

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application Seeking :
Approval of Ohio Power :
Company's Proposal to : Case No. 14-1693-EL-RDR
Enter into an Affiliate :
Power Purchase Agreement :
for Inclusion in the Power:
Purchase Agreement Rider. :

In the Matter of the :
Application of Ohio Power :
Company for Approval of : Case No. 14-1694-EL-AAM
Certain Accounting :
Authority. :

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PROCEEDINGS

before Ms. Greta See and Ms. Sarah Parrot, Attorney
Examiners, at the Public Utilities Commission of
Ohio, 180 East Broad Street, Room 11-D, Columbus,
Ohio, called at 9:00 a.m. on Friday, October 23,
2015.

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EXHIBITS

COMPANY EXHIBITS IDENTIFIED ADMITTED

49 - 5/15/2015 Amendment Letter 4034 4045

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OCC EXHIBITS IDENTIFIED ADMITTED

20 - Prefiled Testimony of
Hisham M. Choueiki, PhD, P.E.
Case No. 13-2385/2386 3912 4041

- - -

IEU EXHIBITS IDENTIFIED ADMITTED

1 - Direct Testimony of
Jonathan A. Lesser, Ph.D. 3865 3888

17 - AEPGR FERC Request for Waiver 3935 --

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STAFF EXHIBITS IDENTIFIED ADMITTED

1 - Direct Testimony of
Hisham M. Choueiki, Ph.D., P.E. 3889 4039

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1 Manufacturers' Association Energy Group, Kim Bojko
2 and Danielle Ghiloni.

3 MR. MENDOZA: Tony Mendoza on behalf of
4 Sierra Club.

5 MS. MOONEY: On behalf of Ohio Partners
6 for Affordable Energy, Colleen Mooney.

7 MR. O'BRIEN: On behalf of the Ohio
8 Hospital Association, Rick Sites and Tom O'Brien.

9 MR. DOUGHERTY: Good morning, your
10 Honors. On behalf of the Ohio Environmental Council
11 and Environmental Defense Fund, Trent Dougherty.

12 MS. PETRUCCI: Good morning, your Honor.
13 On behalf of PJM Power Providers, the Electric Power
14 Supply Association, Exelon Generation, and
15 Constellation NewEnergy, Howard Petricoff, Mike
16 Settineri, and Gretchen Petrucci.

17 EXAMINER PARROT: Thank you, everyone.

18 Mr. Darr?

19 MR. DARR: Thank you, your Honor. IEU
20 Ohio calls Dr. Jonathan Lesser.

21 (Witness sworn.)

22 - - -
23
24
25

1 JONATHAN A. LESSER, PH.D.

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

4 DIRECT EXAMINATION

5 By Mr. Darr:

6 Q. Please state your name.

7 A. Jonathan Lesser, L-e-s-s-e-r.

8 Q. Would you state your business address,
9 please?

10 A. My business address is Continental
11 Economics, 6 Real Place, Sandia Park, New Mexico.

12 MR. DARR: I'd like to have marked as IEU
13 Exhibit 1 the prefiled testimony of Dr. Lesser.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Dr. Lesser, do you have in front of you
16 what's been marked as IEU Exhibit 1?

17 A. I do.

18 Q. Would you identify that for us, please.

19 A. That is a copy of my direct testimony and
20 exhibits.

21 Q. Do you have any additions or corrections
22 to IEU Exhibit 1?

23 A. I do not.

24 Q. If you were asked the questions today
25 contained in IEU Exhibit 1 today, would your answers

1 contained in that exhibit be the same?

2 A. Yes, they would.

3 MR. DARR: I tender the witness for
4 examination, your Honor.

5 EXAMINER PARROT: Thank you, Mr. Darr.

6 MR. CONWAY: Just a short voir dire.

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8 VOIR DIRE EXAMINATION

9 By Mr. Conway:

10 Q. Good morning, Dr. Lesser.

11 A. Good morning, counselor.

12 Q. Welcome back to Ohio.

13 A. Thank you.

14 Q. With regard to your testimony at pages 43
15 and 44, which I'd ask you to turn to briefly --

16 A. I'm there.

17 Q. -- in question 52 and the answer at
18 question 52 you have some testimony regarding your
19 understanding of two FERC decisions. Do you see
20 that?

21 A. I do.

22 Q. And are you offering your legal opinions
23 regarding proper interpretation of those decisions in
24 the testimony?

25 A. I'm not offering a legal interpretation.

1 I'm offering my interpretation on the economic
2 aspects of those as an expert witness who has
3 participated in market-based rate application cases;
4 and, in fact, I'm in one now.

5 Q. And so your testimony with regard to
6 these two decisions in comparison to providing a
7 legal opinion about it is in the category of a lay
8 opinion; is that correct?

9 A. That's my opinion as an expert witness on
10 economics and the economic issues.

11 MR. CONWAY: Thank you, your Honor. I
12 have no motion to strike in light of the answers.

13 EXAMINER PARROT: Very good.

14 Any questions, Ms. Mooney?

15 MS. MOONEY: No questions, your Honor.

16 EXAMINER PARROT: Mr. O'Brien.

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

18 EXAMINER PARROT: Mr. Dougherty?

19 MR. DOUGHERTY: No questions.

20 EXAMINER PARROT: Ms. Petrucci?

21 MS. PETRUCCI: No questions.

22 EXAMINER PARROT: Mr. Mendoza?

23 MR. MENDOZA: No questions, your Honor.

24 EXAMINER PARROT: Ms. Bojko?

25 MS. BOJKO: No. Thank you, your Honor.

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1 EXAMINER PARROT: Mr. Michael?

2 MR. MICHAEL: No. Thank you, your Honor.

3 EXAMINER PARROT: Mr. Yurick?

4 MR. YURICK: Nothing, your Honor.

5 EXAMINER PARROT: Mr. Kurtz?

6 MR. KURTZ: No questions.

7 EXAMINER PARROT: Mr. Conway.

8 MR. CONWAY: Thank you, your Honor.

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10 CROSS-EXAMINATION

11 By Mr. Conway:

12 Q. Dr. Lesser, with regard to the topic of
13 long-term contracts that CRES provides might offer or
14 do offer in Ohio to customers, a few questions.

15 First of all, is it correct that you do
16 not hold yourself out to be an expert about the
17 offers that CRES providers currently are offering to
18 residential and commercial customers in Ohio?

19 A. No, I'm not. I'm not an expert on that.

20 Q. So you wouldn't know how many CRES
21 providers currently are offering long-term contracts
22 for competitive generation service in Ohio?

23 A. I've not reviewed that, no.

24 Q. And you haven't then, of course, studied
25 what terms and conditions CRES providers include in

1 their long-term contract offers for residential and
2 commercial customers, correct?

3 A. In terms of the specific contractual
4 terms and prices, no, I have not.

5 Q. And you're not knowledgeable about how
6 long the terms of the contracts for residential and
7 commercial customers are being offered by the CRES
8 providers in Ohio at this time?

9 A. Not at this time.

10 Q. And at page 40 of your testimony you
11 refer to the ESP III order for AEP Ohio. Do you see
12 that?

13 A. Yes, I do.

14 Q. And so I take it that you have some
15 familiarity with the Commission's order in the AEP
16 Ohio company's last ESP proceeding, ESP III?

17 A. I do. I have a copy of the order with
18 me, in fact.

19 Q. And you are aware -- or, let me rephrase
20 that. Are you aware that the Commission in its ESP
21 III order found that rate stability was an essential
22 component to the ESP?

23 A. Would you refer me to a page in the
24 order?

25 Q. Sure, page 25. Let me give you a more

1 precise reference. In the last sentence of the first
2 paragraph on page 25, do you see the statement by the
3 Commission at that point that "As we have
4 consistently emphasized in AEP Ohio's prior ESP
5 proceedings, rate stability is an essential component
6 of the ESP"? Do you see that?

7 A. I see that sentence. I'm not convinced
8 that this proposal actually would provide that. But
9 I certainly see the sentence.

10 Q. You see the sentence, all right.

11 A. Yes.

12 Q. And do you agree with the Commission's
13 finding that rate stability is an essential element
14 of the ESP?

15 A. That's the Commission's finding. I don't
16 disagree that the Commission found that at all, no.

17 Q. My question is, do you agree with the
18 Commission's position on that point?

19 MR. DARR: Objection, relevance.

20 EXAMINER PARROT: Overruled. We've been
21 allowing the question, Mr. Darr. I'm not going to go
22 about it any differently with this witness.

23 So please answer.

24 Q. Just to be clear, my question isn't
25 whether you agree that the Commission said that in

1 its order. My question is, do you agree with that
2 position, that rate stability is an essential element
3 of an ESP?

4 A. Well, that really depends on what is the
5 price to achieve the rate stability, so if there's --
6 essentially you're asking a question about the value
7 of hedging to stabilize prices, and with any
8 insurance product, it depends on what is the price.

9 Q. So whether or not you agree with that
10 position is dependent on other factors; is that fair?

11 A. Other economic factors, that's correct.

12 Q. And are you also aware that the
13 Commission found in its ESP III order for the company
14 that both shopping and SSO customers may benefit from
15 the PPA rider because it would have a stabilizing
16 effect on the price of retail electric service,
17 irrespective of whether the customer is served by a
18 CRES provider or the SSO?

19 A. Would you tell me where you're reading
20 please?

21 Q. What I'm recapping is the Commission's
22 statement at page 22 of the order. Go back a couple
23 pages, and I would direct your attention to the
24 second narrative sentence in that paragraph which is
25 in the middle of the first full paragraph on page 22.

1 Do you see the statement at that point in the
2 Commission's order, it starts with the phrase "As
3 discussed before"?

4 A. Thank you, I see that.

5 Q. Are you aware that the Commission made
6 this finding in its ESP III order, this finding being
7 that "both shopping and SSO customers may benefit
8 from the PPA rider because it would have a
9 stabilizing effect on the price of retail electric
10 service, irrespective of whether the customer is
11 served by a CRES provider or the SSO"?

12 A. That's what the order says. I assume
13 that's what the Commission found.

14 Q. And, again, my question is, did you agree
15 or disagree with that finding by the Commission?

16 MR. DARR: Same objection, your Honor.

17 EXAMINER PARROT: Noted and overruled.

18 A. I disagree with that statement because,
19 one, the ESP III order is referring to the OVEC
20 contract only. That is not what AEP is asking for in
21 this case. And as my testimony discusses, I believe
22 there would be -- there's significant likelihood of
23 output volatility and because of the delay in the
24 price adjustment which could actually contribute to
25 volatility. So I would disagree with the statement

1 that customers will necessarily benefit from the PPA
2 rider.

3 Q. So you disagree with the Commission's
4 statement at that point in its order, correct?

5 MR. DARR: Same objection, your Honor.

6 EXAMINER PARROT: Overruled.

7 A. The Commission says shopping and SSO
8 customers may benefit, and I emphasize the word
9 "may." They do not say "will" benefit. There is a
10 difference, counselor. And so I certainly disagree
11 that customers will benefit from this proposal in
12 this case for many reasons that are discussed in my
13 testimony.

14 Q. And so let me just be clear. I wasn't
15 trying to substitute a word, like, such as "will" for
16 another word that's actually in the statement. So
17 with that clarification that you just mentioned, the
18 Commission uses the word "may," do you, with that
19 clarification, agree or disagree with the
20 Commission's statement in the order?

21 MR. DARR: Objection.

22 MR. MICHAEL: Objection, asked and
23 answered.

24 EXAMINER PARROT: Overruled.

25 A. In my opinion, one, and again, this is

1 referring to a different PPA and rider than is
2 proposed in this proceeding which involves a
3 different contract in addition to OVEC, it's my
4 opinion that any stabilizing effect on the price of
5 retail electric service, if there, in fact, is a
6 stabilizing effect, which I contend there may not be,
7 is overridden by the short-term and long-term
8 economic damage that will occur because of subsidies
9 in the wholesale electric markets and subsidies in
10 the retail electric market that I believe will damage
11 wholesale and retail competition.

12 Q. Well, thank you for your explanation of
13 your position.

14 My question is really getting back to the
15 statement of the Commission's order regarding whether
16 you agree or disagree with it, and my follow-up
17 question for you is, would you agree that this
18 sentence in the Commission order does not refer to or
19 limit itself to the OVEC contract?

20 A. My understanding is that in this ESP III
21 proceeding, correct me if I'm wrong, AEP was asking
22 for a nonbypassable rider associated with the OVEC
23 contract.

24 Q. Okay. And so is it your understanding
25 that the Commission's statement in this sentence is

1 limited to the context of the OVEC contract?

2 A. I can't give you a legal opinion as to
3 what the Commission was or was not thinking. I see
4 the statement that is made by the Commission. I
5 certainly agree the Commission made the statement,
6 and my testimony stands.

7 Q. Dr. Lesser, are you aware that the
8 Commission in its ESP III order identified four
9 factors that it said it would balance, among other
10 things, in its decision-making regarding a future
11 application to populate the PPA rider with purchase
12 power agreements?

13 A. I'm aware of those four factors, but if
14 you refer me to a specific page in the order.

15 Q. Well, happily, it's the same page we were
16 just talking about, and it's in the next paragraph,
17 and the four factors to which I'm referring begin
18 after the colon at the end of the line that ends with
19 the word "recovery" and the four clauses that follow
20 the colon are the four -- describe the four factors
21 to which I refer.

22 MR. DARR: Your Honor --

23 EXAMINER PARROT: Its on page 25.

24 MR. DARR: Yeah.

25 Q. I'm sorry, 25.

1 A. Yeah, I see those.

2 Q. And you are aware of that aspect of that
3 portion of the Commission's order, correct?

4 A. I am.

5 Q. Okay. And do you agree with the
6 Commission's point at this juncture that these four
7 factors are factors that the Commission should
8 consider, among other things, in making its decision
9 in this case?

10 MR. DARR: Objection.

11 EXAMINER PARROT: Overruled.

12 A. Well, its clear from the language in the
13 order, counselor, that the Commission asked AEP Ohio
14 to "at a minimum address the following factors."

15 Q. That is correct. And I wasn't trying to
16 pose to you a question which assumes that the
17 Commission would be restricted to the four factors.
18 But you would agree that, first, the Commission did
19 announce in this order, the ESP III order, that it
20 would balance the four factors that we just
21 identified, correct?

22 A. Well, yes, the Commission said it will
23 balance but not be bound by, so yeah, I agree.

24 Q. And do you agree that its appropriate for
25 the Commission to consider these four factors in its

1 consideration of the company's application in this
2 case?

3 MR. DARR: Objection, relevance.

4 EXAMINER PARROT: Overruled.

5 A. I have no reason to disagree with the
6 factors the Commission has identified here. I don't
7 know what other factors the Commission might
8 consider. It's simply that is what the Commission
9 has decided.

10 Q. Thank you, Dr. Lesser.

11 Let me turn your attention next to your
12 fairly short discussion at page 45, question and
13 answer 55, regarding what a moral hazard is from an
14 economic perspective. Do you see that question and
15 answer on page 55 -- on page 45?

16 A. I do.

17 Q. And you believe that traditional
18 cost-of-service ratemaking also can and has created a
19 moral hazard?

20 A. It can, yes.

21 Q. And it has in certain instances, in your
22 view?

23 A. In certain instances it has.

24 Q. And then let me turn your attention to
25 page 47 of your testimony where you discuss your

1 understanding of the extent to which AEP Ohio has
2 provided analysis of the likely impacts of the Clean
3 Power Plan on its revenue estimates. Do you see
4 that?

5 A. Yes, I see that.

6 Q. Are you aware that in its analysis AEP
7 Ohio has included a \$15 per metric ton carbon
8 mitigation cost starting in 2022?

9 A. Yes, I did see that; however, as you
10 probably know, the Clean Power Plan, in fact, does
11 not impose a carbon tax. It's more of a command and
12 control type of specific reduction. So a carbon tax
13 is -- the analysis of a carbon tax is, in fact,
14 irrelevant to the Clean Power Plan. Moreover, the
15 social carbon embedded in the Clean Power Plan
16 actually rises to \$50 a ton by the year 2030.

17 Q. And are you aware of the aggregate amount
18 of cost, including a \$15 per ton carbon mitigation
19 cost, added to the company's cost analysis that it
20 used in this proceeding?

21 A. I'd have to refer back to Mr. Pearce's
22 workpapers that he used to develop Exhibit KDP-2.

23 Q. Dr. Lesser, you have five, I'll call
24 them, and can you characterize them, whether
25 similarly or differently, you have four or five --

1 strike that.

2 Dr. Lesser, at pages 5 to 8 of your
3 testimony, at the outset you summarize five major
4 concerns that you have with the company's proposal,
5 correct, the proposal regarding the PPA and PPA
6 rider, correct?

7 A. That is correct, although the first one
8 is really a conclusion that the PUCO should reject
9 the proposal. It's Nos. 2, 3, 4, and 5 that are the
10 specific criticisms.

11 Q. I'd like to test how hard and fast, how
12 fundamental your concerns that you have summarized
13 there are to your position. Would you be willing to
14 compromise your objections and acquiesce to the
15 company's proposals if the company provided a
16 sufficient amount of other benefits?

17 A. I'm not sure I understand your question,
18 counselor. What other benefits are you discussing?
19 Where are they in the proposal? Where would I find
20 them?

21 Q. My question to you is would you be
22 willing to compromise your objections and thus back
23 off from them, overlook them, withdraw them, and
24 acquiesce in the company's proposals in this case if
25 there were sufficient benefits that were provided to

1 compensate for your acquiescence?

2 MR. DARR: Objection. The question's
3 vague.

4 MR. CONWAY: Your Honor, I don't think
5 it's vague. I'm trying to determine, trying to test
6 how hard and fast his criticisms are.

7 EXAMINER PARROT: I think he did already
8 state he's not sure what kind of benefits you're
9 referring to, Mr. Conway, so I think you need to, at
10 least, put some specificity around that.

