Q. And the next document, if you look at the
15 second page of that document, it is a letter
16 October 22, 2014 -- 2013. It talks about an auction
17 that began on Tuesday, October 22, 2013, correct?

18 A. So that was C. D says the letter is
19 November 13, 2013.

20 Q. I said look at the second page of the
21 exhibit, sir.

22 A. Oh, Exhibit C, 109C.

23 Q. No, 109D.

24 A. 109D. Okay. So there is a letter dated
25 October 22, 2013.

1 Q. And it refers to an auction that began on
2 October 22, 2013, correct?

3 A. Yes, yes.

4 Q. And would it be fair to say in both these
5 auctions, there were auctions for a product for
6 delivery of power beginning in June, 2014, and ending
7 in May of 2015, a one-year product?

8 A. That's correct.

9 Q. And in both auctions, there was up for
10 bid power to be delivered January of -- excuse me,
11 starting in June, 2014, ending in May of 2016, a
12 two-year product, correct?

13 A. That's correct.

14 Q. And would it be fair to say that between
15 October, 2013, and January, 2014, or at least
16 January 22, 2014, there was something called the
17 polar vortex that occurred?

18 A. The polar vortex occurred in the winter
19 of 2014. So January, 2014.

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

21 A. I'm sorry, tell me again the -- between
22 which two dates was the polar vortex.

23 Q. Between the two auctions, sir.

24 A. Yes.

25 Q. Now, would it be fair to say that in the

1 October, '13, that is, October, 2013, auction, the
2 one-year price -- clearing price, one-year product
3 clearing price was \$50 -- \$50.90 per megawatt-hour.

4 A. One second, please. \$50.91, correct.

5 Q. And in the January auction, the same
6 product went for \$55.83 per megawatt-hour, correct?

7 A. Yes.

8 Q. That would be a 10 percent increase,
9 wouldn't you agree?

10 A. Yes.

11 Q. And if we look at the two-year product in
12 October of 2013, the price was \$59.99 per megawatt
13 hour, correct?

14 A. Yes.

15 Q. And the same product in 20 -- in the
16 January auction was \$68.31 per megawatt-hour,
17 correct?

18 A. Yes.

19 Q. And you would agree -- or would you
20 accept that's a 14 percent increase?

21 A. Sure. I'll trust you did the math right.

22 Q. Thank you. Now, would it also be fair to
23 say that the blended prices that have appeared in
24 rider GEN have increased over the last three delivery
25 years?

1 A. Yes. There is a reason for that, and
2 that's the ATSI. ATSI was congested in the '15-16
3 delivery year due to retirements.

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

6 EXAMINER PRICE: Mr. McNamee? You don't
7 need to respond. Granted.

8 Dr. Choueiki, if you have information
9 like that that you think helps with context to your
10 answer, Mr. McNamee will be more than happy to ask
11 you those questions on redirect.

12 THE WITNESS: Yes, your Honor.

13 Q. Dr. Choueiki, have you from time to time
14 reviewed the companies' filing with respect to the
15 new rate for rider GEN?

16 A. No.

17 Q. Okay. So you wouldn't have seen what the
18 companies' rider GEN levels were at any time over the
19 last three years?

20 A. No.

21 Q. What I said was correct?

22 A. Yes, you are correct, that I don't look
23 at them.

24 Q. Now, would it also be true to say there
25 are very few CRES suppliers in the companies' service

1 territory that provide or offer contracts to
2 residential customers for 36 months?

3 A. I don't know. As I recall, some CRES
4 providers may have contracts for four years, but I
5 don't remember if it's during that time or not.

6 Q. Do you live in the companies' service
7 territory, sir?

8 A. I am in AEP, you're right. AEP CRES
9 service --

10 Q. So let's go back to my question.

11 A. Yes.

12 Q. My question is, isn't it true that very
13 few CRES providers show contracts or offer contracts
14 to residential customers for a period of 36 months?

15 A. I'm not sure. I don't know if it's true
16 or not.

17 Q. Well, isn't it true from time to time,
18 you reviewed the Apples to Apples charts on the PUCO
19 website?

20 A. Only if I'm shopping.

21 Q. Well, isn't it a fact you have looked at
22 those, sir?

23 A. I haven't looked in the last three years
24 or four years on the Apples to Apples chart.

25 Q. You don't recall talking about the fact

1 that you review the Apples to Apples website during
2 your testimony in the AEP case?

3 A. I don't recall.

4 Q. So you wouldn't know what the Apples to
5 Apples website says then?

6 A. I know what the Apples to Apples website
7 is for. I just don't -- I am not aware whether CRES
8 providers are offering contracts in your companies'
9 territory for three years or not.

10 Q. Well, my question to you simply, sir, is
11 do you recall testifying in the AEP case that you
12 from time to time refer to the Apples to Apples
13 website?

14 A. I don't recall. I may have said that. I
15 don't recall.

16 Q. So you think you might have said that?

17 A. I may have said that.

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

19 EXAMINER PRICE: You may.

20 MR. KUTIK: I would like to have marked
21 as Exhibit 130, a document marked or entitled "Energy
22 Choice Ohio Residential Apples to Apples Comparisons
23 Chart" published Friday, September 11, 2015, at 6
24 a.m.

25 EXAMINER PRICE: It will be so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Dr. Choueiki, I have handed you what has
3 been marked for identification as Company
4 Exhibit 130. Do you recognize that as coming from
5 the PUCO's Apples to Apples website?

6 A. Yes.

7 Q. I'm sorry, did you say "yes"?

8 A. Yes.

9 Q. Would you agree with me that as we look
10 at these, we only see four suppliers that offer
11 36-month contracts?

12 MS. FLEISHER: Before he answers, your
13 Honor, I am not sure we established that he
14 recognizes this as the -- from the website and knows
15 whether it's accurate or not.