11 Q. The benefits I'm talking about are things
12 that would be of value to you and your client. And
13 it could be -- and I don't want to limit what they
14 might be. I'm just asking conceptually is there any
15 basis on which the benefits that could be provided
16 would be sufficient to overcome your criticisms?

17 MR. DARR: Objection, your Honor. Not
18 only is it vague, but it's based on a hypothetical
19 that's not established in the record.

20 EXAMINER PARROT: I think I will allow
21 it.

22 If you're still not sure where he's
23 trying to go with this, let us know, Dr. Lesser.

24 A. I'm going to ask a clarifying question.
25 Mr. Conway, in part of your question are you

1 inferring a change in the proposal that AEP would be
2 offering?

3 Q. Not at this point, no. You would have a
4 result where the company's proposals are adopted, or
5 at least that you would not object to their adoption,
6 you would withdraw your criticisms or you would, at
7 least, would not pursue them, and in return for doing
8 that, withdrawing your objections, acquiescing in the
9 company's proposals, you and your client would get a
10 sufficient amount of benefits that would cause you
11 to, in the balance, decide that it was a reasonable
12 thing to do for you and your client.

13 MR. DARR: Same objection, your Honor.

14 MR. CONWAY: Just to point out, it
15 sounded like he was about to --

16 EXAMINER PARROT: Yes, I can tell that,
17 Mr. Conway.

18 I still think it's a little vague myself,
19 Dr. Lesser, but if you think can you answer, go
20 ahead.

21 THE WITNESS: Well, I'll try, your Honor.

22 A. First off, when you talk about the
23 benefits to the client, if AEP promised benefits to
24 the client that the client decided that they would
25 withdraw my testimony, et cetera, that's their right.

1 Obviously, it has nothing to do with me. So your
2 question really almost would be directed at the
3 Industrial Energy Users rather than me.

4 In terms of do I -- would I withdraw my
5 objections to the current proposal as set forth in
6 this proceeding by AEP and essentially would back off
7 my objections, given that if there were sufficient
8 benefits, even though you haven't identified what
9 those benefits are? My answer is no, because, in my
10 view, the question, the proposal fundamentally and
11 adversely would affect the wholesale market
12 competition in PJM and retail market competition in
13 Ohio, which I believe are policy goals at both the
14 federal level and the state level.

15 Q. So I think what I heard you say, in part,
16 is that you could envision that your client who's
17 sponsoring your testimony here could back off,
18 withdraw its objections based on your testimony if
19 there were sufficient benefits to cause them to
20 believe that it was a reasonable result for them?

21 MR. MENDOZA: Objection, mischaracterizes
22 the witness's answer.

23 MR. DARR: And, additionally, A, it's not
24 relevant what IEU would do or not do; second, there
25 are no settlement conditions that are reviewed here,

1 nor would it be proper to review them in this
2 context. The question is completely off base here,
3 your Honor.

4 MR. CONWAY: I'm not asking the witness
5 to propose a settlement to IEU's position or
6 compromise for his principles. I'm simply testing
7 the hard and fastness of the principles that underlie
8 his criticisms, both for him and for IEU.

9 MR. DARR: And in that regard, then, your
10 Honor, the questions have been asked and answered by
11 counsel.

12 EXAMINER PARROT: I'm going to ask you to
13 rephrase Mr. Conway, if we can avoid trying to
14 recharacterize his response.

15 Q. (By Mr. Conway) Do I take your response
16 to indicate that the principles which underlie your
17 concerns are not so fundamental that they cannot be
18 compromised?

19 MR. DARR: Objection.

20 A. I believe you --

21 EXAMINER PARROT: Hang on.

22 MR. DARR: Hang on, Dr. Lesser.

23 EXAMINER PARROT: Rephrase.

24 Q. Was there a problem with the question,
25 Dr. Lesser?

1 EXAMINER PARROT: Mr. Conway, I asked you
2 to rephrase it, please.

3 MR. DARR: Thank you, your Honor.

4 Q. So does your prior testimony indicate
5 that your concerns that you have articulated in your
6 testimony could be compromised and withdrawn under
7 the appropriate -- in return for the appropriate
8 package of other benefits?

9 MR. DARR: Objection, your Honor,
10 relevance.

11 EXAMINER PARROT: Overruled.

12 A. Counselor, your question is again
13 extremely vague. My testimony here today is at the
14 behest and on behalf of IEU Ohio. If IEU Ohio
15 decides at this moment to withdraw my testimony
16 because of some promise that has been provided to
17 AEP -- by AEP Ohio to the clients, the industrial
18 customers themselves, as far as I know, that's their
19 right.

20 I'm not aware of that. Mr. Darr has not
21 asked me to fold up my tent and leave the room, and
22 I'm not aware -- you're posing a hypothetical,
23 hypothetical benefits of which I don't believe exist
24 under the current proposal that AEP has put forward
25 in this proceeding. So I simply don't -- your

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1 question to me is irrelevant because you're asking me
2 about something that IEU would do and has control
3 over but I don't.

4 And you're asking me would I compromise
5 my principles over a hypothetical. The answer is no.

6 Q. Well, let me attack it from a different
7 direction, Dr. Lesser. Are you aware that the
8 FirstEnergy utilities have a proceeding pending
9 before the Commission in which they've made a similar
10 proposal to the proposal AEP has made in this case?

11 MR. DARR: Objection, your Honor. Now
12 we're really going far afield.

13 MR. CONWAY: Your Honor, I think I'm
14 still doing exactly the same thing, which is testing
15 the hard and fastness of his positions that he has
16 presented and IEU has sponsored.

17 MR. DARR: And the relevance of the FE
18 proceeding, which is presenting a different proposal
19 over a different light in a context of a full-blown
20 ESP case, can have absolutely no relevance to the
21 testimony that's presented here on a different
22 proposal contained in AEP's case.

23 MR. CONWAY: Your Honor, if I might
24 respond. Everybody in this room knows the proposals
25 are very similar, and everyone knows that the

1 witnesses in this case were, in large part, the same
2 witnesses from the intervenor's side that have
3 testified in the FirstEnergy case, and everybody
4 knows that there's been regular use of statements
5 made in one case to present positions through
6 cross-examination in the other case. So there is
7 relevance. They're very similar, and the positions
8 being taken in the other case by the intervenors are
9 very similar to not only this intervenor, but by
10 other intervenors are very similar.

11 MR. DARR: I think Mr. Conway has just
12 made my point.

13 MR. CONWAY: No, that's the point I'm
14 getting to, your Honor, so I think I'm allowed to
15 test the credibility and the weight of his
16 criticisms. That's what I'm doing.

17 EXAMINER PARROT: I'm going to overrule
18 the objection with respect to this question that's
19 pending and see where it goes from there.

20 MR. CONWAY: Thank you.

21 EXAMINER PARROT: You need to reread.

22 (Record read.)

23 A. I'm aware that there was a FirstEnergy
24 proceeding. I was not a participant in that
25 proceeding. I have not reviewed any of the materials

1 in that proceeding. I do not know what FirstEnergy
2 is requesting. I do not know what the intervenors'
3 positions are in that case. I have no opinion on
4 that case. As I told you in my deposition, I simply
5 know nothing about it and, therefore, can offer no
6 opinion on that proceeding whatsoever.

7 MR. CONWAY: Just a moment, your Honor.

8 Q. (By Mr. Conway) And, Dr. Lesser, your
9 ignorance of what the particulars are and the issues
10 in the FirstEnergy case and the nature of the
11 FirstEnergy utilities' proposals, is that ignorance
12 the result of instruction from your counsel not to
13 become familiar with it?

14 MR. DARR: Objection, your Honor.

15 MR. CONWAY: He's testifying here today,
16 your Honor, as an outside expert. It's perfectly
17 acceptable to ask him what the basis of his
18 engagement is here and what the limitations of it
19 that were imposed by or agreed to with his counsel.

20 MR. DARR: Both irrelevant, and it also
21 relates to preparation for this matter, your Honor.

22 EXAMINER PARROT: Sustained.

23 MR. DARR: Thank you, your Honor.

24 MR. CONWAY: No further questions, your
25 Honor.

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1 EXAMINER PARROT: Mr. Margard?

2 MR. MARGARD: No questions, thank you,
3 your Honor.

4 EXAMINER PARROT: Any redirect?

5 MR. DARR: If I could have just a moment,
6 your Honor.

7 EXAMINER PARROT: You may.

8 (Discussion off the record.)

9 EXAMINER PARROT: Any redirect?

10 MR. DARR: No redirect, your Honor.

11 EXAMINER PARROT: Thank you, Dr. Lesser.

12 THE WITNESS: Thank you.

13 EXAMINER PARROT: Mr. Darr, you may move
14 your exhibit.

15 MR. DARR: Thank you, your Honor, IEU
16 Ohio moves the admission of IEU Exhibit 1.

17 EXAMINER PARROT: Are there any
18 objections to the admission of IEU Exhibit No. 1?

19 MR. CONWAY: No, your Honor.

20 EXAMINER PARROT: Hearing none, it is
21 admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER SEE: Mr. Margard?

24 MR. MARGARD: Thank you, your Honor.

25 Staff would call Dr. Hisham Choueiki.

1 (Witness sworn.)

2 EXAMINER SEE: Mr. Margard?

3 MR. MARGARD: Thank you, your Honor.

4 Your Honor, I'd ask that the prefiled testimony of
5 Dr. Choueiki filed in this case on October 9, 2015,
6 be marked as Staff Exhibit 1 for purposes of
7 identification.

8 EXAMINER SEE: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 - - -

11 HISHAM M. CHOUEIKI, Ph.D., P.E.

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

14 DIRECT EXAMINATION

15 By Mr. Margard:

16 Q. Thank you. Dr. Choueiki, do you have
17 before you what's been marked as Staff Exhibit No. 1?

18 A. Yes.

19 Q. And this is your prefiled direct
20 testimony in this case; is that correct?

21 A. Yes.

22 Q. And was this testimony prepared by you?

23 A. Yes.

24 Q. Do you have any changes, corrections, or
25 modifications to make to the testimony as filed?

1 A. No.

2 Q. If I were to ask you the questions
3 contained in it, would your responses be the same?

4 A. Yes.

5 MR. MARGARD: Your Honors, I respectfully
6 move for admission of Staff Exhibit No. 1, subject to
7 cross-examination, and I tender Dr. Choueiki for that
8 purpose.

9 EXAMINER SEE: Any cross-examination for
10 this witness, Ms. Fleisher?

11 MS. FLEISHER: None, your Honor.

12 EXAMINER SEE: Ms. Mooney?

13 MS. MOONEY: No, your Honor.

14 EXAMINER SEE: Mr. O'Brien?

15 MR. O'BRIEN: No, your Honor.

16 EXAMINER SEE: Mr. Dougherty?

17 MR. DOUGHERTY: No questions.

18 EXAMINER SEE: Ms. Petrucci?

19 MS. PETRUCCI: No questions.

20 EXAMINER SEE: Mr. Mendoza?

21 MR. MENDOZA: No questions, your Honor.

22 EXAMINER SEE: Ms. Bojko?

23 MS. BOJKO: Yes, your Honor. Thank you.

24

25 - - -

CROSS-EXAMINATION

By Ms. Bojko:

Q. Good morning, Dr. Choueiki.

A. Good morning.

Q. Could we turn to page 10 of your prefiled testimony that's been marked as Staff Exhibit 1, please. On page 10, line 13, you mention the previous Ohio Power proceeding. Do you see that?

A. Yes.

Q. And did you provide testimony on behalf of staff in that proceeding?

A. Yes.

Q. In the AEP ESP III proceeding -- do you know what I mean when I say "AEP ESP III"?

A. Yes.

Q. In the AEP ESP III proceeding, did you oppose the establishment of the PPA rider in that case?

MR. MARGARD: Objection, your Honor. Dr. Choueiki is testifying on behalf of staff. If counsel is requesting whether staff opposed and would rephrase her question in that manner, I would withdraw my objection.

MS. BOJKO: My apologies, I meant to say "staff." I'll rephrase.

1 EXAMINER SEE: Thank you.

2 Q. (By Ms. Bojko) Dr. Choueiki, did staff
3 oppose the establishment of the PPA rider in the AEP
4 ESP III case?

5 A. Yes.

6 Q. And has staff's testimony and position
7 changed in the proceeding before the Commission
8 today?

9 A. We still say no. We recommend to the
10 Commission to deny the expanded PPA rider. However,
11 the only difference is the Commission spoke after we
12 opposed -- after staff opposed the PPA rider in both
13 AEP's ESP and Duke's ESP, and they found that the PPA
14 may be in the public interest. So we continue to
15 oppose it unless the Commission finds it's in the
16 public interest.

17 Q. So your testimony is that staff's
18 position has changed in light of the Commission's
19 decision; is that correct?

20 A. That is correct. The Commission
21 implements policy, energy policy, and we go there
22 with them.

23 Q. And the change in your testimony would be
24 that you're proposing alternative recommendations in
25 this case; is that correct?

1 A. So their recommendation is to deny the
2 expanded PPA. If the Commission disagrees with us,
3 with staff, then here's the alternative based on the
4 necessary conditions that they set in both the AEP
5 and Duke ESP orders.

6 Q. And on page 11, line 11, of your
7 testimony, you state that the Commission identified a
8 set of conditions that "were necessary but not
9 sufficient." What did you mean by "necessary but not
10 sufficient"?

11 A. So the Commission articulated a set of
12 conditions; however, the Commission stated that they
13 are not bound by these conditions, so to the extent
14 the company -- and by the company, I mean Ohio Power
15 in this case -- the company satisfies all necessary
16 conditions, the Commission may still say no.

17 Q. Could you turn to page 3, line -- I'm
18 sorry, page 13, line 3. On line 3 you state that "if
19 properly conceived," the PPA rider "may be in the
20 public interest." Do you see that?

21 A. Yes.

22 Q. Staff does not set forth in this
23 testimony what that public interest standard is, do
24 they?

25 A. No. The Commission decides what's in the

1 public interest.

2 Q. So staff doesn't have an opinion on what
3 is or what is not in the public interest?

4 A. That is correct. We have no opinion.

5 Q. Now, let's turn to your alternative
6 recommendations on page 17. Here you list staff's
7 alternatives. Are these alternative recommendations
8 regarding the PPA units which are the units owned by
9 AEP Generation in the proposed case, or are they
10 related to OVEC, or are they related to both?

11 A. I define the expanded PPA at the
12 beginning of my testimony to include two -- the
13 expanded PPA rider to include two purchase power
14 agreements; one between the company and OVEC, the
15 other between the company and AEP Generation
16 Resources. So that's both. Everything is included.

17 Q. Thank you for that clarification. So all
18 the alternative recommendations are for OVEC and the
19 AEP Generation PPA affiliate unit?

20 A. Yes.

21 Q. And are these conditions set forth in
22 your alternative recommendations sufficient for the
23 Commission to approve the expanded PPA rider if they
24 satisfy all of these conditions?

25 A. No. Again, those are the necessary

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1 conditions that were articulated by the Commission.
2 To the extent the Commission has others, other
3 conditions they'd like to be met, they're not here.
4 That's why -- that doesn't mean if the Commission
5 agrees -- if the company agrees to all these
6 necessary conditions, that still doesn't mean that
7 the Commission will agree.

8 Q. So this list that you provide isn't
9 necessarily an exhaustive list of alternatives that
10 may be available or that the Commission should
11 consider.

12 A. It is not.

13 Q. Let's look at the first alternative.
14 Your first alternative is to limit the PPA to three
15 years; is that correct?

16 A. To the term of the ESP.

17 Q. Which is scheduled to be three years; is
18 that your understanding?

19 A. Less than three years from now, right,
20 because they already are in the ESP.

21 Q. Good point. Fair enough. Thank you.

22 If the Commission allows the PPA rider
23 for the term of the ESP III, would that represent a
24 move away from a fully competitive generation market?

25 A. So staff's opinion is as follows: We

1 have a fully functional competitive market whereby
2 consumers in AEP Ohio's service territory either shop
3 or not shop, and about 70 percent or more of the
4 megawatt hours are being shopped. So the others are
5 being procured via competitive offer.

6 So in this case AEP Ohio, the wires
7 company, and it is a wires company now, is basically
8 providing distribution service. Any way to bring
9 back generation into the mix is a move in the
10 opposite direction.

11 Q. And isn't it true that in the Commission
12 order in the AEP ESP III case the Commission found
13 that there was likely no benefit in the first three
14 years of the rider and that only over a longer
15 timeframe could, perhaps, there be benefits to
16 customers?

17 MR. NOURSE: Your Honor, it's getting
18 awfully friendly. These are -- there's a lot of
19 softballs. I understand clarifications, but this is
20 definitely friendly.

21 MS. BOJKO: Your Honor, may I be heard?

22 EXAMINER SEE: Go ahead.

23 MS. BOJKO: This is in no way friendly
24 cross. OMAEG does not support the establishment of a
25 PPA rider, doesn't support populating that rider, and

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1 it doesn't support any alternatives. I'm testing his
2 alternatives right now. I'm focusing on the
3 alternatives for that very reason, and I think that
4 the Commission's order was actually adverse to his
5 first alternative, and that's what the question was
6 about.

7 EXAMINER SEE: I'm going to overrule the
8 objection. I'll allow the question.

9 THE WITNESS: Can I hear the question?

10 EXAMINER SEE: Yes.

11 (Record read.)

12 A. I can't recall exactly the language in
13 the order, but if they did say that, then they said
14 that. I'm not going to say no, they didn't say it.
15 But to the extent they said it, they said it.

16 Q. Let's look at your second alternative.
17 Is it staff's understanding that under rider RRS as
18 proposed, that expenses passed through to customers
19 can only be challenged at FERC?