16 EXAMINER PRICE: Are you making an
17 objection?

18 MS. FLEISHER: Objection. No foundation.

19 A. Four.

20 Q. Four? Thank you.

21 EXAMINER PRICE: Mr. Kutik, can you
22 respond to the lack of foundation objection?

23 MR. KUTIK: Your Honor, he recognized
24 this as coming from the PUCO's website, and I believe
25 the witness has answered.

1 EXAMINER PRICE: Dr. Choueiki, do you
2 recognize this as coming from the Apples to Apples
3 website?

4 THE WITNESS: It says Energy Choice Ohio.

5 EXAMINER PRICE: Do you have any reason
6 to doubt --

7 THE WITNESS: I have no reason to doubt
8 that this --

9 EXAMINER PRICE: Similar to what the
10 Apples to Apples looked like the last you looked at
11 it, although I think the formatting change --

12 THE WITNESS: I think the formatting is
13 different, but it says "Energy Choice Ohio." I have
14 no reason to believe this is not coming from our
15 website.

16 EXAMINER PRICE: Thank you.

17 Q. (By Mr. Kutik) Now, would it be fair to
18 say, sir, that you haven't done a review of any of
19 the 36-month contracts that appear in this Apples to
20 Apples website?

21 A. That is correct.

22 Q. Would it be fair to also say you don't
23 know whether these 36-month contracts have what are
24 called regulatory out clauses?

25 A. That's correct.

1 Q. And you know what a regulatory out clause
2 is, do you not?

3 A. Yes.

4 Q. And would you say there are certain
5 supply contracts that have regulatory out clauses
6 with residential customers? You've seen that before?

7 A. I think I've seen it in FE Solutions'
8 contract.

9 Q. So you have seen those, correct?

10 A. Yeah.

11 Q. And have you seen them in other
12 contracts, too?

13 A. The reason I said I have seen it --

14 Q. Well, sir, my question is have you seen
15 that --

16 MR. McNAMEE: Object.

17 Q. -- in other contracts too?

18 MS. FLEISHER: Objection, interrupting
19 the witness.

20 EXAMINER PRICE: Mr. Kutik will allow the
21 witness to finish the answer, and then we'll go on
22 from there. Your answer, Dr. Choueiki?

23 THE WITNESS: I don't remember what I was
24 answering.

25 Q. So let's get back to my question.

1 EXAMINER PRICE: Mr. Kutik, let's have
2 the prior question back, please.

3 (Record read.)

4 EXAMINER PRICE: Please finish.

5 THE WITNESS: Because there was a
6 complaint case that -- or a Commission investigation
7 or something. I can't recall any more where we
8 looked at some of these contracts, but they were just
9 directed at one company.

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

11 EXAMINER PRICE: Granted.

12 Q. Now, my question to you, sir, is are you
13 aware that other contracts -- other companies also
14 have regulatory out clauses in their supply contracts
15 to residential customers?

16 A. I am not aware. I don't know.

17 Q. Now, I want to talk to you a little bit
18 about the companies' proposal in this case and your
19 understanding of it. It's true, is it not, that
20 rider RRS is not comprised of a PPA?

21 A. Rider RRS is associated with a PPA.

22 Q. That's not my question. My question is,
23 rider RRS is not comprised of a PPA.

24 A. And the only answer I can give you is
25 rider RRS is associated with a PPA. It would not

1 exist if there was no PPA.

2 Q. Right. Well, isn't it true that the
3 companies are not seeking Commission approval of a
4 PPA in this case?

5 A. Just a recovery of the PPA costs, not the
6 approval of the PPA.

7 Q. So what I said was correct.

8 A. I answered I thought your question.

9 Q. No. With all due respect, Doctor, isn't
10 it true that the companies are not seeking an
11 approval of the PPA in this case?

12 MR. McNAMEE: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. McNAMEE: Asked and answered.

15 EXAMINER PRICE: No. He has not answered
16 it. "Yes" or "no," Dr. Choueiki.

17 A. No.

18 Q. What I said was correct?

19 A. The companies are not asking for the
20 Commission's approval.

21 Q. Okay. But the companies are asking
22 approval of rider RRS, correct?

23 A. They are seeking approval for a recovery
24 mechanism off the PPA in rider RRS.

25 Q. All right. So they are seeking approval

1 of rider RRS, correct?

2 A. The way I understand it is they are
3 seeking approval for rider RRS which recovers the PPA
4 costs.

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

6 EXAMINER PRICE: Granted.

7 Dr. Choueiki, just please answer
8 counsel's questions directly.

9 THE WITNESS: Your Honor, I am trying. I
10 am attempting to answer to the best of my knowledge.

11 Q. With due respect, Doctor, this is a "yes"
12 or "no" question. Isn't it true that the companies
13 are seeking approval of rider RRS in this case?

14 A. Yes, they are.

15 Q. Now, you understand that the PPA that's
16 being proposed, we are talking about in this case, is
17 a wholesale transaction, correct?

18 A. Yes.

19 Q. And you understand, and although as the
20 Attorney Examiner aptly pointed out, jurisdiction is
21 not your area, you do understand that the Public
22 Utilities Commission of Ohio doesn't have
23 jurisdiction over wholesale transactions, correct?

24 A. That is correct.

25 Q. Now, would it be fair to say rider RRS is

1 a mechanism to net the price that the companies would
2 pay FES for the outputs of the plants and the
3 revenues that the companies would get from selling
4 that output into the PJM markets?

5 A. Yes, that's about right.

6 Q. Now, would it be also fair to say that
7 the companies have not proposed an ROE for any
8 Commission approval with respect to rider RRS?