20 EXAMINER SEE: Ms. Bojko, please
21 reconsider your question.

22 MS. BOJKO: Oh, I'll withdraw that
23 question.

24 EXAMINER SEE: Thank you.

25 Q. Turning to your second alternative, is it

1 your understanding that under rider PPA as proposed,
2 that expenses passed through to customers could only
3 be challenged at FERC?

4 A. So to the extent the Commission in Ohio
5 disagrees on an expense item, then my understanding
6 is that the Commission to the extent we want to
7 challenge that, because the AEP Generation Resources
8 is still going to bill AEP Ohio, so if we want to
9 challenge that item, the Commission here would have
10 to go to FERC.

11 Q. And under your proposed rigorous review,
12 would the Commission review the behavior of AEP and
13 AEP Generation in the marketplace?

14 A. I'm sorry, clarify for me a bit. I don't
15 get the question. Behavior? What behavior?

16 Q. Well, under -- you say, "rigorous review
17 of expanded PPA rider," my question is would the
18 Commission or staff review the behavior of AEP or AEP
19 Generation in the marketplace, such as bidding
20 strategies?

21 A. Oh, bidding behavior, yes. Definitely we
22 would want to review the bidding behavior of AEP, the
23 general resources that are in the PPA, and the ones
24 that are not in the PPA, that are owned by AEP
25 Generation Resources.

1 Q. And would you review AEP Ohio's bidding
2 behavior?

3 A. Well, AEP Ohio, would be responsible for
4 the units that are in the PPA. But AEP Generation
5 Resources would be responsible for bidding the units
6 that are not in the PPA. And that's why we have in
7 the condition AEP Ohio and AEP Generation Resource,
8 the two parties to the wholesale contract, would have
9 to agree before they file it at FERC.

10 Q. And your next alternative, your third
11 alternative, you were recommending that the
12 Commission look beyond the PPA units and OVEC and
13 look at the entire fleet, which is what I believe you
14 just referenced.

15 A. Right.

16 Q. Why are you looking at the -- why is your
17 recommendation to look at the entire fleet?

18 A. Again, to look at the -- want to make
19 sure that the units that are in the PPA are not being
20 disadvantaged over other units that are not in the
21 PPA.

22 Q. And your last bullet, your fourth
23 recommendation is a sharing mechanism of the risk
24 associated. Does the staff's alternative methodology
25 eliminate the risk to customers under this scenario?

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1 A. No. So here's the situation right now.
2 The risk the company claims is on AEP Ohio to the
3 extent the Commission disallows an expense, AEP
4 Generation Resource will have to bill AEP Ohio and
5 AEP Ohio will have to pay; however, they won't be
6 able to charge consumers.

7 If AEP Ohio is revenue neutral, and
8 that's what they claim to the situation, then they
9 ought to be risk neutral. That means the risk to AEP
10 Ohio, whether there is a PPA or not, should be
11 exactly the same.

12 Q. But your alternative doesn't eliminate
13 that risk; isn't that true?

14 A. Well, our alternative, staff's
15 alternative, would be to -- the risk would be between
16 AEP Generation Resources and consumers, and the
17 Commission with these conditions will manage the
18 consumers' part of the risk and AEP Generation
19 Resources would manage its risk. In the middle AEP
20 Ohio would have no risk at all.

21 Q. And my question wasn't clear. The risk
22 that you talk about, the managing risk for the AEP
23 customers, that isn't eliminated. There's still a
24 risk to manage; isn't that correct?

25 A. Oh, yes, there will be a risk,

1 definitely.

2 Q. And if we look at your second, third, and
3 fourth alternatives, you reference AEP Generation in
4 those three alternatives. Do you see that?

5 A. So the full information sharing, the
6 sharing mechanism, and the rigorous review?

7 Q. Correct.

8 A. Correct, because AEP Generation has to
9 agree to these recommendations before the official
10 contract is signed.

11 Q. So in your regulatory opinion, do you
12 believe that the Commission has existing authority to
13 order AEP Generation to accept audit findings which
14 is in your second alternatives?

15 A. The Commission isn't ordering anything.
16 AEP Generation Resources, upfront on its own, is
17 accepting to share information.

18 Q. And would your response be the same with
19 regard to your third and fourth alternatives?

20 A. Correct.

21 Q. Okay.

22 A. So this is a wholesale contract. It's
23 not under our jurisdiction. So the two parties to
24 the contract would have to accept it.

25 Q. I think you just said it's not under

1 the -- AEP Generation isn't under the Commission's
2 current jurisdiction; isn't that correct?

3 A. That is correct.

4 Q. So you believe that AEP Generation would
5 have to accept these conditions through a
6 modification to the purchase power agreement in order
7 to even implement your alternative recommendation?

8 A. They would have to be conditions in the
9 contract between AEP Ohio and AEP Generation
10 Resources.

11 Q. So do you believe that --

12 A. So the Commission in Ohio is not ordering
13 that contract. That contract is under FERC
14 jurisdiction. The two parties in the contract,
15 before they file at FERC, they would agree to
16 conditions, like any other contract.

17 Q. And with that agreement, you do not
18 believe that AEP Generation would have to agree to
19 subject itself to Commission jurisdiction?

20 A. No.

21 Q. And, Dr. Choueiki, you're not providing a
22 legal opinion on whether these three alternatives are
23 legally possible, are you?

24 A. That is correct, I am not.

25 MS. BOJKO: Thank you. That's all I

1 have. Thank you, Dr. Choueiki.

2 EXAMINER SEE: Mr. Michael?

3 MR. MICHAEL: Yes, your Honor. Thank
4 you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Michael:

8 Q. Dr. Choueiki, how are you?

9 A. Pretty good, thank you.

10 Q. My name is William Michael. I'm a
11 consumers' counsel in the Office of Ohio Consumers'
12 Counsel. I do have a couple questions for you.

13 First, I'd like to, if I can, follow up
14 on some questions that Ms. Bojko asked you. If I
15 understood correctly, you indicated that as a result
16 of the ESP order, the Commission stated that a PPA
17 rider could be in the public interest, correct?

18 A. Yes.

19 Q. But, nonetheless, staff in this
20 proceeding still opposes the PPA rider as proposed by
21 AEP Ohio; is that correct?

22 A. I'm sorry, there was -- someone sneezed.
23 You're asking if staff is still opposed?

24 Q. Yes. Notwithstanding the Commission's
25 finding in ESP III that a PPA rider could be in the

1 public interest, in this proceeding staff,
2 nonetheless, still opposes the PPA rider as proposed,
3 correct?

4 A. Yes.

5 MR. NOURSE: Your Honor, I object. It is
6 already obvious he's trying to get him to repeat his
7 arguments that support OCC's position.

8 MR. MICHAEL: Your Honor, it wasn't
9 obvious to me. The question I asked was not asked by
10 Ms. Bojko, and I just want to be clear because I'm
11 not, based on sort of the half loaf that was
12 presented. I think the Commission deserves the full
13 loaf.

14 MR. NOURSE: He already stated in his
15 testimony and in response to Ms. Bojko's testimony --
16 Ms. Bojko's questions.

17 MR. MICHAEL: We're happy to have her
18 testify if you'd like, Steve.

19 MR. NOURSE: I would like that.

20 EXAMINER SEE: Okay, move on,
21 Mr. Michael.

22 MR. MICHAEL: Thank you, your Honor.

23 Q. (By Mr. Michael) Another question I
24 wanted to follow up on, Dr. Choueiki, if I could,
25 from Ms. Bojko, was the conversation you had with her

1 regarding the degree to which the proposal was or was
2 not a move away from moving towards a competitive
3 market. You recall that conversation you had with
4 Ms. Bojko?

5 A. Yes.

6 Q. And my recollection, Dr. Choueiki, is
7 that you indicated that anything that brings
8 generation into the mix is a move away; is that
9 correct?

10 A. Yes.

11 Q. And does the PPA rider bring generation
12 into the mix, as you described it in your response to
13 Ms. Bojko?

14 A. Yes.

15 Q. I also wanted to follow up, Dr. Choueiki,
16 if I could, regarding your conversation with
17 Ms. Bojko on the suggested agreement between AEP Ohio
18 and AEPGR in the PPA. Do you recall that discussion
19 you had with Ms. Bojko?

20 A. Yes.

21 Q. Is it your understanding, Dr. Choueiki,
22 that to the degree AEP Ohio and AEPGR did enter into
23 such an agreement that the PUCO could enforce that
24 agreement?

25 A. No.

1 Q. In other words, the PUCO could not
2 enforce that agreement, correct?

3 A. No. To the extent there is something we
4 disagree with after the agreement goes into effect,
5 then the Commission has to go to FERC, and the
6 further approval would be on the Commission.

7 Q. Thank you, Dr. Choueiki. If I could draw
8 your attention, Dr. Choueiki, to the page 18 of your
9 testimony.

10 A. Okay.

11 Q. And I do apologize, Dr. Choueiki, I think
12 my last round of questions already addressed what I
13 was going to ask you regarding page 18 so I'm
14 actually going to move on.

15 Draw your attention to page 6, please --
16 I apologize for that -- specifically lines 9 and 10.

17 A. Okay.

18 Q. You assert on those lines, Dr. Choueiki,
19 that AEP Ohio will sell all output from the PPA units
20 and the OVEC generation on the PJM markets, correct?

21 A. Yes.

22 Q. Is it your understanding, Dr. Choueiki,
23 that not all of the AEPGR generation plants are
24 included in the PPA proposal?

25 A. That is correct, only the ones that

1 they're asking for.

2 Q. And is it your understanding,
3 Dr. Choueiki, that PJM has a must-offer requirement?

4 A. They do for units that have cleared the
5 capacity market. So units that have committed to the
6 capacity market, they have a must-offer requirement
7 in the energy market.

8 Now, in the capacity market they also
9 have a must-offer requirement to the extent there is
10 no bilateral contract with someone else or that power
11 plant is a fixed resource requirement plant.

12 Q. Thank you.

13 Are the PPA units under a must-offer
14 requirement in the capacity market?

15 A. I'm not sure I can say. I don't know if
16 this is public information or not.

17 MR. NOURSE: Are you asking are all of
18 them or are you asking about any individual?

19 MR. MICHAEL: I'll start with are all of
20 them first.

21 THE WITNESS: Should I be involved in
22 that discussion?

23 EXAMINER SEE: If you feel you need to
24 ask this question and you need to close the hearing
25 room and handle it in a confidential portion, fine.

1 MR. MICHAEL: Not in public?

2 EXAMINER SEE: Definitely.

3 MR. NOURSE: Your Honor, I don't think
4 this is for the public record to get into.

5 MR. MICHAEL: That's fine, your Honor.

6 MR. NOURSE: The auction results.

7 MR. MICHAEL: That's fine, your Honor.
8 I'll move on, your Honor.

9 Dr. Choueiki, if generation that is under
10 a must-offer requirement has costs above the PJM
11 clearing price, they do not have to participate in
12 the PJM capacity market, correct?

13 A. I'm sorry, there's something wrong with
14 your question.

15 Q. Certainly. Which part? I'll rephrase.

16 Is it your understanding, Dr. Choueiki,
17 that the independent market monitor creates a demand
18 curve ahead of the capacity auctions?

19 A. PJM is the one that creates the demand
20 curve.

21 Q. PJM creates the demand curve ahead of the
22 capacity auction, correct?

23 A. Correct.

24 Q. And if a generating unit's cost is above
25 what ultimately is the clearing price, that

1 generating unit does not have to clear on the PJM
2 market, correct?

3 A. They can offer zero if they want. They
4 don't know what the market clearing price is going to
5 be until the market clears.

6 Q. Correct.

7 A. So they offer a price. If the price
8 turns out to be lower than the market clearing price,
9 then they're in. If their offer price is higher than
10 what ends up being the clearing price, then they're
11 not, but they must offer.

12 Q. They must offer. But if they are a
13 must-offer and the must-offer generator's costs are
14 greater than the clearing price, they're not required
15 to participate in the clearing capacity?

16 A. I think we're speaking past each other.
17 If they have to offer, let's say their cost is \$300,
18 okay? \$300 a megawatt-day. They offer at zero. The
19 clearing price is 150. Then that means they cleared
20 because they offered at zero, and the clearing price
21 was 150.

22 Now, if they offered at 300 and the
23 market clearing price is 150, then they didn't clear.
24 So then they're not in the capacity market and they
25 don't have the must-offer requirement in the energy

3910

1 market because they didn't clear. They didn't commit
2 in the capacity market.

3 Q. And, Dr. Choueiki, I appreciate your
4 assistance on this. And let me ask another question
5 to clarify for myself your testimony.

6 Let's assume that an offer is made at 300
7 as you suggested, okay? And let's further assume
8 that a bid is made at zero by that generator at the
9 cost of 300. Okay?

10 A. They offered at 300?

11 Q. No, I apologize. Their cost is 300, they
12 offer at zero and the clearing price is 150.

13 A. Okay.

14 Q. Can the generators still come in and show
15 that its costs is above the clearing price and
16 therefore not participate?

17 A. No.

18 Q. Okay.

19 A. They can't do that. Once they clear,
20 that means they're in.

21 Q. Dr. Choueiki, I'd like to turn your
22 attention to your alternative proposal, and we'll
23 just start on page 17, please. Under your
24 alternative proposal, Dr. Choueiki, could the PPA
25 rider be used as a venue for other unregulated

1 generation to be contracted and paid for by AEP Ohio
2 distribution customers without being competitively
3 bid?

4 A. You say "other generators." Other
5 besides the ones in it proposed?

6 Q. Correct, yes, sir.

7 A. What I heard yesterday from the CEO is
8 that they won't, they won't add more, from the CEO of
9 AEP. They won't add more units into the PPA rider.

10 Q. Right.

11 A. I don't know what the company intends to
12 do in the future.

13 Q. Okay.

14 A. The Commission would have to basically
15 say to the extent they agree to the PPA, they'll
16 define what the conditions are, what's in, what's
17 out, what can come in, what can't come in.

18 Q. And in your questions with Ms. Bojko,
19 Dr. Choueiki, you confirm that you had filed
20 testimony in AEP Ohio's ESP III case, correct?

21 A. On behalf of staff, yes.

22 MR. MICHAEL: May we approach, your
23 Honor?

24 EXAMINER SEE: Yes.

25 MR. MICHAEL: We'd like to have what has

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1 been handed to Dr. Choueiki, your Honor, marked as
2 OCC Exhibit 20, if we could, please.

3 EXAMINER SEE: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Dr. Choueiki, can you please identify
6 what has been marked as OCC Exhibit No. 20?

7 A. That's my prefiled testimony in Case No.
8 13-2385-EL-SSO.

9 Q. Thank you. And, Dr. Choueiki, if I could
10 please request that you turn to page 12 of that
11 direct testimony, and specifically the first full
12 paragraph on that page, Dr. Choueiki. You state
13 there that "Staff is concerned that AEP Ohio may use
14 this rider as a venue for other unregulated
15 generation to be contracted and paid for by AEP Ohio
16 distribution customers without it being competitively
17 bid."

18 Did I read that correctly?

19 A. Yes.

20 Q. Does staff have that same concern under
21 your alternative proposal?

22 MR. NOURSE: Your Honor, I object. It's
23 friendly cross.

24 MR. KURTZ: Your Honor, can I be heard on
25 this issue? Because if the shoe were on the other

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1 foot, I would support Mr. Nourse, but I support OCC
2 here, and that's the nature of staff's testimony, is
3 they oppose the PPA conceptually, but then they
4 provide alternatives which may make it acceptable.
5 So, in a sense, staff is both hostile and friendly to
6 any party here, and so I think with that has to be
7 factored in in your evidentiary rulings.

8 MR. NOURSE: And, your Honor, I certainly
9 have not objected to 99 percent of the questions that
10 have happened so far, but in this particular case,
11 he's trying to get this witness to make statements
12 that are -- that he didn't make in his testimony here
13 that favor OCC.

14 MR. MICHAEL: And, your Honor, if I may
15 interject, I had asked Dr. Choueiki the question
16 about this concept, and I didn't know if the question
17 was unclear or if Dr. Choueiki didn't understand it,
18 so what I'm trying to do is refresh his recollection
19 in what Dr. Choueiki said in Case No. 13-2385 and see
20 if we can't ask some questions about that.

21 And, your Honor, I would just supplement
22 my remarks to the extent staff has changed their
23 testimony, OCC believes that it's appropriate for
24 questioning Dr. Choueiki to determine to what extent
25 and if it's based on a Commission order or if it's

1 based on some other factor.

2 EXAMINER SEE: I'm going to grant the
3 objection.

4 You can try again, Mr. Michael.

5 Q. (By Mr. Michael) Dr. Choueiki, it's true
6 that in the ESP III case staff was concerned that AEP
7 Ohio may use the PPA rider that was proposed there as
8 a venue for other unregulated generation to be
9 contracted and paid for by AEP Ohio distribution
10 customers without it being competitively bid, right?

11 MR. NOURSE: Objection. Same objection,
12 your Honor.

13 MR. MICHAEL: That's a foundation, your
14 Honor, for the next question, which is has staff
15 changed their position in this matter.

16 EXAMINER SEE: I'm going to allow the
17 question. You can answer it, Dr. Choueiki.

18 A. So in the first ESP the company asked
19 only for its entitlement into OVEC with the
20 possibility of expanding the PPA rider to include
21 other generation. So staff recommended no, and to
22 the extent the Commission wanted to grant the PPA, we
23 recommended that they limit it to the OVEC
24 entitlement. That means not add any more into the
25 rider.

1 Now, the Commission then issued an order
2 saying the PPA may be in the public interest. In
3 this testimony and the new testimony, the one in the
4 rider case staff said no, too, so we haven't changed
5 our position. We said no to a smaller PPA. Now
6 we're saying no to a bigger PPA.

7 However, the Commission again -- we
8 recognize the Commission has spoken and issued two
9 orders, and that's why we have an alternative
10 recommendation of putting conditions around that
11 rider.

12 Q. And, Dr. Choueiki, if I might, I believe
13 you stated in that response that staff has not
14 changed its position, but I want to -- when you said
15 that, did you mean that staff did not change its
16 position on this concern?

17 A. No, staff did not change its position on
18 the concept of a PPA, that we believe we are in a
19 competitive market. It's a fully functionally
20 competitive market in Ohio, a generation service, so
21 there is no need for anything else on the generation
22 side.

23 Q. Thank you, Dr. Choueiki. In my line of
24 work, sometimes I try to be precise, so I want to
25 focus your attention on this particular concern

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1 stated on page 12 of what we marked as OCC Exhibit 2,
2 if I might. And I just --

3 EXAMINER SEE: OCC Exhibit 2?

4 MR. MICHAEL: I apologize, your Honor.

5 Q. OCC Exhibit 20. And I just want to ask,
6 Dr. Choueiki, when you indicated that staff had not
7 changed its position, I would like to ask you, if I
8 can, did staff not change its position regarding this
9 particular concern? Stated another way, does staff
10 still have this concern in the PPA proposal made by
11 AEP Ohio in Case No. 14-1693?

12 MR. NOURSE: Objection, your Honor.

13 EXAMINER SEE: Basis?

14 MR. NOURSE: As stated at the beginning
15 of this line of questioning, he's trying to get this
16 witness to come up with a new recommendation, new
17 concern that's not in his testimony. It's friendly
18 cross.

19 MR. DARR: It's not friendly cross at
20 all, your Honor. By the very argument that
21 Mr. Nourse made, he's indicating that the witness is
22 being asked to take a position contrary or to develop
23 a position contrary to the position he's stated in
24 his testimony.

25 MR. NOURSE: It's not contrary because he

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1 said there could be other concerns and the Commission
2 could add as many things to the list as they want to.

3 MR. DARR: And we all have the right to
4 explore what those other conditions are and how they
5 may affect the proposal, your Honor.

6 MR. MICHAEL: And further, your Honor,
7 it's really -- Dr. Choueiki was very clear in stating
8 that staff still opposes. In connection with my
9 question about this particular aspect of his previous
10 testimony, I'm simply wanting to confirm whether or
11 not that opposition and the fact that staff hasn't
12 changed its position applies to that particular
13 concern.

14 EXAMINER SEE: I'm going to allow the
15 witness to answer the question, but be a little more
16 pointed in your question.

17 MR. MICHAEL: Thank you, your Honor.

18 EXAMINER SEE: Do you need it reread,
19 Dr. Choueiki?

20 THE WITNESS: No. I still remember it.

21 A. So in the ESP order, in the ESP case, AEP
22 asked for the PPA to be expanded to something else.
23 That's why we had that concern, so we raised it.

24 In this one, in this rider application,
25 the set is defined, the OVEC entitlement plus all the

1 other things and nothing more. So I didn't -- the
2 staff did not have an additional concern of what if
3 they had more because it's closed now. They say what
4 is in the PPA rider. It's the OVEC entitlement plus
5 these units, and that's it. They didn't leave room,
6 a door open for more if they wanted to add more.

7 Q. So it's your understanding then,
8 Dr. Choueiki, that -- I apologize. It's staff
9 understanding that AEP Ohio has committed not to
10 trying to include any other of its generation assets
11 in the PPA rider?

12 A. Yes.

13 Q. Were AEP Ohio to attempt to get
14 additional generation units in the PPA rider, would
15 this concern then be one that staff would raise in
16 connection with that effort by AEP Ohio?

17 MR. NOURSE: Objection. It's not
18 relevant, calls for speculation, incomplete
19 hypothetical.

20 MR. MICHAEL: Well, your Honor, I'm not
21 quite aware that AEP Ohio has committed definitively
22 to saying they wouldn't attempt to include any other
23 generation resources in the PPA rider, so to the
24 degree that Dr. Choueiki and staff are under a
25 different impression, I think it's fair for OCC to

1 inquire, based on what it believes to be the facts,
2 whether or not staff would raise that same concern
3 were AEP Ohio to try and get additional generation in
4 the PPA rider.

5 EXAMINER SEE: And I'll allow Witness
6 Choueiki to answer the question. The objection is
7 overruled.

8 A. So staff's understanding is that there is
9 no more units that can enter the PPA rider. Now
10 you're asking should I -- what do I think would be
11 staff's position?

12 Q. Let me rephrase, if I could,
13 Dr. Choueiki. Were AEP Ohio to attempt to get
14 additional unregulated generation in the PPA rider,
15 would the concern expressed by staff on page 12 be
16 one that you would then have in connection with that
17 new generation?

18 A. So if AEP's application included a
19 statement like it was previously in the ESP case
20 where they're saying currently the PPA rider we're
21 requesting includes two contracts, one OVEC and
22 company, one company and AEP Generation Resources,
23 plus we may want more, then we would have had the
24 same concern.

25 Q. If I could please direct your attention,

1 Dr. Choueiki, to page 13 of what was previously
2 marked OCC Exhibit 20, specifically lines 11 through
3 14.

4 A. Yes.

5 Q. Thank you. It states there, "Staff is
6 concerned that the AEP regulated business unit that
7 bids the OVEC generating stations into the PJM
8 capacity, energy, and ancillary services markets may
9 use different strategies than those used by its
10 affiliate, AEP GenCo." Did I read that correctly?

11 A. Yes.

12 Q. Does staff have that concern in
13 connection with the present proposal being made by
14 AEP Ohio?

15 MR. NOURSE: Objection.

16 EXAMINER SEE: Basis?

17 MR. NOURSE: Same.

18 EXAMINER SEE: The objection is
19 overruled.

20 A. Yes, we have that objection -- that
21 concern, and that's why it is, actually, we're asking
22 for maximum information, not only from units that are
23 in the PPA, but all the AEP Generation Resource units
24 to mitigate that concern.

25 Q. And just to clarify, Dr. Choueiki, that

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1 concern that I reference in OCC Exhibit No. 20 was
2 specific to OVEC. To clarify, does staff have that
3 same concern with respect to the other PPA units?

4 A. So the concern that in the alternative
5 recommendation in this case that we're here today
6 for, we have that same concern and it addresses all
7 the units, not only the OVEC units, all units that
8 are in the PPA and outside the PPA.

9 Q. Dr. Choueiki, under staff's alternative
10 proposal, the reliability of the transmission system
11 would still be under the auspices of PJM, correct?

12 A. That is correct.

13 Q. Dr. Choueiki, do you agree that about
14 70 percent of Ohio's electric generation resource
15 mixes coal?

16 A. If we're talking nameplate capacity
17 versus generation, so there's capacity and there is
18 energy, nameplate capacity, it's more like coal is
19 about 55 percent. But energy -- I'm just discussing
20 2014, the latest data we have for a full year.

21 Q. Correct.

22 A. For energy it's about in the high 60s.

23 Q. Dr. Choueiki, would you agree that about
24 17 percent of Ohio's electric generation resource mix
25 is natural gas?

1 A. 17 percent?

2 Q. Yes, sir.

3 A. Again, energy, it's probably 17 or
4 18 percent; not nameplate. So there's megawatts and
5 megawatt-hours. In megawatt-hours, 2014 probably was
6 in the high teens, 17, 18 percent.

7 Q. And, Dr. Choueiki, would you agree that
8 about 12 percent of Ohio's electric generation
9 resource mix of energy is nuclear?

10 A. You said 12 percent?

11 Q. Yes, sir, I did.

12 A. It's in the teens too. I don't remember
13 what the number is. I can't recall.

14 Q. Dr. Choueiki, in connection with your
15 conversation with Ms. Bojko, you acknowledged that
16 even under your alternative proposal, customers would
17 still bear some risk under the alternative PPA rider,
18 correct?

19 A. So to the extent the Commission agrees to
20 the conditions and approves the PPA, some risk will
21 be on consumers, but to the extent the Commission has
22 defined the public interest and it includes a little
23 bit of risk, that means there are other benefits to
24 consumers that the Commission found.

25 Q. And that notwithstanding, any financial

1 risk associated with generation that's borne by
2 customers is inconsistent with the fully competitive
3 generation market, correct?

4 A. Customers take risk. There are shopping
5 customers that are month to month. They're taking
6 risk. The risk is on them, but they choose to take
7 that risk. Other customers may do fixed contracts,
8 sign a fixed contract for 12 months or 24 months.
9 But in the construct before us, the PPA construct,
10 there is a risk because costs to the company may
11 increase.

12 Q. And unlike your previous statement where
13 the shoppers choose to assume the risk, under the
14 construct put forward by AEP Ohio, customers would be
15 forced to accept that risk, correct?

16 MR. NOURSE: Your Honor, I object. I
17 mean, this is -- OCC had their own witnesses. If
18 they wanted to make these points, they don't need to
19 use Dr. Choueiki as a conduit to make all these
20 additional points that don't relate to his testimony,
21 clarifying his recommendations, and I think it's
22 inappropriate.

23 MR. MICHAEL: I withdraw the question,
24 your Honor.

25 EXAMINER SEE: Thank you.

1 Q. (By Mr. Michael) Under your alternative
2 proposal, Dr. Choueiki, in the testimony you filed in
3 this case, unlike the shopping customers that choose
4 to take on generation risk, the alternative proposal,
5 if adopted, would force customers to assume
6 generation-related financial risk, correct?

7 A. So if we were to go there, that means the
8 Commission found that it's in the public interest to
9 have that rider, then, yes, it is correct that all
10 customers will be paying for that hedge. But overall
11 the Commission found -- must have found that it's in
12 the public interest.

13 Q. But the customers under your alternative
14 proposal would be assuming generation-related
15 financial risk irrespective of whether they wanted to
16 or not, correct?

17 A. It's a nonbypassable charge so everyone
18 is paying for it.

19 Q. So all of them would be assuming
20 generation-related financial risk irrespective of
21 whether or not they wanted to.

22 A. There would be some risk involved, yes.

23 Q. Thank you, Dr. Choueiki. Dr. Choueiki,
24 does staff believe that the alternative proposal in
25 your direct testimony would subsidize generation?

1 A. Yes.

2 Q. And, Dr. Choueiki, it's accurate that
3 under your alternative proposal it is unknown whether
4 the PPA rider is going to be either a debit or a
5 credit to customers, correct?

6 A. That is correct. Because it's all in the
7 future, no one knows.

8 Q. So staff, obviously, then can't guarantee
9 that the PPA rider will be a net financial benefit to
10 customers, right?

11 A. If it's just on a financial basis, yes,
12 no one knows.

13 Q. Dr. Choueiki, are you familiar with the
14 Lakeshore Unit No. 18 up in northeastern Ohio?

15 A. How familiar? Very familiar? I've
16 seen -- I mean, I've looked at it online, and I know
17 where it is but --

18 Q. Fair enough.

19 A. -- that's about it.

20 Q. What is it?

21 A. It's a power plant, and I don't even know
22 if it's retired or not.

23 Q. Coal-fired plant?

24 A. I think it's coal-fired, yes.

25 Q. Is it scheduled to be retired, do you

1 know?

2 A. I don't remember.

3 Q. Are you familiar, Dr. Choueiki, with the
4 Eastlake Units 1 through 3 plants up in northeastern
5 Ohio?

6 MR. NOURSE: Object. Relevance.

7 MR. MICHAEL: Your Honor, what I am
8 trying to establish is that relates to the
9 reliability element that the Commission set forth in
10 its ESP III order. These units are coal-fired units
11 that are or will be shut down.

12 My follow-up points are going to be there
13 is additional gas-fired generation coming online, or
14 that is expected to come online, and, thus, there's
15 going to be no net loss of megawatts available to
16 Ohians.

17 MR. NOURSE: Again, your Honor, these go
18 beyond his testimony. They don't relate to AEP Ohio
19 units.

20 MR. MICHAEL: Your Honor, I don't recall
21 that the Commission's ESP III order was limited only
22 to AEP Ohio units as it relates to the reliability
23 aspect that it wanted information on.

24 MR. DARR: I also believe, your Honor,
25 that several witnesses on behalf of AEP Ohio placed

1 into contention whether or not Ohio will be a
2 successful place for purposes of securing generation
3 resources. I point to the witness testimony of Mr.
4 Wittine, also the testimony I believe of Mr. Thomas,
5 and also the testimony of Mr. Vegas.

6 MR. NOURSE: That's a different topic
7 than these questions related to, your Honor.

8 MR. DARR: Not at all, your Honor. It
9 all relates to whether or not Ohio is an area that
10 will be subject to reliability concerns, and I would
11 add Mr. Bradish raised questions about it, as well.

12 MR. NOURSE: Again, Mr. Williams
13 indicated that might be a future topic but not his
14 current topic.

15 MR. MICHAEL: I've got to lay a
16 foundation, your Honor, and also I believe AEP Ohio's
17 witnesses are taking the position that if G leaves
18 Ohio, we're going to have to spend all this money on
19 transmission because we're going to have to get it
20 from other states.

21 And if your Honor will allow me based on
22 the foundation to move forward, I think we'll be able
23 to show there's plenty of generation coming to Ohio.

24 EXAMINER SEE: I think you need to move
25 on, Mr. Michael.

1 MR. MICHAEL: Thank you, your Honor. If
2 I might have a brief moment, your Honor.

3 EXAMINER SEE: Sure.

4 MR. MICHAEL: Thank you, Dr. Choueiki,
5 for your time. I appreciate it very much.

6 No further questions, your Honor.

7 EXAMINER SEE: Mr. Darr?

8 MR. DARR: Yes, thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Darr:

12 Q. I'd like to turn to your testimony at
13 page 13, Dr. Choueiki.

14 A. Okay.

15 Q. At lines 11 through 16 you indicate that
16 one of the reasons for rejecting the proposal
17 presented by AEP Ohio in this case is that the
18 company did not demonstrate a financial need,
19 correct?

20 A. Correct.

21 Q. And the basis for that is that the
22 underlying calculation of the PPA payments would be
23 based on a 50/50 capital structure and 11.24 return
24 on equity; is that correct?

25 A. Correct. That's what they presented to

1 us.

2 Q. Now, your conclusion you did not indicate
3 factors other than the return on equity and 50/50
4 capital structure for your determination; is that
5 correct?

6 A. That is correct. The determination was
7 based on what are the revenues and what are the power
8 plant expenditures, and they seem to be even lower
9 without -- that means the power plants are able to
10 pay their bills just from the revenues.

11 Q. So based on that, you reached the
12 conclusion that there was not a demonstration of a
13 financial need; is that correct?

14 A. That is correct.

15 Q. Now, are you familiar with any actions by
16 AEP Ohio to incur accounting impairments for any of
17 the PPA units that are at issue in this case?

18 A. No.

19 Q. Is it fair to say that the statement that
20 you make at lines 11 through 16 would indicate that
21 the price to be charged by AEPGR would be too high?

22 A. The 11.24 percent is too high to be
23 awarded to unregulated assets under the Commission's
24 jurisdiction.

25 Q. And you understand that even at that high

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1 price, AEP Ohio still claims the plants would produce
2 a profit rather than a cost to customers?

3 MR. NOURSE: Your Honor, I object. This
4 is not only using pejorative terms, but it's trying
5 to, again, expand and get the witness to elaborate on
6 conclusions that he clearly made in his testimony
7 with no clarification, no adverse challenging
8 questions at all.

9 MR. DARR: I think it is adverse, your
10 Honor, inasmuch as we have a recommendation here that
11 even under these circumstances, this proposal could
12 be modified in some way to make it adequate for
13 Commission approval, and I should be allowed to
14 explore that.

15 EXAMINER SEE: I'm going to overrule the
16 objection. You can explore staff's position.

17 Answer the questions, Dr. Choueiki.

18 MR. DARR: Could we have the question
19 read back, please?

20 (Record read.)

21 A. Yes, based on the energy forecast they
22 are projecting profits.

23 Q. And does the staff see any reason to have
24 ratepayers pay unrecovered costs when in the longer
25 term AEP Ohio projects the plants will produce

1 revenues in total that are greater than the purchase
2 price AEP Ohio would pay GR under the proposal?

3 MR. NOURSE: Objection, your Honor.

4 EXAMINER SEE: Grounds?

5 MR. NOURSE: Friendly cross.

6 MR. DARR: Not at all, your Honor, same
7 question, same issue.

8 EXAMINER SEE: Objection is sustained.

9 Q. (By Mr. Darr) Now, you had limited your
10 alternative proposal to three years; is that correct,
11 or to the life of the ESP?

12 A. Staff position is, yes, the life of the
13 ESP.

14 Q. And for practical purposes what we would
15 be talking about is the remainder of, well, 2016,
16 2017, and five months of 2018, correct?

17 A. Yes.

18 Q. During that period has staff taken any
19 position with regard to the probabilities that the
20 rider will produce a credit or a charge to customers
21 if the Commission approves AEP Ohio's proposal?

22 A. We have not for the following reason,
23 because there are revenues, a lot of revenues, for
24 the 5 percent high load, higher load, and there are
25 costs for the 5 percent low load, and the difference

1 between these two, one of them is a charge of the
2 \$900 million; the other one is a credit of \$2
3 billion.

4 So it's so volatile even -- and, you
5 know, that's only for nine years. We're not sure
6 what's going to happen in the future, so...

7 Q. My question was a little more specific
8 than that. Has staff taken any position with regard
9 to whether or not the rider would produce a credit or
10 a charge over the remaining term of the current ESP
11 of AEP Ohio?

12 A. And my answer is we have not because the
13 rider value is different whether you assume a
14 5 percent lower load or a 5 percent higher load or
15 the one in the middle. So the position was we don't
16 know what's going to happen. So we did not do an
17 analysis of what's going to happen, and that's why
18 you don't see anything in my testimony.