9 A. Not explicitly.

10 Q. Okay. Now, would it also be fair to say
11 that the price that the companies would pay under the
12 PPA would not necessarily reflect FES's costs?

13 A. I'm not following. I'm sorry.

14 Q. What about my question don't you
15 understand?

16 A. Because I thought in the company's
17 application, it says exactly what the costs are.

18 Q. Well, for example, the term sheet -- I'll
19 back up. You read the term sheet, have you not?

20 A. I read it a while back, yes.

21 Q. But you have read it?

22 A. Yes.

23 Q. And would it be fair to say that -- and
24 you have been here for many of the companies'
25 witnesses testimonies, have you not?

1 A. In and out, yes.

2 Q. And among those including Mr. Ruberto,
3 correct?

4 A. I think I was for part of his
5 presentation.

6 Q. And you understand that the term sheet
7 assumes a debt-to-equity ratio of 50 percent,
8 50 percent for FES, correct?

9 A. Yes.

10 Q. You are aware that FirstEnergy Solutions'
11 actual capital structure is something different.

12 A. That is correct.

13 Q. 63 -- 65 percent equity and 35 percent
14 debt, correct?

15 A. I don't remember the number, but I
16 remember in the 60s.

17 Q. Okay. And that would result in an
18 effective ROE of 9.6 percent, correct?

19 A. If you were to assume the 63 calculation,
20 then it would be different, yes.

21 Q. Somewhere in the range of 9.6 percent?

22 A. Subject to check, yes. I will agree with
23 you.

24 Q. Now, in your position, do you from time
25 to time look at tabulations of allowed ROEs?

1 A. I have looked in the past, yes.

2 MR. KUTIK: Your Honor, at this time, I
3 would like to have marked as Company Exhibit 131 a
4 document entitled "Rate Case Summary" from the Edison
5 Electric Institute.

6 MS. HENRY: Your Honor, I just ask
7 that -- not all copies are being provided to all
8 parties.

9 MR. KUTIK: May I finish, please?

10 MS. HENRY: Sure.

11 MR. KUTIK: Q1 2015.

12 EXAMINER PRICE: Okay. We will mark
13 that.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER PRICE: And then, Ms. Henry, you
16 had something to ask.

17 MS. HENRY: Yes. I am just saying we
18 have not received -- we have only gotten two exhibits
19 so far, and I am sharing them with another party, and
20 I would just hope by the end of the day, we can be
21 provided a full set of all the -- all the exhibits.

22 MR. KUTIK: We have no problem with that.
23 We will provide them electronically.

24 EXAMINER PRICE: Thank you.

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

1 EXAMINER PRICE: You may.

2 Q. Dr. Choueiki, I have handed you what has
3 been marked for identification as Company Exhibit
4 131. Have you seen documents and tabulations such as
5 this produced by the Edison Electric Institute?

6 A. Not recently, but I have seen some tables
7 like this.

8 Q. All right. And have you -- and
9 particularly looking at Table 5 -- excuse me, table 6
10 on page 3, have you seen tabulations such as this
11 reflecting average awarded ROEs?

12 A. Yes.

13 Q. Okay. And would it be fair to say that
14 an ROE of 9.6 percent is generally below the average
15 of allowed ROEs over the last 20-something years?

16 MS. FLEISHER: Objection, foundation.
17 It's not been established he is familiar with this or
18 knows that this list of --

19 MR. KUTIK: I can't hear what she is
20 saying.

21 EXAMINER PRICE: Please use your
22 microphone. Thank you.

23 MS. FLEISHER: Just objection to
24 foundation to the extent that question relied on this
25 list as establishing authoritatively ROEs granted.

1 There's been no foundation for that.

2 EXAMINER PRICE: I'll sustain the
3 objection. It is not clear he has ever seen this
4 particular document before.

5 MR. KUTIK: My question actually, your
6 Honor, stands on its own, but let me ask it, without
7 referring to the document.

8 Q. (By Mr. Kutik) Doctor, would it be fair
9 to say that, at least in your recollection and
10 experience, that an ROE of 9.6 percent would be less
11 than the allowed -- the average allowed ROEs for any
12 year for the last 20 years?

13 MS. WILLIS: Objection.

14 MS. BOJKO: Objection.

15 EXAMINER PRICE: Grounds, Ms. --

16 MR. KUTIK: Ms. Willis.

17 MS. WILLIS: I just love to draw
18 attention to myself. It is -- it is overly broad.
19 It's a very overly broad question that I don't -- I
20 don't believe the witness can respond to.

21 EXAMINER PRICE: He can answer if he
22 knows.

23 MR. McNAMEE: Could we have the question
24 reread?

25 MS. BOJKO: You didn't --

1 EXAMINER PRICE: One at a time.

2 Ms. Bojko, next objection.

3 MS. BOJKO: You weren't hearing things.
4 I did object simultaneously.

5 EXAMINER PRICE: Okay.

6 MS. BOJKO: My objection is based on it
7 appears Dr. Choueiki is looking at a document. I am
8 not sure this document can, in fact, stand on its own
9 without looking at the list. I don't think that -- I
10 think the foundation does need to be made first
11 before, or at least the witness should be instructed
12 not to review the document if that's the point of the
13 question.

14 MR. KUTIK: Well, I specifically said
15 apart from the document.

16 EXAMINER PRICE: Okay. Mr. Kutik is not
17 responsible for the witness's actions, but the
18 witness should not look at the document. Your
19 objection is overruled, and Mr. McNamee has asked to
20 have the question back again. Can we have the
21 question again?

22 (Record read.)