19 Q. So staff is not taking a position one way
20 or the other with regard to the credibility or
21 reliance that the Commission should place on AEP's
22 forecast contained in KDP-2; is that fair?

23 A. The first three are easy because we know
24 what the capacity market prices are. We can look in
25 the forward energy market and see the prices, and the

1 revenues seem to be reasonable, especially after you
2 do the adjustments to the capacity performance
3 revenues, so we have a more accurate number on the
4 revenue side.

5 The cost side, no one has been talking
6 about. We don't know what the costs are. There is
7 KDP-2, there are costs to the power plants. We don't
8 know how accurate they are.

9 Q. So staff -- I'm sorry, I didn't mean to
10 interrupt.

11 A. So the Commission will have to decide how
12 much reliance to put on each one of these for the
13 revenues and for the costs. I mean, it's in the
14 record, so they can decide what they like, what they
15 don't like.

16 Q. But staff is not taking a position one
17 way or the other whether or not the Commission should
18 take -- should rely on the KDP-2 exhibit; is that
19 correct?

20 A. That is correct.

21 Q. And is it fair to say you have not made,
22 "you" meaning staff, have not made any independent
23 analysis of the benefits -- or, excuse me, the
24 credits or charges that would be produced by the
25 rider?

1 A. We've looked at what the company has
2 given us, but we haven't developed our own forecasts.

3 Q. At pages 14 and 15 of your testimony, you
4 indicate one of the concerns with the application
5 filed by AEP-Ohio is it's failure to commit to full
6 information sharing, correct?

7 A. Correct.

8 Q. And you indicate there that as an
9 alternative, the Commission should consider including
10 rigorous review of both AEP Ohio and AEPGR; is that
11 fair?

12 A. On the generation side rather than just
13 power plants that are pertinent to the PPA, like AEP
14 is recommending, look at the entire fleet.

15 Q. Are you familiar with whether or not AEP
16 Generation Resources is required under its
17 market-based rate authority to maintain books and
18 records in accordance with the FERC Uniform System of
19 Accounts?

20 A. I believe they're required by FERC. We
21 don't have requirements ourselves on AEPGR.

22 Q. My question was very specific. Are you
23 aware whether or not FERC has or would require AEP
24 Generation Resources to maintain its books in
25 accordance with the Uniform System of Accounts under

1 the market-based rate's authority of AEPGR.

2 A. I'm not aware of what under their
3 corporate separation rules and record bookkeeping
4 they're supposed to do with FERC.

5 MR. DARR: May I have a document marked
6 as IEU Exhibit 16, please.

7 EXAMINER SEE: 17?

8 MR. DARR: I'm sorry, is it 17? We
9 withdrew 16, as I recall.

10 EXAMINER SEE: But you did mark it.

11 MR. DARR: Yes, I did mark it.

12 EXAMINER PARROT: So we still consider
13 it.

14 MR. DARR: Very good, let's call it 17.

15 EXAMINER SEE: IEU 17 is so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. DARR: For purposes of the record,
18 I'd like to represent to the Bench that this is drawn
19 from the FERC website, and it is a notice contained
20 on that website published by the FERC.

21 Q. (By Mr. Darr) As part of your preparation
22 for this case, did you investigate at all the
23 requirements of AEP Generation Resources to maintain
24 its books and records in compliance with FERC Uniform
25 System of Accounts?

1 A. No.

2 Q. Were you aware that AEPGR had filed or
3 submitted a request for waiver of the reporting
4 requirements with the Federal Energy Regulatory
5 Commission of FERC Form 1 and FERC Form 3Q for the
6 calendar year 2015?

7 A. No, I wasn't, until I read it just now.

8 Q. I want to follow up on a question I asked
9 earlier. Are you aware of whether or not AEPGR has
10 taken any impairments with regard to the PPA units?

11 MR. MARGARD: Your Honor, if we could get
12 a clarification, specifically with accounting
13 impairments; is that what you're referring to?

14 MR. DARR: Specifically accounting
15 impairments, yes.

16 A. I cannot recall if they have or have not.

17 Q. One final area of concern, one last
18 question or area of concern. You indicated in a
19 prior answer that you looked at the three-year window
20 because there's an availability of market data with
21 regard to revenue; is that correct?

22 A. Yes. There's transparency on capacity
23 and energy.

24 Q. And the transparency is afforded by the
25 PJM capacity market and the forward markets with

1 regard to energy; is that correct?

2 A. Correct.

3 MR. NOURSE: Objection.

4 EXAMINER SEE: Grounds, Mr. Nourse?

5 MR. NOURSE: I think he already answered
6 the question, your Honor.

7 EXAMINER SEE: Would you like to respond,
8 Mr. Darr?

9 MR. DARR: Actually, I don't think I
10 asked him specifically with regard to the
11 transparency. His explanation as to the
12 transparency, I think this is new information, your
13 Honor.

14 MR. NOURSE: I don't think Dr. Choueiki
15 has testified anything about his opinion about future
16 energy prices. He hasn't done any analysis in his
17 testimony, so there's no basis for him to throw in
18 opinions in answer to Mr. Darr that support IEU's
19 position on that topic.

20 MR. DARR: Again, it's not IEU's position
21 that any rider should be adopted, your Honor. An
22 alternative proposal is substantially different than
23 that proposed by the staff. Additionally, your
24 Honor, this question goes specifically to why staff
25 proposed a three-year limitation on the PPA rider.

1 MR. NOURSE: Again, you can say that
2 about any topic, your Honor, but that's not the basis
3 for throwing in opinion on something that the staff
4 has not looked at it and addressed in testimony.

5 EXAMINER SEE: Did you already respond to
6 the question posed to you, Dr. Choueiki?

7 THE WITNESS: I can't recall.

8 MR. DARR: He did, your Honor.

9 MR. NOURSE: Are we done with that line
10 of questioning?

11 MR. DARR: No, I have one more question.

12 MR. NOURSE: I reserve the objection
13 before the response.

14 EXAMINER SEE: Okay. And, Dr. Choueiki,
15 I need you not to respond until the objection has
16 been ruled on. Go ahead.

17 MR. DARR: I think the response to my
18 last question was "yes." I just want to make sure
19 that's clear.

20 EXAMINER SEE: Was that your response,
21 Dr. Choueiki?

22 THE WITNESS: Yes.

23 MR. DARR: That's all I've got. Thank
24 you.

25 EXAMINER SEE: Mr. Yurick?

1 MR. YURICK: No questions.

2 EXAMINER SEE: Mr. Kurtz?

3 MR. KURTZ: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Kurtz:

7 Q. Good morning, Dr. Choueiki.

8 A. Good morning.

9 Q. Could you turn to page 13 of your
10 testimony, please. I want to get some clarification
11 on staff's position.

12 First of all, with respect to the return
13 on equity, you have it listed here at 11.24 percent;
14 is that right?

15 A. Right.

16 Q. That's the number AEP used throughout its
17 modeling for the nine-and-a-half years?

18 A. Yes, nine years and three months.

19 Q. But do you understand that the actual
20 return on equity being requested is a formula rate?

21 A. Correct.

22 Q. Can you identify the formula, if you
23 remember it?

24 A. I don't remember it, but I remember it
25 was a range of -- they wanted a range between

1 8 percent and 15 percent.

2 Q. Do you recall that the return on equity
3 requested by AEPGR would be the long-term cost of
4 debt identified in December of the prior year,
5 Moody's long-term debt index plus 650 basis points?

6 A. That is correct.

7 Q. With a floor of 8.9 percent and a ceiling
8 of 15.9 percent.

9 A. Yes. That's an accurate description.
10 There's evidence in the record from Mr. Taylor using
11 for current -- first of all, do you understand that
12 the 11.24 percent was the December 2014 Moody's bond
13 index plus 650 basis points?

14 A. That is correct.

15 Q. Now, there's evidence in the record that
16 using the August 2015 Moody's bond index, the return
17 on equity that would result from the AEP proposal
18 would be 11.69 percent? Were you aware of that?

19 A. No. So it's gone up, so the cost of debt
20 has gone up.

21 Q. Right. So the return on equity has,
22 therefore, gone up as well under the formula,
23 correct?

24 A. Yes.

25 Q. If 11.24 percent is excessive, would

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1 11.69 percent be more excessive?

2 A. Yes.

3 Q. Did you review the testimony of OEG
4 Witness Mr. Taylor regarding his flex-down
5 return-on-equity proposal?

6 A. Sorry, I did not.

7 Q. Do you know if anyone from staff reviewed
8 it?

9 A. I don't know.

10 Q. Did you or anyone on staff review the
11 testimony of OEG Witness Mr. Kollen?

12 A. I can't recall if I did or I did not.
13 I'm not sure if others have.

14 EXAMINER SEE: You're going to need to
15 speak up, Dr. Choueiki.

16 THE WITNESS: Okay.

17 Q. Okay. If 11.24 percent after-tax return
18 on equity is excessive, does the staff have a
19 position as to what it should be?

20 A. Well, to the extent the Commission wants
21 to grant a PPA, it should be at least the cost of
22 debt. Okay. So anything above that is extra, is a
23 bonus.

24 Now, also to the extent the Commission
25 agrees with the company and wants the company to

1 invest in these units, then they're going to have to
2 provide some incentive. Should that incentive be 650
3 basis points? Staff thinks that's way high,
4 especially because it's also unregulated assets, so
5 you're awarding a guarantee on return on equity to
6 unregulated assets?

7 Q. And you understand that this return on
8 equity of 11.24 percent is after tax?

9 A. Yes.

10 Q. And that AEPGR would recover the tax
11 effect from consumers to get it to the after-tax
12 number?

13 A. Correct.

14 Q. Since you haven't reviewed Mr. Taylor's
15 testimony, let me ask you just conceptually. If you
16 assume the Commission approves a form of PPA,
17 wouldn't you agree that a return on equity that is
18 lower when the PPA is a charge would be preferable
19 to a set return on equity that is the same whether
20 the PPA is a charge or credit?

21 MR. NOURSE: Your Honor, I object. The
22 witness has already stated he didn't review
23 Mr. Taylor's testimony. It is a complicated
24 recommendation with multiple facets, and I think
25 Dr. Choueiki, to the extent he has any qualifications

1 to address ROE, should not be forced to provide an
2 off-the-cuff decision about something he hasn't
3 looked at and something staff hasn't evaluated.

4 MR. KURTZ: Your Honor, this is the only
5 staff witness. He does testify that the return on
6 equity proposed by the company is excessive, and I've
7 asked him a hypothetical question, essentially, would
8 it be reasonable if the return on equity is lower
9 when the PPA is a charge and higher if the PPA is a
10 credit?

11 MR. NOURSE: Your Honor, he's asking for
12 an endorsement of a position he didn't address in
13 testimony and hasn't reviewed.

14 MR. KURTZ: I think this is a perfectly
15 reasonable hypothetical to understand staff's
16 position.

17 MR. MARGARD: Your Honor, may I be heard?

18 EXAMINER SEE: Yes.

19 MR. MARGARD: Again, Dr. Choueiki is
20 testifying on behalf of staff. To the extent that
21 Dr. Choueiki can testify as to staff's position, he
22 should be permitted to do so. To the extent that
23 requires him to offer his own individual opinion, I
24 believe it's inappropriate.

25 MR. KURTZ: Can I clarify?

1 Q. Do you know if staff would have a
2 position on the hypothetical I addressed to you?

3 A. No.

4 Q. Speaking about the --

5 EXAMINER SEE: Go ahead.

6 MR. KURTZ: He answered, so that's fine.

7 Q. Speaking about the financial need of the
8 generation units, as you use the term on line 15, did
9 anyone from staff look at whether the cost-of-service
10 calculation that AEPGR made was accurate?

11 A. No.

12 Q. Your answer was "no"?

13 A. No.

14 Q. If using standard ratemaking
15 cost-of-service adjustments it was assumed that the
16 cost-of-service rate was too high, should it be
17 reduced to more accurately reflect the financial need
18 of the plants?

19 MR. NOURSE: I object, your Honor. It's
20 the same thing. Now he's trying to get Mr. Kollen's
21 position in for a general undefined hypothetical when
22 it's clearly something that the witness has already
23 indicated staff has not looked at.

24 MR. KURTZ: I'm asking if staff would
25 have a position on the basic question if they've

1 overstated their cost, is that wrong and should it
2 get fixed?

3 EXAMINER SEE: To the extent that staff
4 has a position on the issue and has taken a position,
5 you can answer the question, Dr. Choueiki.

6 A. If they overstated their cost, then they
7 need to be fixed.

8 Q. Okay. Page 15, please, line 3: "The
9 Company and AEPGR did not, in Staff's opinion, commit
10 to sharing the financial risk."

11 If I understand your testimony, the only
12 commitment that AEP Ohio made was that they're
13 subject to disallowance for imprudent costs and so
14 forth, and, therefore, that's the sharing that they
15 think is adequate?

16 A. That is correct.

17 Q. Did you towards the end in your specific
18 recommendations on page 19 at the top where you're
19 addressing this as the sharing mechanism, you say
20 that AEPGR should be responsible for a portion of the
21 costs associated with the PPA rider in exchange for a
22 portion of the revenue. That sharing mechanism you
23 think would be appropriate?

24 A. So a couple of mechanisms. One of them
25 is 50/50. Let's say 50/50. We say the Commission

1 says 50 percent of the revenues would go to
2 generation resource and the other 50 percent of the
3 revenues would go to consumers in the rider, and
4 50 percent of the symmetry, that is, 50 percent of
5 the costs would go to consumers, and 50 percent of
6 the costs would go to AEPGR. That's one incentive
7 for the company to profit maximize and cost minimize.

8 An alternative is to look at -- let's say
9 the Commission decides to go over three years or a
10 PPA. You would look at the value of the rider, so it
11 could be a charge or a credit. Let's say it's a
12 charge and it's \$100 million. So then the Commission
13 could say, okay, those are the revenues. Those are
14 the costs. They're causing a \$100 million charge.
15 That looks like if you divide if we assume 50 million
16 megawatt-hours for AEP, AEP distribute, AEP Ohio,
17 that's a \$2 charge.

18 Q. More like 44 million. Sorry.

19 A. 50 million megawatt-hours per year.

20 Q. I think it's 44, but I get the math.

21 MR. NOURSE: Your Honor, I think the
22 witness was giving a purely hypothetical, and now
23 Mr. Kurtz is testifying to facts.

24 EXAMINER SEE: Let the witness finish his
25 answer.

1 Q. I'm sorry, go ahead.

2 A. Still going to go with my 50. So
3 100 million divided by 50 million would be \$2. The
4 Commission may say, okay, that's a cap. AEP Ohio and
5 AEP Generation Resource, you have to agree that no
6 more than \$2 a megawatt-hour consumers pay.

7 Now, on the flip side, on the credit,
8 given that everything above \$2 goes to AEPGR, not to
9 AEP Ohio, then on the flip side we say anything of
10 more than \$2 of credit goes to AEPGR. The first \$2
11 of credit goes to consumers. From then on it goes to
12 AEPGR.

13 Q. Okay.

14 A. That's another mechanism.

15 Q. So you have two sharing, the 50/50 and
16 then the cap, right?

17 A. Cap on both credits and to give an
18 incentive to AEPGR.

19 Q. Under your 50/50, would that essentially
20 put AEPGR and ratepayers in the same boat, they would
21 have the incentives to control costs and maximize
22 revenues?

23 A. Correct.

24 Q. And that would be they would be in the
25 same boat from the very first dollar.

1 A. Yes.

2 Q. Under the cap, as you described it,
3 \$100 million band, on either side they wouldn't
4 really have that much incentive if the PPA was going
5 to be 40 million or 30 million or 20 million charge
6 or credit because that would all be on consumers.

7 A. Within that cap?

8 Q. Yes.

9 A. I mean, there would be other conditions
10 too, right. So we're monitoring the behavior, their
11 competitive behavior. We're reviewing other things,
12 their costs. I mean, those conditions would
13 continue. It's not like blindly you go with plus or
14 minus \$2 and that's it.

15 Q. I understand, but wouldn't an advantage
16 of the 50/50 sharing mechanism be that there would be
17 an incentive from dollar one?

18 A. I can't understand, decide which one is
19 better. If we maybe sit for two days, you and I, and
20 discuss it, one of us will convince the other which
21 one is better. But right now I can't tell you.
22 There are two mechanisms. I know each one of them
23 has pros and cons.

24 Q. I'm sure that's true.

25 Page 17 you're proposing to limit the

1 rider to three years or the term of the ESP; is that
2 correct?

3 A. Yes.

4 Q. Let me skip that one.

5 The rigorous review, the next condition,
6 I talk about reviewing the expenses and so forth, and
7 if the Commission -- you talk about this intervention
8 at FERC with the burden of proof being on the Ohio
9 Commission in a FERC proceeding in this section of
10 your testimony; is that correct?

11 A. Right.

12 Q. What would be the case if the Ohio
13 Commission wanted to have a charge disallowed from
14 the AEPGR to Ohio Power as part of the equation,
15 right?

16 A. So AEPGR bills AEP Ohio, and now the
17 Commission is conducting an audit, and there's
18 \$50 million should be the sell-out. So the
19 Commission would have to go to FERC to argue why it
20 should be a sell-out.

21 Q. Now, if the Commission, though, limits
22 itself to the retail rate recovery through the PPA
23 rider and says here's the \$50 million disallowance,
24 AEP Ohio, you have to absorb it, there would be no
25 FERC intervention or burden of proof or any type of

1 activity at FERC. Wouldn't it all be retail?

2 A. So the concern is not only that the
3 Commission may disallow their 50 million and then
4 customers aren't charged, the Commission is also
5 concerned with the company it regulates, AEP Ohio.

6 Let's say the Commission disallows
7 \$200 million, but AEP Ohio still committed to paying
8 the \$200 million to AEP Generation Resource. Then
9 two years later AEP Ohio will come to us and say,
10 Commission, we need money, and we can't pay our
11 bills. So the Commission has to worry about the
12 financial integrity of the wires company, and that's
13 why at the beginning with one -- I can't remember
14 which, who it was cross-examining me, it's very
15 important that AEP Ohio stays risk neutral.

16 Q. I understand your concern but you're
17 creating another problem by that, aren't you? Aren't
18 you creating this FERC issue?

19 A. Not if AEPGR accepts in the PPA that if
20 the Commission in Ohio on a final order disallows a
21 specific expense, then AEPGR can't bill to AEP Ohio.

22 Q. I know you're not a lawyer, but if it did
23 create legal problems in the sense that it could be
24 argued the Ohio Commission was trying to regulate at
25 the wholesale level, would that be a -- should that

1 be a concern?

2 A. I am not a lawyer, but I don't see the
3 legal concern if the two parties agree to conditions
4 in the contract. So AEPGR is agreeing in the
5 contract that -- they are agreeing on their own
6 without any order from the Ohio Commission that if
7 the Ohio Commission on a final order disallows
8 \$50 million, then that's it, AEPGR will not bill AEP
9 Ohio that \$50 million.

10 Q. Okay. I understand your concern about
11 the financial integrity of the distribution utility
12 because ultimately that could raise its borrowing
13 cost, cost of capital which could cost native load to
14 consumers; is that right?

15 A. That's one concern. The other they could
16 come under an emergency statute and ask for money
17 because they pay -- they have lots of liability on
18 their generation side from another company.

19 Q. Now, that would be a fairly extreme
20 situation, would you agree?

21 A. It is an extreme situation, but it's a
22 situation that the Commission should be concerned
23 about, especially if they allow a term that long.

24 Q. Let me walk through the mechanics then
25 under your proposal. AEPGR bills AEP Ohio monthly

1 under the PPA, correct?

2 A. That's how they propose it.

3 Q. Then AEP Ohio would put a charge or a
4 credit through the PPA rider either simultaneously or
5 with a one-month billing lag of some sort; is that
6 right?

7 A. They reconcile through, like, a true-up
8 once a year or once a quarter.

9 Q. But the billing will go AEPGR to AEP Ohio
10 and AEP Ohio will charge or credit consumers after
11 they clear power in the market and decide whether
12 there's a profit or a loss.

13 A. Correct.

14 Q. Now, staff would audit the PPA rider not
15 monthly.

16 A. No.

17 Q. Annually?

18 A. The Commission will decide whether it
19 should be annually. I mean, I'm pretty sure it's not
20 going to be quarterly either.

21 Q. So if one of these annual audits you
22 determine there was a \$50 million imprudent expense,
23 then there would be presumably some sort of hearing
24 on that?

25 A. If there is a disagreement, there will

1 have to be a hearing.

2 Q. And there could be appeals and so forth?

3 A. Yes.

4 Q. If ultimately the Commission is found to
5 be correct that the \$50 million imprudent charge
6 should be returned, you're envisioning that instead
7 of making AEP Ohio simply not recover that amount
8 make AEPGR refund it to AEP Ohio who would then in
9 turn refund it to consumers.

10 A. Or subtract it from future bills.

11 Doesn't have to be a refund, future bills.

12 MR. KURTZ: Thank you, Dr. Choueiki.

13 EXAMINER SEE: Mr. Nourse?

14 MR. MARGARD: Your Honor, could we go off
15 the record for just a brief second?

16 EXAMINER SEE: Yes.

17 (Off the record.)

18 (Recess taken.)

19 EXAMINER SEE: Let's go back on the
20 record. Mr. Nourse?

21 MR. NOURSE: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Nourse:

25 Q. Good morning, Dr. Choueiki.

1 A. Good morning.

2 Q. I want to ask you some questions, and if
3 I ask you your opinion, I'm really talking about
4 staff because you're representing staff here, right?

5 A. That is correct.

6 Q. I'll try to say "staff."

7 Does staff believe that market-based
8 solutions are always better than regulatory
9 solutions?

10 A. This is the construct we have right now,
11 and markets seem to be working very well right now.

12 Q. By your answer are you saying staff does
13 not prefer market-based solutions to regulatory
14 solutions?

15 A. Oh, no, I'm not saying that.

16 Q. So staff does prefer market-based
17 solutions to regulatory solutions.

18 A. Correct.

19 Q. Any qualification or conditions you want
20 to put on that opinion or preference?

21 A. No. I mean, shopping is prosper Ross in
22 Ohio and standard service offers were pro curing
23 supply for nonshoppers at highly competitive rates so
24 it's looking good.

25 Q. Do you consider, you staff consider the

1 PPA rider a market-based solution or a regulatory
2 solution?

3 A. There are some market components in it,
4 but it is a -- there is cost base in it, too. So
5 it's like a mixed bag. It has both in it.

6 Q. Is it fair to say that the regulatory
7 structure in Ohio currently is also a hybrid of
8 competition and regulation?

9 A. So the ESP Statute 143 is not the MRO.
10 The MRO is all the way for the market. ESP, right
11 now we have this electric security plan statute that
12 gives us security to the utility and to consumers, so
13 there's some protection mechanisms in it. And under
14 the ESP umbrella, we have a fully competitive model.

15 Q. So you're disagreeing that the ESP is a
16 hybrid of competitive and regulatory components?

17 A. Well, the only thing that ESP has that
18 the MRO does not have, and that's a nonlegal opinion,
19 is that the ESP, the Commission still has authority
20 under the standard service offer. So the Commission
21 can decide to limit shopping. The Commission can do
22 lots of things that once the company is under an MRO
23 statute they wouldn't.

24 Q. And has the Commission ever approved an
25 MRO?

1 A. No.

2 Q. Would you agree -- that well, strike
3 that.

4 So is the staff still philosophically
5 opposed to the PPA rider?

6 A. Staff is opposed to the PPA rider, and
7 that's why our recommendation to the Commission is to
8 deny the PPA rider. However, the Commission, again,
9 has spoken in two orders, and so now basically the
10 Commission may find that the PPA could potentially be
11 in the public interest. So that's why we oppose it;
12 however, we have an alternative recommendation to the
13 Commission -- to the extent the Commission finds that
14 the PPA rider, as modified by the Commission, is in
15 the public interest.

16 Q. So is it fair to say then that staff has
17 changed its prior view of being philosophically
18 opposed to PPA riders in light of the ESP III order?

19 A. I don't see that staff changed its
20 position because even in the previous one we stated
21 to the extent the Commission disagrees with staff,
22 here are the conditions. We're doing the same thing
23 here. The only additional two observations we have
24 since staff's position were articulated in ESP orders
25 for Duke and AEP were that we have order and opinions

1 and orders that state that a PPA may be in the public
2 interest.

3 Q. And we'll get into the opinion and order
4 a little bit later. So let me ask you some more
5 background questions first. Did staff perform any
6 analysis of whether the PPA rider is expected to be a
7 net charge or credit over the life of the PPA units?

8 A. We have looked at everything that AEP
9 filed.

10 Q. So staff hasn't done any independent or
11 quantitative analysis of the life of the PPA units?

12 A. All the way to 2051, we did not. Neither
13 did AEP. AEP only showed us nine years and three
14 months.

15 Q. Okay. And so did staff do any
16 quantitative analysis or independent analysis of the
17 PPA financials for any period of time?

18 A. We did not forecast anything -- energy
19 markets because the error in the forecast is very
20 high post three years.

21 Q. Does that mean that staff believes that
22 the future is uncertain with respect to capacity and
23 energy prices beyond three years?

24 A. Not only on the prices, also on the cost.
25 So the revenues and the cost are so uncertain that

1 basically, whatever -- I mean, you could make energy
2 prices go up or you could make energy prices go down
3 in your forecast and the impact is tremendous --

4 Q. Oh, I understand.

5 A. -- on the rider.

6 Q. I understand that. So I'm asking you
7 about the revenue side. I appreciate you've already
8 stated your opinion about the cost a couple times.

9 But with respect to future capacity and
10 energy prices in the PJM markets, do you agree that
11 that's volatile and unpredictable when you look out
12 beyond three years?

13 A. Yes, it's more volatile.

14 Q. And it's uncertain what the level of the
15 prices will be; is that correct?

16 A. I think PJM has done a better job now at
17 least with the capacity performance product that, I
18 mean, look at the results of the last two transition
19 auctions and the '18-'19 auction. The price of
20 capacity is more moderately stable than before.

21 Q. You believe that stability will continue
22 indefinitely in the future; in other words, beyond
23 three years?

24 A. I think -- I don't believe we'll see
25 \$16 prices anymore. I think all these problems have

1 been fixed. The nuances have been fixed.

2 Q. You believe the PJM markets are fully
3 functional and effective?

4 A. The energy market is very competitive.
5 The capacity market is administratively mitigated.

6 Q. You believe that the PJM markets are
7 fully functional and effective and they don't need
8 any more reforms; is that your testimony?

9 A. No. I didn't say they're perfect. I
10 said they're fully functional, the energy market.
11 The capacity market needs a little bit more work, but
12 it's going towards a good solution.

13 Q. Can you identify any flaws today in the
14 capacity or energy PJM markets?

15 A. I mean, we're reading about flaws right
16 now where consumers, at least in the winter where we
17 had the polar vortex, you had some generators that
18 were unable to procure gas. You had generators that
19 were -- that paid a premium on gas and weren't able
20 to recover it. So those problems are getting fixed
21 now with capacity performance and with increasing the
22 offer cap that PJM was thinking about doing for the
23 energy market.

24 Q. Anything else come to mind as far as
25 flaws or things that still need fixed?

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1 A. To be sure there are others.

2 Q. If the Commission finds it to be a
3 quantitative financial benefit, the PPA rider, you
4 would still -- you, staff, would still oppose the PPA
5 rider based on other concerns, correct?

6 A. The biggest concern is we are in a fully
7 competitive market in AEP service territory. So now
8 we're bringing back generation components as charges
9 instead of just going in the market and buying or
10 going in the market and shopping or going in the
11 market and procuring for the nonshopping. Now we're
12 adding more complexity with a rider that is tied to
13 generation again that is distributed across all
14 customers.

15 Q. I appreciate your concerns, but is the
16 answer affirmative to my question? Do you need it
17 read back?

18 A. Yes.

19 (Record read.)

20 A. It depends how the Commission comes up
21 with the -- I mean, if they deem it to be in the
22 public interest, then they have the reasons to why
23 it's in the public interest. So long as the staff
24 says we're in a competitive market, we're going to
25 have this thing holding us back. Why are we going

1 back providing subsidies when we're in a competitive
2 market?

3 Q. But, again, I want to clarify staff's
4 position. So is it true that if the Commission found
5 that there was a clear quantitative financial benefit
6 for the PPA rider for whatever term that they're
7 looking at or would approve it for, staff would still
8 oppose the proposal based on other concerns; am I
9 correct?

10 A. Depends. I can't give you an answer,
11 absolute answer, because it really depends. Like
12 you're saying, to the extent another application
13 comes in for a PPA, well, now, the ruler that we're
14 going to use is whatever the Commission used to grant
15 the PPA. So that would be staff's position.

16 Again, we're implementing Commission
17 policy, so whatever the Commission decides, if the
18 Commission decides in this case that a PPA is in the
19 public interest and they identify exactly what it's
20 going to look like and the company accepts it, then
21 that's the ruler that we're going to use when company
22 Y comes in for a PPA.

23 Q. Now, you've, I think, referred to the PPA
24 financial hedge construct as a form of insurance,
25 correct?

1 A. Correct.

2 Q. And you agree that insurance has value,
3 even if you never make a claim, so to speak, or have
4 a net financial advantage?

5 A. Consumers buy car insurance and home
6 insurance and life insurance to hedge their risk.
7 And you buy insurance, and even if your house doesn't
8 burn down, you still pay for that insurance, but it's
9 the peace of mind.

10 Q. And in some cases that kind of insurance
11 is required by law or imposed as an obligation by the
12 government.

13 A. Yes.

14 Q. That would be imposed, that obligation
15 would be imposed based on a determination that it is
16 good for the customer, independent of whether the
17 customer would buy their insurance voluntarily,
18 correct?

19 A. That is correct.

20 Q. Now, in your review of this case and your
21 testimony in preparation for this case, do you review
22 the Apples to Apples site to monitor CRES retail
23 offerings?

24 A. Every day? No. Every now and then I
25 may.

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1 Q. When was the last time you did?

2 A. Been a while.

3 Q. Like years, more than a year?

4 A. I can't recall. No, I don't think it has
5 been a year, but I can't recall when I did it.

6 Q. Do you recall you testified on this point
7 in the FirstEnergy case down the hall a couple days
8 ago?

9 A. Yes. And they showed me some Apples to
10 Apples stuff.

11 Q. But you recall in that proceeding stating
12 you hadn't looked at Apples to Apples in the last
13 three or four years?

14 A. I don't know. I may have said it. I
15 don't recall when was the last time I looked at the
16 Apples to Apples chart.

17 Q. And you certainly didn't start work on
18 this case three or four years ago, right?

19 A. No.

20 Q. It's been a long case, but it hasn't been
21 that long.

22 Do you review -- well, let me rephrase.

23 In your work for this case, in your
24 analysis and preparation for your testimony, have you
25 reviewed AEP Ohio's generation capacity and

1 generation energy rates that are based on SSO auction
2 results?

3 A. So the last -- I mean, right now AEP is
4 in its first SSO auction result here, so it started
5 in -- when did it start? June 1 of 2015. So we just
6 started, and I think I'm familiar with the rates that
7 cleared the auction.

8 Q. I asked you about the retail rates. Have
9 you examined the retail rates?

10 A. Oh, no, I did not.

11 Q. And FirstEnergy has done SSO auctions
12 longer than AEP, correct?

13 A. Correct.

14 Q. Have you looked at retail rates for
15 FirstEnergy, retail rates that relate to
16 FirstEnergy's wholesale SSO auctions?

17 A. No.

18 Q. No? Do you make observations or findings
19 about retail volatility for shopping and nonshopping
20 customers on a regular basis?

21 A. Do I make observations? To whom am I
22 making observations?

23 Q. Do you examine that? Do you monitor it?
24 Do you follow it?

25 A. I follow the SSO auctions, not the retail

1 side.

2 Q. Okay. And so you don't follow the retail
3 rate volatility.

4 A. I don't design rates at all myself.

5 MR. DARR: I missed the end of that.

6 THE WITNESS: I don't design retail rates
7 myself.

8 Q. Does someone else on your team or with
9 staff -- since your last answer I think was relating
10 to you, not staff, does someone else on your team or
11 staff monitor and document or report anything about
12 retail volatility or retail rate trends?

13 A. Could be. I know on our website we
14 publish retail rates by EDU, but I'm not sure like
15 what.

16 Q. None of your opinions in your testimony
17 were based on review of any of that data, correct?

18 A. That is correct.

19 Q. As a general matter, do you agree that
20 closure of PPA units, generation units, would cause
21 significant adverse economic impacts on Ohio's
22 economy?

23 A. Depends if it impacts them positively or
24 negatively. If a power plant shuts down because its
25 very inefficient and another power plant comes up

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1 that is brand new and highly efficient, I'm not sure
2 why it would impact negatively in that scenario.

3 That's why I can't say like a general statement any
4 power plant that shuts down, it impacts the economy.

5 Q. But now you're changing my question. I'm
6 not asking about whether five other things happen,
7 there could be a net positive on Ohio. I'm asking
8 whether you agree as a single development, whether
9 the closure of a PPA unit would cause significant
10 adverse affects on Ohio's economy?

11 A. And I can't agree that this is the only
12 thing that is on a power grid because it's not so.
13 So we never studied the power grid as just this one
14 power plant and that local county. You're looking at
15 the big picture so you have to look at what's
16 happening when this shuts down. You can't say just
17 this shuts down and study the impact on this picture.
18 We don't live in an isolated world where only one
19 thing would happen at a time. I can't answer your
20 question.

21 Q. Your first response you talked about a
22 new plant opening. Are you saying that whenever a
23 plant closes in Ohio, there's always a new plant that
24 opens in Ohio?

25 A. No. What I'm saying is a plant shuts

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1 down in Ohio, then to the extent it impacts
2 reliability there might be some transmission upgrade,
3 and to the extent transmission upgrades cause other
4 power plants that are more efficient than the power
5 plant that shut down to sell energy and capacity in
6 the market, then maybe it's better.

7 Q. And that was actually a separate
8 question. I wanted to ask you about reliability. My
9 current question relates to economic development
10 impacts on Ohio's economy and you saying staff is
11 indifferent to the impact on Ohio's economy of
12 closing a PPA unit.

13 A. No. Staff would have to look at the
14 impact of the entire Ohio economy and the electricity
15 prices and what's being developed before we make a
16 statement that this is going to be bad for the
17 economy. And it may be. It's just we can't say that
18 just from one power plant shutting down it's a
19 calamity on Ohio's economy.

20 Q. I didn't say anything about a calamity.
21 I asked you whether there were adverse impacts. And
22 so by your answer when you talk about looking at
23 electric prices, are you suggesting that closing an
24 Ohio PPA plant would cause electric prices to go down
25 somehow and that would offset the cost of the impact

1 on the economy?

2 A. It may.

3 Q. Closing one Ohio plant could cause
4 electric prices to go down and provide a net benefit
5 to Ohio consumers is; is that your testimony?

6 A. Now you're putting in things that I did
7 not say. What I said, I said it may. And the reason
8 it may because of these other things, that a more
9 efficient power plant may be constructed, that could
10 cause more jobs, that could cause more efficient
11 generation and cheaper prices.

12 Q. That's your hypothetical. My
13 hypothetical is one thing happens. The plant closes.
14 Are there adverse impacts on Ohio's economy?