23 A. I don't recall this happening ever
24 because we don't generally -- the Commission sets ROE
25 on utilities it regulates. It doesn't set ROEs --

1 Q. Finish your answer. Go ahead. Are you
2 finished?

3 A. The Commission does not -- those are
4 allowed returns. I can't compare an unregulated
5 utility's ROE to a regulated utility's ROE.

6 Q. My question simply is, would an ROE of
7 9.6 be below the average allowed ROE for any year for
8 the last 20 years?

9 A. For regulated utilities, the answer is
10 yes.

11 Q. Okay. Now, would it also be true to say
12 that under the term sheet, FES bears a risk of
13 nonrecovery if it fails to follow good utility
14 practice?

15 A. That's in the PPA agreement term sheet.

16 Q. The answer to my question is "yes"?

17 A. The answer is yes.

18 Q. And the companies have the right to audit
19 FES's books and records, correct?

20 A. The companies do.

21 Q. And the companies have an opportunity to
22 review FES's proposed capital expenditures, correct?

23 A. Yes.

24 Q. The companies have also proposed reviews
25 and audits of the costs that the companies pay and

1 review the audit by the Commission, correct?

2 A. That's where it's vague a bit. I mean,
3 they did propose it in testimony, but it's not clear
4 to me.

5 Q. All right. And would it be fair to say
6 the companies proposed that -- and I think -- well,
7 you said in response to some questions I think from
8 Ms. Willis, didn't you -- you testified, did you not,
9 that if the companies incurred costs that they paid
10 to FES and the Commission disallowed those costs, the
11 companies would be -- would obviously have the risk
12 of nonrecovery, correct?

13 A. Correct.

14 Q. Now, as you understand it now, would it
15 be fair to say that under the companies' proposal,
16 the Commission would not have the right to do
17 anything that would affect what FES -- FES would be
18 paid?

19 A. Unless FES agrees to it, you are right.

20 Q. Okay. And would it be fair to say that
21 under your proposal, I guess it's one of the
22 alternate proposals, where if the Commission
23 disallowed a cost, FES wouldn't be paid for those
24 costs, would it be true that the Commission would
25 effectively be setting a price that FES would be

1 paid?

2 A. So let me follow your scenario. So you
3 are saying the Commission disallows the company, and
4 then the company then accordingly does not pay a fee?

5 Q. Correct.

6 A. And now the question is, would then
7 Commission be setting --

8 Q. Effectively setting the price.

9 A. In the wholesale contract?

10 Q. Under the PPA.

11 A. Yes, that's why FES needs to agreed to
12 it.

13 Q. Okay. And do you agree -- do you believe
14 that FES can agree to allow the Commission to set
15 wholesale prices?

16 MR. McNAMEE: I object.

17 EXAMINER PRICE: Grounds?

18 MR. McNAMEE: I believe it's very
19 directly asking for a legal conclusion from this
20 nonlegal witness.

21 EXAMINER PRICE: Let's have the question
22 back again, please.

23 (Record read.)

24 EXAMINER PRICE: I am going to overrule
25 your objection. We understand he is not an attorney,

1 but it's not that different from the question that
2 Ms. Willis asked him earlier.

3 MR. McNAMEE: Then let me interpose a
4 different objection.

5 EXAMINER PRICE: Okay.

6 MR. McNAMEE: We'll try something else.

7 EXAMINER PRICE: Okay.

8 MR. McNAMEE: The -- I think the question
9 is contra-factual because under the scenario that's
10 laid out, it isn't the Commission that's setting the
11 rate; it's the contract that's determining the rate.
12 The contract would have --

13 MR. KUTIK: Well, I object now. This is
14 coaching.

15 EXAMINER PRICE: I don't think that
16 Mr. McNamee is trying to coach.

17 MR. McNAMEE: That is not my intent.

18 EXAMINER PRICE: But I do think that
19 Mr. McNamee to the extent he has these issues can
20 bring it out on redirect rather than objection.

21 MR. McNAMEE: Fair enough.

22 EXAMINER PRICE: So, again, you can
23 answer the question if you know.

24 THE WITNESS: I'm sorry, what was the
25 question again?

1 MR. KUTIK: May I have the previous
2 question and answer read, please.

3 EXAMINER PRICE: You may.
4 (Record read.)

5 EXAMINER PRICE: You can answer that
6 question, Mr. Choueiki.

7 A. So here is the dilemma, the companies and
8 FES are agreeing to costs. The Commission in order
9 to grant the recovery of these costs, FES would have
10 to agree to them.

11 Q. Right. So I guess my question to you,
12 sir, is do you believe that FES can allow the
13 Commission to effectively set the price under the
14 PPA?

15 A. Not set the price. The Commission is not
16 setting the price.

17 Q. Well, isn't it true that under your
18 scenario, the Commission would be setting the
19 compensation that FES would be paid under the PPA?
20 You just said that, didn't you?

21 A. No. It would be the companies and FES
22 agreeing up front to a contract, and that would be
23 it.

24 Q. So you agree that the -- or it's your
25 testimony that the -- that the -- that FES would have

1 the ability to allow the Commission to adjust or
2 comment on what FES could get paid under the
3 contract; fair to say?

4 A. FES and the companies would have to agree
5 to a contract that is enforced by FERC.

6 Q. No, that's not my question, sir.

7 MR. KUTIK: Your Honor, I move to strike
8 and to have the witness directed to answer the
9 question.

10 EXAMINER PRICE: We will strike the last
11 response, and let's have the question back again.
12 But, Dr. Choueiki, you need to answer this question.

13 (Record read.)

14 A. I'm not sure. I'm not sure.

15 Q. Okay.

16 A. I don't understand contract law to
17 understand this statement.

18 Q. Fair enough. Now, it would be true, is
19 it not, that the companies have committed to full
20 information sharing with the Commission regarding
21 Davis-Besse, Sammis, and OVEC?