15 MR. MARGARD: Your Honor, I'm going to
16 object. I think this has been answered a number of
17 times. The witness has indicated that he doesn't
18 believe that he can answer such a question, that it
19 has to be looked at in context.

20 MR. NOURSE: Again, your Honor, I think
21 it's a fairly discrete question that he's giving a
22 different answer to that adds other things that were
23 not related to my question.

24 MR. MARGARD: I agree that it's discrete.
25 I would also submit that the witness has indicated

1 that he can't answer that question.

2 EXAMINER SEE: I would agree. It's been
3 asked and answered.

4 MR. NOURSE: I'll move on.

5 Q. (By Mr. Nourse) We have your answer.
6 Thank you. All right. Now let's talk about
7 reliability in a general matter. You started to
8 address this before. You agree that a PPA unit
9 closure would cause the need for transmission grid
10 improvements?

11 A. It could.

12 Q. Is it possible that it wouldn't?

13 A. If all of them closed at the same time,
14 I'm pretty sure they're going to need some
15 reliability upgrades. I'm just not sure -- the
16 probability of all of them closing at the same time
17 is de minimus.

18 Q. Let's take one plant at a time. So are
19 you saying it's possible that any one of the plants
20 could close without causing any reliability
21 improvements to be made?

22 A. It's possible that, for example, if
23 Stuart 1 shuts down and all the owners of Stuart 1
24 agreed to shut it down, that there may not be a
25 reliability problem. It's possible. But it's

1 possible there might be a reliability problem.

2 Q. All right. And whenever there's a
3 reliability investment that's caused by a plant
4 closure, there would be a price tag associated with
5 that, correct?

6 A. Correct.

7 Q. And Ohio customers would pay for part of
8 that price tag, correct?

9 A. Yes. Based on what type of a solution it
10 is. If it's like 500 kV and above or 345 double
11 circuit and above, then 50 percent would be locally.
12 50 percent would be socialized. There are allocation
13 methods, but, yes, Ohio customers would be impacted
14 if there's transmission upgrade.

15 Q. And you mentioned earlier I think in
16 questions from OCC that you believe, correct me if
17 I'm saying this wrong, that approving the PPA would
18 amount to a subsidy in the context of the PJM
19 markets.

20 A. Yes.

21 Q. And does the subsidy that you're
22 referencing there in that context, is that different
23 from cost-of-service rates that occur in other states
24 within PJM that are under regulation, rate
25 regulation?

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1 A. So states that are regulated that are in
2 PJM, they are a vertically integrated utility, they
3 regulate generation, distribution, and transmission,
4 so they look at everything, all the books and records
5 and number of chairs, every generating thing there,
6 they can decide how they grant them costs plus an
7 investment because that's how the regulatory
8 construct is.

9 Q. So those states -- I'm sorry, were you
10 not finished?

11 A. In states where there's retail choice
12 those are deemed generation to be competitive
13 service. So then if it's a competitive service, then
14 it's in the market. Generation owners recover in the
15 market their cost.

16 Q. So if there's a state that has cost-based
17 generation service, then it's okay, the subsidy is
18 not a problem?

19 A. You have to give me a little bit more.
20 If a state is a regulated state, where is the
21 competition?

22 Q. Correct me if I'm wrong, but I thought
23 your prior answer was hinged on whether or not
24 there's a vertical utility as opposed to the presence
25 of a cost-based generation rate in that state.

1 A. Well, there would be a regulated utility.
2 That means generation is regulated like distribution
3 transmission. But you have to give me more
4 information if you have something in mind that you
5 want to talk about.

6 Q. I'm just trying to understand your
7 distinction where you draw the line.

8 A. Well, the distinction is a state that has
9 a regulatory construct where it's a regulated
10 monopoly in generation, even if that state isn't PJM,
11 for example --

12 Q. So that's the -- I'm sorry.

13 A. -- versus a state like Ohio and
14 Pennsylvania and New Jersey and Maryland where there
15 is competition, generation is a competitive service.

16 Q. So that's the only circumstance you
17 believe in the program for what you're calling a
18 subsidy, is where you have vertically integrated,
19 additional rate regulation, correct?

20 A. And I don't consider that a subsidy
21 because they are regulating a cost of service.

22 Q. Well, in those states the generator still
23 gets paid through the PJM markets for capacity and
24 energy, right?

25 A. Correct.

1 Q. And they get paid the cost-based rates
2 from retail customers, correct?

3 A. We're talking about not an AEP company,
4 right? Because AEP companies outside Ohio are fixed
5 resource requirement companies, so we're talking
6 about another company that is regulated? That isn't
7 PJM?

8 Q. I'm trying to understand where you draw
9 the line, once again. So I'm asking you whether
10 that's true for your vertically integrated, regulated
11 utility in another state -- we don't have to list all
12 of them again because you already did that -- that
13 those utilities get their revenue from the PJM
14 market, and then they get their cost, their net cost,
15 from retail customers, correct?

16 A. That is correct.

17 Q. And in some instances it may be revenues
18 that exceed the cost, in which case the retail
19 customers would benefit, correct?

20 A. Correct.

21 Q. And in some instances there may be costs
22 that exceed the PJM revenues and then retail
23 customers pay for that, correct?

24 A. Correct.

25 Q. Now, with your subsidy criticism, does

1 that apply to renewable energy purchase agreements in
2 Ohio?

3 A. If they're mandated by law, then they may
4 be subsidized, that's true. I mean, subsidy --
5 subsidy sometimes is good; sometimes it's bad. And
6 in cases where it's in the public interest to
7 subsidize, like in telephone rates, business
8 customers used to subsidize residential customers for
9 the same line, but that was in the public interest,
10 so the Commission did that.

11 Q. Okay. So if the Commission here in Ohio
12 determines what you're characterizing as a subsidy to
13 be in the public interest, then it's okay, right?

14 A. The Commission is the body that decides
15 what's in the public interest on every policy.

16 Q. And you wouldn't take issue with that
17 specific example, right?

18 A. I wouldn't. If the Commission decides,
19 the Commission decides.

20 Q. Let me just ask you a few general
21 questions while we're on the PJM markets topic.
22 While we're on the subject of PJM markets, I just
23 want to ask you a few general questions based on your
24 understanding and expertise there.

25 A. Okay.

1 Q. So do you agree that the capacity and
2 energy markets in PJM are administrative?

3 A. The capacity is administrative, more
4 administrative. The energy market, I think, is more
5 competitive than administrative.

6 Q. Okay. And to be clear, when I say
7 "administrative," I'm referring to the fact that the
8 FERC and then PJM, under FERC's authority, creates a
9 set of rules and administrative determinations to
10 manage and operate the market. Is that the same
11 definition you were using?

12 A. I was thinking more like, for example, a
13 capacity market, they say it is competitive. Well,
14 it's competitive in terms of offers, but at the end
15 of the day, there's a vertically -- there is a VRR,
16 variable resource requirement, curve that sets the
17 demand curve, so its more administrative than in the
18 energy market.

19 Q. And there are other administrative
20 features of the PJM capacity market, such as the cap,
21 the cap that's related to CONE, cost of new energy,
22 CONE, correct?

23 A. In the capacity market.

24 Q. In the capacity market. That's an
25 administrative determination that's -- generally it's

1 one-and-a-half times CONE; is that correct?

2 A. One-and-a-half times CONE is the max.

3 Q. The cap.

4 A. The cap.

5 Q. For energy prices.

6 A. For capacity.

7 Q. I'm sorry, capacity prices. And the max
8 was at least temporarily changed recently. Were you
9 aware of that?

10 A. On what?

11 Q. On capacity.

12 A. On the energy market it was changed.

13 Q. Why don't you tell us about that.

14 A. The winter after the polar vortex winter,
15 the PJM asked to waive the \$1,000 energy price on
16 specific units that are buying gas at the higher rate
17 that their costs are above \$1,000, and FERC gave a
18 temporary waiver on that, but that was on the energy
19 side. Now they're revisiting the issue again.

20 Q. So, again, that's an example even with
21 what you called the competitive energy market where
22 PJM can change the rules and affect pricing, correct?

23 A. FERC decides. FERC decides, right. So
24 there is a stakeholder process in PJM, and they
25 discuss it ad nauseam, for three or four months, and

1 then PJM agrees to ask FERC to revise a specific
2 tariff, and then FERC agrees to it. Then it becomes.

3 Q. So it's administrative and bureaucratic;
4 is that what you're saying?

5 A. I didn't say any of these two words.

6 Q. And what FERC/PJM giveth they taketh
7 away, right? In other words, they can change the
8 rules at any time?

9 A. Of course we have the venue of filing at
10 FERC and opposing things if we don't like it, so it's
11 an open process. It's not like FERC and PJM decide
12 what is going to happen and then it happens.

13 Q. But it's ultimately FERC that can change
14 the rules, and, in fact, they've done that frequently
15 with the PJM markets. Would you agree?

16 A. Yes.

17 Q. When it comes to bidding data for market
18 participants that are involved with the PJM capacity
19 and energy markets, would you agree that PJM and the
20 independent market monitor review such bidding data
21 relating to individual participants for purposes of
22 ensuring compliance with all the rules?

23 A. Yes.

24 Q. And, in fact, you, as a PUCO staff
25 member, can have access to that same data; is that

1 correct?

2 A. That is correct.

3 Q. And you regularly do request and receive
4 approval for accessing that data?

5 A. That is correct.

6 Q. Now, are you aware of also the feature
7 within the capacity auction, what's called the
8 regulatory backstop option?

9 A. You have to tell me a little bit more.

10 Q. Are you aware of a feature if the
11 capacity auction fails to clear enough resources, PJM
12 can ultimately enter into cost-based contracts to
13 ensure capacity resources are available?

14 A. Yes.

15 Q. And that's separate and distinct from the
16 reliability, must-run type of cost-based contract,
17 correct?

18 A. Yeah, those are different, that's true.
19 Those are based on announced retirements, and then
20 PJM would like to keep them on until the grid is
21 upgraded, so they enter into these contracts.

22 Q. And that's another administrative feature
23 of PJM markets, that you have to get approval to
24 retire a generation unit?

25 A. Well, a generator makes an announcement,

1 and PJM conducts a reliability study and the market
2 monitor conducts a market power study, and then to
3 the extent there is nothing, there is no impact on
4 reliability, then that's fine. To the extent there
5 is, then they try to work out a solution with that
6 generation owner and provide them with cost-based
7 contracts until the upgrade is fully deployed.

8 Q. So in those key respects do you agree
9 that PJM relies on cost-based regulatory monitors to
10 solve their problems?

11 A. In those aspects they do.

12 Q. Let me ask you a few more general
13 questions. These kind of relate to PJM as well. And
14 I also want to -- these general questions relate to
15 your role as part of the staff, part of the PUCO
16 staff, as well, okay?

17 So would you agree with me that fuel
18 diversity is of great importance?

19 A. Yes.

20 Q. And would you agree that a significant
21 portion of retiring megawatts are being replaced by
22 natural gas resources -- I'm sorry, let me rephrase
23 that.

24 Would you agree with that a significant
25 portion of retiring megawatts being replaced by

1 natural gas resources, we cannot afford to forget
2 about protecting our current resources to help in
3 hedging against any unforeseen natural gas
4 curtailments?

5 A. So I agree to the generation diversity,
6 but we haven't gotten there yet. I mean, in Ohio at
7 one point in time we were more than 80 percent coal,
8 and now we're more like -- in terms of nameplate
9 capacity after the retirements that just occurred in
10 May, we're more like 50 percent coal; and gas is 30
11 or 35 percent in nameplate capacity, not in energy.

12 So we were relying on 80 percent coal.
13 Now we're relying on 50 percent coal. At some point
14 in time we're going to get to a point where we need
15 to make sure we have at least a fair share of each
16 one of the fuel types to maintain generation
17 diversity.

18 Q. Okay. Well --

19 A. So we were relying more on coal. Now
20 we're relying more on gas and nuclear. Before it was
21 just coal and nuclear.

22 Q. But in the context of retiring megawatts
23 being replaced by natural gas, you agree that we
24 cannot afford to forget about protecting our current
25 resources to help in hedging against any unforeseen

1 natural gas curtailments?

2 A. I think PJM has done a good job right now
3 trying to include those in the offers for generators
4 having a firm contract and allowing them to include
5 the cost of the firm contract for gas or
6 infrastructure to the extent they need to tap into
7 another pipeline, interstate pipeline.

8 So before -- I would agree with you
9 before these reforms that have occurred in the
10 capacity performance. Now they're built in
11 explicitly to make sure that a generator that commits
12 to capacity performance that is a natural gas
13 generator has to carry that risk and make sure that
14 they have a firm contract or have access to more than
15 one pipeline of natural gas.

16 Q. And when you said before "I would agree
17 with you," did you think I was reading something from
18 your prior ESP III testimony?

19 A. No. I meant before, and I should have
20 said "before CP." Before CP generators weren't even
21 allowed to count the firm contract in their offer
22 price.

23 Q. What about last week, would you agree
24 with that comment last week?

25 A. Last week?

1 Q. At the FirstEnergy hearing.

2 A. I don't remember what I said at the
3 FirstEnergy hearing.

4 Q. Okay. I may come back to that. Let me
5 try to move on and see if we can get there otherwise.

6 A. Okay.

7 Q. Do you agree that diversity is important
8 so there's value in having a coal plant and a nuclear
9 plant and a gas plant?

10 A. Yes. I agree we need all three fuels.

11 Q. Would you agree that coal prices are
12 generally more stable than natural gas prices?

13 A. Yes.

14 Q. Now there's been some discussion today
15 about your understanding of the proposed PPA contract
16 so you had some questions about that from other
17 counsel, right?

18 A. Yes.

19 Q. And did you review the actual draft
20 contract that's part of this record that constitutes
21 the proposed PPA?

22 A. I reviewed the actual contract, and then
23 I reviewed also a summary of the contract. More
24 recently I reviewed the summary, which was in
25 Dr. Pearce's testimony, I think.

1 Q. Correct. Okay. So is it your
2 understanding from reviewing the contract that AEP
3 Ohio has a veto over significant capital investments
4 that would occur going forward?

5 A. Supposedly there is a three way, three
6 votes. There's an AEP Ohio vote, an AEP Generation
7 Resource vote, and an AEP services vote. And to the
8 extent AEP Ohio and AEP Generation Resource do not
9 agree, then AEP, I don't know if its AEP Generation
10 Energy Services or AEP the parent company, has a
11 vote. That will break the tie.

12 Q. Do you recall a sentence in the PPA that
13 says, "For major material projects at a wholly owned
14 Seller Facility, Buyer's prior written approval and
15 agreement must first be obtained before proceeding
16 with such Capital Improvements Work"? Does that
17 sound familiar?

18 A. Yes.

19 Q. And under that kind of language, would
20 you agree that the PPA -- excuse me, that AEP Ohio
21 would have approval authority and, therefore, veto
22 authority over significant capital investments?

23 A. The way I understand it is AEP Ohio does
24 not; the Commission, the Ohio Commission.

25 MR. NOURSE: Your Honor, I'd like to use

1 Sierra Club Exhibit 2 that's already been admitted
2 into the record as the draft PPA.

3 May we approach, your Honor?

4 EXAMINER SEE: Yes.

5 Q. (By Mr. Nourse) Dr. Choueiki, I realize
6 you're not an attorney. I'm not trying to ask you
7 legal questions or contractual --

8 A. Yes.

9 Q. -- the outcomes of any contractual
10 lawsuits or anything like that, but you did state you
11 reviewed the contract and you're making opinions
12 about it so I want to make sure we're on the same
13 page here, if possible.

14 A. Okay.

15 Q. So on this issue I was reading from
16 Section 4.2 that's on page 13. And you understand
17 that under this contract, the buyer is AEP Ohio and
18 the seller is AEP Generation Resources?

19 A. Yes.

20 MR. DARR: Objection, your Honor. The
21 contract itself doesn't say that, I don't believe.
22 On the front page it says "GENCO." Leaves the date
23 blank.

24 MR. NOURSE: There are definitions, your
25 Honor, and I'm asking him to accept that for purposes

1 of these questions.

2 EXAMINER SEE: All right. Go ahead.

3 Q. (By Mr. Nourse) So, Dr. Choueiki, in
4 Section 4.2 can you read that second sentence to
5 yourself?

6 A. Okay.

7 Q. And would your understanding of that
8 language be that the buyer gets to approve or deny
9 the major material capital projects before they
10 proceed?

11 MS. BOJKO: Objection.

12 EXAMINER SEE: Grounds, Ms. Bojko?

13 MS. BOJKO: He's mischaracterizing the
14 PPA contract. He's leaving off an important phrase
15 at the beginning of the sentence that says, "For
16 major or material projects at a wholly owned Seller
17 Facility." He's misrepresenting the contract to the
18 witness.

19 MR. NOURSE: I'll accept that
20 clarification, your Honor. I was talking about the
21 AEP affiliate PPA units.

22 EXAMINER SEE: With that clarification,
23 the witness can answer the question.

24 THE WITNESS: I'm sorry, what was that
25 question again?

1 (Record read.)

2 A. Them and other co-owners. I mean, that's
3 what the contract -- what it says here in the second
4 sentence. It's not like only AEP Ohio would have to
5 agree. If it's Zimmer and they want to do a major
6 investment, then everyone else who co-owns that
7 facility will have to.

8 Q. But for the fully owned units, the buyer
9 would have the veto authority we talked about, right?

10 A. So a fully owned unit like Cardinal 1 is
11 owned by AEP Generation Resource, Cardinal 2 and 3
12 are owned by Buckeye Power, and all three of them are
13 operated by another company. I can't recall. I
14 can't remember the name of it.

15 Q. Cardinal Operating Company.

16 A. Cardinal Operating Company. So I'm not
17 sure what happens in these scenarios where you are
18 the owner of Cardinal 1, but does this mean any
19 investment you make does it only have to be approved
20 by you, AEP Ohio, and you have veto power over it?
21 How about the Buckeye Power?