22 A. It's not very clear to us. It's not very
23 clear to staff what they have committed to.

24 Q. All right. Well, isn't it true that the
25 example that you cite for the alleged noncooperation

1 by the companies is DR-25?

2 A. That's an example, yes.

3 Q. I said it was an example, correct?

4 MR. KUTIK: Your Honor, I'd like to have
5 marked at this Company Exhibit 132, a response to
6 PUCO DR-25. And I would note, your Honor, that this
7 is -- I may wish to make this 132 Confidential since
8 although the cover page does not contain confidential
9 information, the attachment does.

10 EXAMINER PRICE: It will be marked as
11 Company Exhibit 132 Confidential.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. KUTIK: May I approach?

14 EXAMINER PRICE: You may.

15 Q. Dr. Choueiki, I have handed you what has
16 been marked for identification as Company Exhibit 132
17 Confidential. Do you recognize that as the
18 companies' responses to PUCO DR-25?

19 A. Yes.

20 Q. This is what you referred to in your
21 testimony, correct?

22 A. Yes.

23 Q. And this asked for certain information
24 from -- for Sammis, Bruce Mansfield, Davis-Besse,
25 Perry, Beaver Valley, Kyger Creek, and Clifty Creek,

1 correct?

2 A. Correct.

3 Q. And would it be fair to say the companies
4 answered that response with regard to Sammis,
5 Davis-Besse, Kyger Creek and Clifty Creek?

6 A. That's correct.

7 Q. Now, would it be fair to say that the
8 staff did not file a motion to compel any further
9 information in response to this discovery request?

10 A. Yes.

11 Q. And I think as you mentioned earlier in
12 questions from Ms. Willis, your concern is that for
13 things like fuel contracts, the staff would want to
14 make sure that these particular plants that would be
15 within the PPA would not be disadvantaged; is that
16 fair to say?

17 A. Yes.

18 Q. Wouldn't it be true that if -- that one
19 measure of looking at fuel purchasing practices at
20 those plants would be to look at the market price for
21 the fuel?

22 A. That's one of the ways to look -- you
23 look at the fuel -- fuel forecasts, historical and
24 actual forecasts. That's not enough.

25 Q. I said is it one way, correct?

1 A. Yes.

2 Q. You said "yes"?

3 A. Yes, it's one way, not the only way staff
4 was thinking.

5 Q. Fair enough. Let me talk to you about
6 the AEP factors for a little bit. Would it be fair
7 to say, sir, that the ROE that is in -- or is
8 referred to in the term sheet is not being
9 represented as the ROE that FES actually earns or has
10 earned from the plants that would be subject to the
11 PPA?

12 A. That's fair.

13 Q. And with respect to the assessment of the
14 impact of the closures of the plants on the grid
15 reliability or the economy, it is fair to say that
16 the companies did obtain an independent expert to
17 provide information with respect to the impact of the
18 closure of the plant for the continued operations of
19 the plant on the Ohio economy, correct?

20 A. I'm not quite sure how independent the
21 expert was. I mean, he was hired by the company to
22 do a specific task, that was the impact on the local
23 economy. There are other factors they didn't look
24 at.

25 Q. All right. But my question is

1 Ms. Murley, who is not employed by the company,
2 correct?

3 A. That's correct.

4 Q. She was an independent contractor, was
5 she not?

6 A. Hired by the company, yes.

7 Q. Okay.

8 MS. HENRY: Objection. I mean, if I
9 recall correctly, they -- for Witness Wilson I
10 believe the companies' position was that if they
11 receive a large sum of their money, I mean, it goes
12 against your thing.

13 MR. KUTIK: Hold on a second. If she
14 wants to argue in brief, let her argue in brief.

15 MS. HENRY: I am going to object to his
16 question because he is assuming facts that aren't in
17 evidence. He can say objection, do they work for
18 them, but he said the credibility of whether they are
19 independent can be separately based.

20 MR. KUTIK: My question was was he an
21 independent contractor.

22 EXAMINER PRICE: I am just overruling the
23 objection.

24 MR. KUTIK: Okay.

25 Q. Dr. Choueiki, with respect to your

1 testimony that you would want an independent expert
2 to look at reliability issues and effect on price of
3 the closure of the plant, would it be fair to say
4 that was not a requirement or one of the factors that
5 the Commission laid out in the AEP case?

6 A. I recall having an independent -- an
7 independent entity or a third party conduct the
8 reliability analysis.

9 Q. Well, isn't it true what the Commission
10 said was it reserved the right to make that
11 requirement?

12 A. It may have said so.

13 Q. Okay. And isn't it true, sir, that --
14 well, back up. So would it be fair to say what you
15 would want is that the companies would have to use
16 independent experts that would be chosen by the staff
17 or by the Commission, correct?

18 A. What the staff would want, not you, not
19 me personally.

20 Q. Thank you for that correction. But with
21 that correction the answer is "yes," correct?

22 A. That's correct. The Commission, the
23 Commission would have to choose.

24 Q. Right. Would it be fair to say that in
25 this case, the Commission has not asked for or

1 directed the companies to contract with any experts?

2 A. That's correct.

3 Q. Okay. So would it be fair to say there
4 was no way that the company could comply with that
5 requirement in this case?

6 MS. HENRY: Objection.

7 EXAMINER PRICE: Grounds?

8 MS. HENRY: The question is vague.

9 EXAMINER PRICE: Overruled.

10 You can answer if you know. If you
11 understand the question, you can answer it.

12 A. The company would have up front hired an
13 independent transmission expert like they did for
14 economic development, but they chose not to.

15 Q. All right. Well, that's not my question,
16 sir. My question is if the requirement was that the
17 independent contractor or the independent expert had
18 to be chosen by the staff, and if the staff did not
19 ask or direct the companies to hire such experts in
20 this case, isn't it true that the companies would
21 have no way to meet that requirement in this case?

22 MS. HENRY: Objection. He already
23 answered that there are ways, and you are not
24 allowing him to articulate the ways they could have
25 done it.

1 EXAMINER PRICE: Overruled.

2 A. My question -- my answer stands. The
3 company could have done so but they didn't.

4 EXAMINER PRICE: I think the difficulty
5 here, Mr. Kutik, is it's kind of a legal process
6 question.

7 MR. KUTIK: That's right, your Honor.

8 EXAMINER PRICE: And he is not an
9 attorney.

10 MR. KUTIK: Fair enough. I'll move on.

11 Q. Now, sir, you said that the companies did
12 not hire an independent expert to look at the
13 transmission issues, correct?

14 A. Correct.

15 Q. Okay. Were you here for the testimony of
16 Mr. Phillips?

17 A. I can't recall.

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

19 EXAMINER PRICE: You may.

20 MR. KUTIK: Your Honor, I would like to
21 show the witness a portion of the transcript in this
22 case from Volume XV.

23 Q. Now, sir, I want to direct you to page
24 3245 of the transcript. I want to read you a
25 question and answer. "Question: So did

1 Mr. Cunningham perform the generation deliverability
2 analysis?" This is now cross-examination of
3 Mr. Phillips.

4 A. I'm sorry. Again what page?

5 Q. 3245.

6 MS. HENRY: Line 19.

7 A. Oh, line 19, okay.

8 Q. "Question: So did Mr. Cunningham perform
9 the generation deliverability analysis?

10 "Answer: Well, there's several steps to
11 that, so Gavin and his team would have decided what
12 studies needed to be done. Gavin and the team
13 together decided if you're going to do those studies,
14 what models you would use, and they got the models
15 off of PJM because those would provide the right
16 information because PJM has a strict process they go
17 through to get that information put together.

18 "After you get the model, the next thing
19 you do -- that's the key part so you have this
20 transition system modeled correctly. So after you
21 get the model, the next step then is you do use
22 software that uses the information of the model to
23 perform a load flow study.

24 So one of the members on Gavin's team was
25 Scott Gass. Scott works for PowerGem. Scott is a

1 former employee. He used to work for PJM and he did
2 those transmission issues" -- "studies. That's what
3 he's" -- "that's what he was an expert on at PJM and
4 did that and did" -- "and did that for a number of
5 years. And, as I said, the team did these things
6 together, but Scott was the one member on the team
7 who ran -- ran the software, and then after the
8 software ran and the results came out, then Gavin and
9 the team reviewed the results."

10 Do you see that, sir?

11 A. I see that.

12 MS. BOJKO: Objection.

13 MS. HENRY: Your Honor.

14 EXAMINER PRICE: Grounds, Ms. Bojko?

15 MS. BOJKO: There has been no foundation
16 that he even knows who Mr. Phillips is, who
17 Mr. Cunningham is, what they do for the company.
18 There's hearsay in Mr. Phillips' statement that he is
19 asking what --

20 EXAMINER PRICE: It can't be hearsay. He
21 said it in court.

22 MS. BOJKO: No, no. If he is repeating
23 what he heard from somebody else and what the team
24 did, not his personal knowledge, that's hearsay.
25 Mr. Phillips is reporting on hearsay that now we are

1 asking this witness to comment on and rely upon.

2 EXAMINER PRICE: You might have wanted to
3 object to Mr. Phillips' hearsay at the time. What's
4 done is done.

5 MS. BOJKO: Mr. Phillips, he was
6 involved, but now what Mr. Cunningham did or what
7 Scott Gass did, it's hearsay to this witness.

8 EXAMINER PRICE: No, no. These are --
9 this -- what we are reading is not an out-of-court
10 statement.

11 MR. KUTIK: Exactly.

12 EXAMINER PRICE: Now, underlying this
13 out-of-court statement there may be a number of
14 statements, and you had a full and fair opportunity
15 to object to those statements at the time. Having
16 not objected to those statements at the time, you
17 can't claim hearsay.

18 MR. KUTIK: May I proceed?

19 MS. BOJKO: It's reporting on
20 out-of-court statements. It is hearsay because it is
21 reporting on out-of-court statements. This piece of
22 document is not hearsay.

23 EXAMINER PRICE: At the time this
24 testimony was given you had a chance to object to
25 those comments as hearsay. It's not appropriate now

1 to come back and say "I wish I had been in the room
2 and posed hearsay objections at the time." This
3 document is not hearsay because it is not an out of
4 store -- out of court statement.

5 MS. HENRY: I have a different objection.

6 EXAMINER PRICE: I understand. And go
7 ahead.

8 MS. HENRY: Okay. My objection is that
9 this statement doesn't support the previous question.
10 If he is trying to prove that there is independence,
11 just that somebody ran a model doesn't show
12 independence.

13 EXAMINER PRICE: That is an issue for
14 brief, not an issue for objection. It may be a fair
15 issue; it is not an evidentiary objection.

16 Mr. Kutik.

17 MS. BOJKO: I'm sorry, your Honor. I
18 still had a first objection of lack of foundation
19 that Mr. -- Dr. Choueiki is even familiar with these
20 witnesses and what they do.

21 EXAMINER PRICE: I believe he asked him
22 if he was in the room, and he said he may have been.
23 Dr. Choueiki has been in and out of the room for the
24 whole proceeding. He has certainly had a chance to
25 see the witnesses he wanted to see.

1 Mr. Kutik.

2 Q. (By Mr. Kutik) Did you know Scott Gass
3 was hired and worked with Mr. Cunningham?

4 A. No.

5 Q. Did you know that Mr. Gass and the
6 companies had worked with and had hired PowerGEM?

7 A. I didn't know that. That's still in my
8 mind not an independent assessment.

9 Q. Now, you've likened these riders to
10 buying insurance, correct?

11 A. Financial hedge, whatever that is in my
12 mind that's --

13 Q. Didn't you use the word insurance before?

14 A. Yes.

15 Q. And would it be true that certain types
16 of insurance are required to be purchased by law?

17 A. Sure.

18 Q. Car insurance, health insurance, correct?

19 A. House insurance.

20 Q. Correct?

21 A. Yes.

22 MR. KUTIK: May I have a minute, your
23 Honor?

24 EXAMINER PRICE: You may. Let's go off
25 the record.

1 (Discussion off the record.)

2 EXAMINER PRICE: Let's go back on the
3 record.

4 MR. KUTIK: I have no further questions.
5 Thank you.

6 EXAMINER PRICE: Thank you. Mr. McNamee?

7 MR. McNAMEE: Could I have a few minutes
8 with the witness, your Honor? I almost certainly
9 will have a question or two.

10 EXAMINER PRICE: We will go off the
11 record now. Let's come back in 10 minutes.

12 (Recess taken.)

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

15 Mr. McNamee, redirect?

16 MR. McNAMEE: Yes, I do, though not very
17 much.

18 - - -

19 REDIRECT EXAMINATION

20 By Mr. McNamee:

21 Q. Dr. Choueiki, what was the price of
22 capacity in ATSI during the 2015-16 delivery year?

23 A. \$357 a megawatt-day.

24 Q. And the same question for PJM West.

25 A. About \$136 a megawatt-day.

1 Q. Why are those two numbers different?

2 A. Because prior to the auction for the
3 '15-16 delivery year, FE Solutions announced the
4 retirement of specific power plants and that caused
5 the ATSI region to be congested. Since then the
6 transmission upgrades have occurred, and the price
7 has gone down from the 357, but the 357 was during
8 the '15-16 delivery year and that caused the SSO
9 auctions to increase in price.

10 Q. Are you done?

11 A. Yes.

12 Q. Okay. Dr. Choueiki, in your cross you
13 were asked if price suppression could cause power --
14 premature power plant retirements. Do you recall
15 that?

16 A. Yes.

17 Q. Okay. And I believe you said "yes"?

18 A. I said yes.

19 Q. Okay. Are there other causes?

20 A. Yes. The power plant could be very old
21 and inefficient and is not competing in the -- can't
22 compete in the energy and ancillary services markets,
23 or it could be not worth retrofitting for
24 environmental compliance. So there are other causes
25 that could make a generation owner retire a plant.

1 MR. McNAMEE: Okay. Thank you,
2 Dr. Choueiki. No further questions.

3 EXAMINER PRICE: Thank you. Ms. Grady?
4 Ms. Willis? Sorry.

5 MS. WILLIS: I have no further questions,
6 your Honor. Thank you.

7 EXAMINER PRICE: Mr. Stinson?

8 MR. STINSON: No, your Honor.

9 EXAMINER PRICE: Mr. Settineri?

10 MR. SETTINERI: No, your Honor.

11 EXAMINER PRICE: Ms. Henry?

12 MS. HENRY: No, your Honor.

13 EXAMINER PRICE: Ms. Fleisher?

14 MS. FLEISHER: No, your Honor.

15 EXAMINER PRICE: Ms. Bojko?

16 MS. BOJKO: No, thank you.

17 EXAMINER PRICE: Mr. Hays?

18 MR. HAYS: No, thank you.

19 EXAMINER PRICE: Mr. Dougherty?

20 MR. DOUGHERTY: No, your Honor.

21 EXAMINER PRICE: Mr. Kurtz?

22 MR. KURTZ: No.

23 EXAMINER PRICE: Mr. Lavanga?

24 MR. LAVANGA: No, your Honor.

25 EXAMINER PRICE: Mr. Randazzo?

1 MR. RANDAZZO: No, thank you.

2 EXAMINER PRICE: Mr. Kutik?

3 MR. KUTIK: May I have a minute?

4 I have no questions. Thank you.

5 EXAMINER PRICE: Thank you.

6 Dr. Choueiki, you are excused.

7 MR. McNAMEE: At this time staff would
8 move for the admission of Staff Exhibit 12.

9 EXAMINER PRICE: Any objections?

10 Seeing none, it will be admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 EXAMINER PRICE: Ms. Grady.

13 MS. WILLIS: Yes, your Honor. OCC would
14 who move for the admission of 29, 30, and 31. With
15 respect to Exhibit 29, we would limit our motion to
16 admit those pages, and we can go through, they were
17 the first couple of pages of that exhibit. If you
18 give me a moment, I will try to find it.

19 Yes, our motion would be to admit with
20 respect to the page entitled "Electric Regulation,"
21 the following page that is entitled "FERC Oversight
22 and State Oversight," "the Ohio Electric Generation
23 Resource Mix" page and that would be it. So we would
24 move to admit only those three or -- yeah, three
25 pages of the Public -- Ohio's Public Utilities

1 Committee briefing along with the cover to indicate
2 what that document is.

3 EXAMINER PRICE: Mr. Kutik?

4 MR. KUTIK: Your Honor, we would object
5 to certainly the cover page. He didn't indicate at
6 all any familiarity with this and hadn't seen it
7 before. We have no objection to the page with
8 respect to electric regulation or the FERC oversight
9 or state oversight. We would object to the resource
10 mix. He said he had not seen that slide before and
11 didn't participate in its creation.

12 EXAMINER PRICE: And didn't rely upon
13 that slide in answering the question about what the
14 gen mix was.

15 MR. KUTIK: That too.

16 EXAMINER PRICE: Mr. McNamee, do you care
17 to speak to that?

18 MR. McNAMEE: Mr. Kutik has covered the
19 waterfront perfectly well.

20 MS. WILLIS: Your Honor, may I respond?

21 EXAMINER PRICE: You may.

22 MS. WILLIS: Yes, your Honor. I believe
23 that Dr. Choueiki testified that the House Public
24 Utilities Committee briefing is a regularly conducted
25 activity that describes the workings of the Public

1 Utilities Commission that is required, and so the
2 cover page would just give context to the document
3 and let the document in. In addition to with respect
4 to the pages, I believe this would also qualify as a
5 self-authenticating document under 902A -- I'm sorry,
6 902.5 because it is an official publication issued by
7 a public authority or agency. So I believe that the
8 authentication and identification need not be an
9 issue to prevent admissibility of this document.

10 EXAMINER PRICE: It is not an official
11 publication. It's a PowerPoint deck. We will,
12 however, admit the cover page and the first two pages
13 you mentioned. The third page there was no
14 foundation for. It was not relied upon by the
15 witness in his testimony. It will not be admitted.

16 MS. WILLIS: Thank you, your Honor.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER PRICE: You also moved 30 and
19 31?

20 MS. WILLIS: Yes, your Honor, I did.
21 Those were even though -- well, yes. Yes, your
22 Honor, I did.

23 EXAMINER PRICE: Any objections to the
24 admission of OCC Exhibits 30 and 31?

25 MR. KUTIK: Yes, your Honor.

1 EXAMINER PRICE: Grounds?

2 MR. KUTIK: For the grounds that I
3 asserted for most of this part of the
4 cross-examination which is this is all for friendly
5 cross and improper.

6 EXAMINER PRICE: Mr. McNamee, do you care
7 to weigh in on this?

8 Ms. Grady.

9 MS. WILLIS: Well, your Honor, I don't
10 believe it was friendly cross. I continue to believe
11 that OCC did not, and I think the record reflects
12 this, did not offer an alternative recommendation.
13 We are philosophically opposed, believe the rider RRS
14 is illegal for a number of reasons, and so I believe
15 our position is diametrically opposed to the
16 alternative recommendation of the staff. So I don't
17 believe it was friendly cross.

18 MR. KUTIK: Well, your Honor -- are you
19 done?

20 MS. WILLIS: Lost my train of thought.
21 If I may have a moment.

22 Yes. And, your Honor, alternatively, if
23 the -- the testimonies are not admitted, we would ask
24 for administrative notice to be taken of those
25 testimonies that were filed in those cases.

1 MR. KUTIK: Your Honor?

2 EXAMINER PRICE: Mr. Kutik.

3 MR. KUTIK: Ms. Bojko, go ahead.

4 MS. BOJKO: I assume you want me to go
5 before you.

6 MR. KUTIK: Yes.

7 MS. BOJKO: Your Honor, we also support
8 the admission or administrative notice of these two
9 documents. We believe that the staff is an
10 independent intervenor in these cases and that the
11 testimony is relevant to their current testimony with
12 regard to their positions taken in a prior case as
13 well as compared to this case. We just -- as we
14 supported and proffered them before, we would support
15 the admission at this time as well.

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

17 EXAMINER PRICE: You may.

18 MR. KUTIK: Your Honor, I guess what's
19 sauce for the goose is sauce for the gander and
20 allowing this to be -- these documents to be admitted
21 at this time in light of your rulings that change in
22 staff position has no probative weight, given the
23 ruling --

24 EXAMINER PRICE: You articulated that
25 better than I did.

1 MR. KUTIK: Given the rulings of the
2 Commission and I was precluded as, frankly, was
3 Ms. Grady -- Ms. Willis, it is prejudicial for those
4 documents to be admitted without us having the
5 ability to cross-examine on them.

6 EXAMINER PRICE: At this time we will
7 deny admission of the exhibits. Again, a change in
8 staff position following the direction of the
9 Commission has no probative weight. It is unduly
10 prejudicial, confusing, and misleading, and these
11 exhibits will not be admitted at this time.

12 Mr. Kutik.

13 MR. KUTIK: Your Honor, we would move --

14 MS. WILLIS: I'm sorry. I don't mean to
15 interrupt, but we asked that administrative notice be
16 taken, so we would ask for a ruling on that motion.

17 EXAMINER PRICE: We will deny
18 administrative notice for the same reasons, but we
19 will note for the record that you previously
20 proffered the testimony and that will be noted, as
21 did Ms. Bojko.

22 Now Mr. Kutik.

23 MR. KUTIK: Your Honor, we move for the
24 admission of Company Exhibit 132 Confidential.

25 EXAMINER PRICE: Any objection to the

1 admission of Company Exhibit 132 confidential?

2 MR. KUTIK: And just to be clear it's the
3 response to PUCO DR-25.

4 EXAMINER PRICE: Yes. Any objections?

5 MS. WILLIS: No objections.

6 MR. McNAMEE: No objection.

7 EXAMINER PRICE: Seeing none, it will be
8 admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 EXAMINER PRICE: That is our final
11 witness for today. We will reconvene Monday at 10
12 o'clock where we will take up Sierra Club Witness
13 Comings; is that right?

14 MS. HENRY: Yes, sir.

15 EXAMINER PRICE: Thank you, all. We are
16 off the record.

17 (Thereupon, at 2:48 p.m., the hearing was
18 adjourned.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Friday, October 16,
5 2015, and carefully compared with my original
6 stenographic notes.

7
8
9
10 _____
11 Karen Sue Gibson, Registered
Merit Reporter.

12 (KSG-6104)

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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 10/16/15 - Volume XXX electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.