22 Q. And was your answer related to Cardinal 1
23 or for the Cardinal plant all together?

24 A. Could be an expense that is shared by all
25 three Cardinals that is major.

1 Q. But if it's a capital investment related
2 only to Cardinal 1, would that be an example of how
3 this provision would work, where the buyer gets to
4 approve it?

5 A. So the buyer, yes, that's what it says
6 there.

7 Q. And how about fuel contracts, new fuel
8 contracts that come up under the PPA, is your
9 understanding that the buyer gets to approve those?

10 A. As I recall, all the same thing, that
11 there are three votes, and I don't know if all three
12 of them have to agree or two out of the three have to
13 agree to a contract.

14 Q. Can you take a look at page 10, Section
15 3.3, entitled "Fuel."

16 A. Just looks at the first sentence? Or you
17 want me to read the whole paragraph?

18 Q. You can read whatever you want. I want
19 to ask you a question about the last sentence. I
20 also want to ask you about a sentence in the middle
21 of the paragraph so go ahead and read the whole
22 thing.

23 A. Okay.

24 Q. So is it your understanding from this
25 language that the buyer will have the right to

1 approve the results of any competitive procurement
2 for new fuel needs or for an extension of or renewal
3 of any preexisting contracts?

4 MR. MARGARD: I'll object to that as
5 being compound. We've got two incredibly different
6 sets of procurements he's referring to. Can you
7 break it down?

8 Q. Sure. I was trying to be expedient, but
9 let's take one at a time. Do you agree, based on the
10 language in the middle of that paragraph, that the
11 buyer would have the right to approve the results of
12 any competitive procurement for fuel needs that arise
13 during the administration of the contract?

14 A. Yeah. They have the right, not the
15 obligation. That means they're not obliged to do so
16 if they don't want to, but they do have the right.

17 Q. And then the last sentence talks about
18 the preexisting contracts, they wouldn't be renewed
19 or extended unless the buyer approves, correct?

20 A. Again, the buyer is AEP Ohio, and the
21 Commission doesn't belong anywhere in this whole
22 picture.

23 Q. Well, we'll get to that.

24 So then another question for you,
25 Dr. Choueiki, as it relates to Section 3.5 on page

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1 11. And if you need to review it, that's fine, but
2 my question is whether it's your understanding that
3 the seller will dispatch the plant based on the
4 buyer's criteria and instructions as well as the PJM
5 requirement.

6 THE WITNESS: May I now have the question
7 read back now that I've read the paragraph?

8 (Record read.)

9 A. That, and also some physical parameters
10 that the seller would have to tell the buyer about.
11 The buyer would have to instruct the seller that
12 there are some physical parameters on these
13 generating units so they can't say dispatch
14 50 megawatts if they have to dispatch at least a 100
15 a specific reason.

16 Q. Fair enough. And then I think you might
17 have already mentioned this, generally, but is it
18 your understanding that under the PPA that the buyer
19 also votes as part of an operating committee to
20 approve other O&M spending and other minor capital
21 projects?

22 A. Yes.

23 Q. And is it your expectation -- or let me
24 ask you that first. Is it your expectation that AEP
25 Ohio's decisions and how they implement the PPA

1 contract would be actions that would be reviewed by
2 the Commission when they're doing a prudence review
3 for retail recovery of PPA costs?

4 A. Yes.

5 Q. Okay.

6 A. I mean, the Commission is not going to be
7 looking at every decision that AEP Ohio gets into
8 every time there's a decision to be made. I think
9 that after the fact or to the extent, maybe, if AEP
10 Ohio is really nervous about a specific decision,
11 they may let the Commission know, but that's up to
12 AEP Ohio.

13 Q. But would you agree that the costs
14 associated with those decisions and administration of
15 the contract would be reviewed by the Commission for
16 prudence or would be subject to review by the
17 Commission for prudence?

18 A. The rider charges would be subject to
19 Commission review.

20 Q. But the cost, if there are net costs
21 being recovered under the rider, those costs that
22 relate to any of AEP Ohio's obligations or
23 responsibilities under the PPA contract would be fair
24 game for a prudence review, correct?

25 A. Yes.

1 Q. And by extension, if there's a prudence
2 review, there could be a disallowance, correct?

3 A. Correct.

4 Q. Do you have experience in reviewing other
5 PPA contract terms?

6 A. No; except ones that have been before us.

7 Q. Okay. Well, that narrows it down. The
8 items we just talked about, went through the
9 contract, are those similar to the FirstEnergy PPA,
10 or are there distinctions there?

11 MR. DARR: Objection, relevance.

12 MR. NOURSE: Well, your Honor, I think he
13 stated his experience is limited to these contracts
14 so I want to ask him at least that observation.

15 MR. DARR: Still doesn't make the FE
16 contract relevant to this proceeding, your Honor,
17 particularly when it's not even in evidence.

18 EXAMINER SEE: I'll allow the question.

19 Dr. Choueiki, you can answer the
20 question.

21 THE WITNESS: Thank you.

22 A. I haven't read both of these contracts in
23 over a month or even more, so I can't tell you what
24 are the details and what's different and what's alike
25 with the exception that FirstEnergy is not asking the

1 Commission for the approval of a PPA.

2 Q. And did you say you read the FirstEnergy
3 contract months ago?

4 A. The term agreement, the draft term
5 agreement.

6 Q. Well, that's one difference, right, that
7 there is an AEP contract that's been put forth,
8 correct?

9 MR. DARR: Objection, your Honor, same
10 basis.

11 MR. NOURSE: Your Honor, this goes to his
12 observations about the PPA, his characterizations as
13 to the inadequacy of the Commission review, the
14 information flow, so I think it's a fair question,
15 very fundamental factual question here.

16 MR. MARGARD: Your Honor, if that's the
17 case, he should ask questions about the PPA contract.

18 MR. DARR: Agreed, your Honor.

19 MR. NOURSE: About what? I couldn't hear
20 you.

21 MR. MARGARD: About this PPA contract.

22 MR. NOURSE: We just went through that.
23 That's why I'm summarizing a couple things here.

24 MR. MARGARD: Not sure why he needs the
25 FE PPA agreement to do that.

1 MR. NOURSE: Well, again, the question
2 pending, your Honor, is simply whether AEP provided a
3 detailed draft contract and whether AEP is alone in
4 doing that.

5 EXAMINER SEE: And that question the
6 witness can answer.

7 A. Yeah, this contract is a lot more
8 detailed than the matrix which was like a term sheet,
9 and, I mean, it was also detailed but not to this
10 level --

11 Q. Okay.

12 A. -- the legal language that this one does.

13 Q. Okay. And do you acknowledge that the
14 buyer's prudence terms that we just went through in
15 detail would uniquely promote a prudence review for
16 retail cost recovery disallowance purposes?

17 MR. DARR: Objection. I'll start with
18 the form --

19 EXAMINER SEE: First, Mr. Nourse, could
20 you repeat that question, please?

21 THE WITNESS: I guess maybe I need to.

22 Q. (By Mr. Nourse) So the terms that we just
23 went through relating to the buyer and then we linked
24 that into the retail cost recovery prudence review,
25 do you recall that?

1 A. Yes.

2 Q. And if you have an opinion or an
3 observation, I'd like to know whether those terms
4 would be something that would be commonly included in
5 a PPA or whether they uniquely facilitate cost review
6 under these circumstances.

7 MR. MICHAEL: Objection. Compound; two
8 materially different compounds in that question.

9 MR. NOURSE: I think they're
10 alternatives, your Honor.

11 EXAMINER SEE: Let's try them one at a
12 time.

13 Q. Do you recognize, Dr. Choueiki, that AEP
14 put forth the specific line-by-line, full draft
15 contract to the parties and ultimately the Commission
16 after the Commission put out its pending order in the
17 ESP III case?

18 MS. BOJKO: Objection. I think it
19 misstates or mischaracterizes the record. AEP did
20 not put forth the contract in its application for the
21 Commission. It was introduced by intervenors.
22 Fundamentally mischaracterizes what AEP did or didn't
23 do.

24 MR. NOURSE: Your Honor, AEP put this
25 contract out there. It was going to be in this

1 record. We gave it to everybody including the staff.
2 We've been very open and transparent about proposing
3 these very specific terms. It's an actual contract.
4 So it is in the record, and I'd like to know whether
5 he understands that that happened after the ESP
6 order, that's my current question.

7 MR. DARR: The record is very clear in
8 this case, your Honor, that the application, both the
9 original and amended, did not include this document.
10 It was only after Sierra introduced it that it became
11 a part of the record.

12 EXAMINER SEE: The objection is
13 sustained. Rephrase your question, Mr. Nourse.

14 Q. (By Mr. Nourse) Dr. Choueiki, do you
15 realize that AEP provided this contract after -- to
16 staff and other parties after the ESP III order?

17 A. Subject to check, I'll accept that you
18 gave this information after the opinion and order
19 came out in 2015.

20 Q. And do you acknowledge at all that AEP
21 Ohio in crafting those terms and provisions with AEP
22 Generation Resources has attempted to facilitate
23 prudence review by the PUCO for costs related to the
24 PPA?

25 MR. DARR: Objection, your Honor.

1 EXAMINER SEE: Grounds, Mr. Darr?

2 MR. DARR: Starting with he's asking a
3 supposition based on what AEP did and I'm quite
4 certain that this witness has no knowledge of the
5 collective mind of AEP Ohio.

6 Second, the question misstates and also
7 contains a mistaken premise. There's nothing in the
8 contract itself that refers to prudence reviews. It
9 simply provides for certain conditions or obligations
10 or opportunities to AEP Ohio.

11 EXAMINER SEE: I was going to let them.

12 MS. BOJKO: Same, your Honor.

13 EXAMINER SEE: Did you want to respond,
14 Mr. Nourse?

15 MR. NOURSE: I said what AEP did was put
16 forth this contract. So I'm asking about the content
17 of the contract and whether he acknowledges that that
18 does anything to facilitate a prudence review.

19 MR. DARR: I don't have an objection to
20 the clarification or the question that he actually
21 just asked.

22 EXAMINER SEE: Okay. So the last
23 question that Mr. Nourse just clarified, you can
24 answer the question, Dr. Choueiki?

25 THE WITNESS: And that is?

1 (Record read.)

2 A. So the contract talks about AEP Ohio
3 reviewing these expenditures and having veto over yes
4 or no. It does not talk about the Commission in
5 Ohio. Now, the Commission can ask questions after
6 the fact about, okay, what decisions were made, what
7 did you say, and show us the detail. But it doesn't
8 talk about the Commission auditing. I didn't see
9 anywhere where it says the Commission will audit
10 anything because that's a wholesale contract.

11 Q. Right, it wouldn't have that in there.

12 Did you read the amended application?

13 A. Yes.

14 Q. Do you recall that discussing prudence
15 reviews based on the contract?

16 A. So we go to the amended application, now
17 you can ask me your questions. Because on top of the
18 contract here.

19 Q. So did you read the amended application?

20 A. Several times.

21 Q. And did it address the prudence issues
22 that were identified?

23 A. It said that the Commission does conduct
24 prudency reviews and disallow. The concern is not
25 whether we conduct the prudency review or not, the

1 concern is having that liability on AEP Ohio. AEP
2 Ohio committing to a reliability even if the
3 consumers are not because in the long run they might
4 be.

5 Q. Yeah, I understand that, you talked about
6 that earlier. So you have no concern for the retail
7 consumers whether or not they bear costs that are
8 imprudent?

9 A. We have concern, of course we do.

10 Q. Did you read the company testimony that
11 addressed this issue about prudence review,
12 Commission access to information?

13 A. Yes, I read it and it wasn't
14 satisfactory. I mean, that was...

15 Q. Which pieces of testimony are you
16 referring to?

17 A. Because it doesn't address the risk of
18 AEP Ohio. The Commission is concerned about
19 consumers, and it's concerned about the company that
20 it regulates. So AEP Ohio is committing to be
21 revenue neutral. Why would they increase the risk on
22 themselves if they're revenue neutral? They're not
23 making any money.

24 Q. Dr. Choueiki, in your last answer when
25 you say "Commission is concerned," did you mean to

1 say the staff?

2 A. The staff is concerned. Thank you for
3 correcting me.

4 Q. Now let's talk about the ESP III
5 decision. You are familiar with the opinion and
6 order that came out in February this year in the ESP
7 III proceeding, right?

8 A. Yes.

9 Q. And you incorporated the decision, the
10 opinion and order in your -- in formulating your
11 testimony. You're attempting --

12 A. Correct. So staff interpreted these
13 decisions, these points, and we presented them in
14 testimony.

15 Q. You're attempting to implement the ESP
16 III order, correct?

17 A. Correct.

18 Q. Do you believe you have applied the
19 letter and spirit of the Commission decision to the
20 best of your ability?

21 A. Yes.

22 Q. Now, did you just apply the Commission's
23 stated factors or did staff create additional
24 conclusions that are not based directly on the ESP
25 III opinion and order?

1 A. No, I just -- we just read the opinion
2 and order and derived these necessary conditions
3 based on our understanding of the conditions.

4 Q. But were you just applying the factors
5 the Commission stated, or were you/staff creating
6 additional conditions beyond those factors?

7 MR. MARGARD: Your Honor, I'll object as
8 asked and answered. The witness said it was based on
9 staff's understanding of the Commission's conditions.

10 MR. NOURSE: That's a slightly different
11 answer and question, your Honor.

12 MR. MARGARD: The nuance eludes me.

13 EXAMINER SEE: It has been asked and
14 answered. The objection is sustained.

15 Q. Do you have the opinion and order with
16 you?

17 A. No.

18 MR. NOURSE: Your Honor, I'd like to
19 approach.

20 EXAMINER SEE: Yes.

21 Q. Okay, Dr. Choueiki, this is the opinion
22 and order excerpt you've been using.

23 A. Okay.

24 Q. And do you see based on your familiarity
25 with the order that the excerpt includes the

1 conclusion section of the PPA rider from the opinion
2 and order?

3 A. Yes.

4 Q. Can you turn to page 21.

5 A. Okay.

6 Q. And the paragraph that's the full
7 paragraph on that page I'd like you to focus on the
8 bottom half of that. You see the part that says
9 "Although several intervenors dispute the value of
10 the proposed hedging mechanism and its use as a means
11 to promote rate stability, there is no question that
12 the PPA rider would produce a credit or charge based
13 on the difference between wholesale market prices and
14 OVEC's costs, offsetting, to some extent, the
15 volatility in the wholesale market."

16 Do you see that?

17 A. Yes.

18 Q. And was staff one of the parties in the
19 ESP III case that disputed the value in the proposed
20 hedging mechanism?

21 A. Well, we recommended denying it based on
22 principle that it was a move in the opposite
23 direction. We didn't, I mean, that was the big issue
24 with the PPA the first time around.

25 Q. Are you saying staff agreed there was

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1 hedging value from PPA in the prior -- in the ESP III
2 case?

3 A. No. We still thought the laddering and
4 staggering was more effective.

5 Q. But you see here where the Commission has
6 found there's no question the PPA rider would produce
7 a credit or charge based on the difference in
8 offsetting to some extent the volatility in the
9 wholesale market, correct?

10 A. Yes.

11 Q. And then the next sentence says "The
12 impact of the PPA rider would be reflected as a
13 charge of credit for a generation-related hedging
14 service that stabilizes electric retail service, by
15 smoothing out the market-based paid by shopping
16 customers to their CRES providers, as well as the
17 marked-based rates paid by SSO customers, which are
18 determined by a series of auctions that reflect
19 prevailing wholesale prices for energy and capacity
20 in the PJM markets."

21 Do you see that?

22 A. I see that.

23 Q. Let's break that down a little bit. So
24 let's take the end of the sentence first. You agree
25 that SSO rates reflect prevailing wholesale prices

1 for energy and capacity?

2 A. Sure, they do.

3 Q. And do you agree that the PPA rider would
4 stabilize those rates by smoothing out the SSO rates?

5 MR. OLIKER: Objection. It's hard to
6 tell if Mr. Nourse is talking about the last ESP case
7 or this one.

8 EXAMINER SEE: Okay, Mr. Oliker.

9 Did you want to respond, Mr. Nourse?

10 MR. NOURSE: No, I think the Commission
11 here was talking about PPA rider mechanism as a
12 whole.

13 EXAMINER SEE: I'll allow the witness to
14 answer the question. He can make any clarification
15 he needs.

16 A. The Commission did not grant the recovery
17 of charges in this case because they found it wasn't
18 in the public interest. So the Commission here is
19 stating the position, its position on this issue,
20 however, they still didn't grant. That means
21 although there is another hedge, there wasn't enough.

22 Q. Okay. Dr. Choueiki, what I'm asking you
23 is whether you agree that the PPA rider stabilized
24 SSO rates.

25 A. It may be but it's not as effective as

1 the laddering and staggering that we conduct every
2 auction.

3 Q. Well, do you think when the Commission
4 found that rejected intervenor positions contrary
5 that the PPA rider would smooth out the rate, the SSO
6 rates that it was already aware of staggering and
7 laddering based on your testimony in that case?

8 MR. MICHAEL: Objection, your Honor. I
9 think Mr. Stevens [verbatim] is misrepresenting the
10 PUCO order because he's leaving off the next sentence
11 that says, talks about the stabilizing effect in
12 theory.

13 So Mr. Nourse is describing it as if the
14 PUCO found it, but they clearly state in there that
15 in theory it could have these effects. There was no
16 factual content. They were simply stating in theory
17 this could happen.

18 MR. MENDOZA: If I may, I just add
19 there's nowhere in this order the Commission made a
20 finding there would actually be in fact a stabilizing
21 effect. I think somewhere else the Commission said
22 it was proposed to have that effect, and I agree with
23 counsel for OCC with the question mischaracterizes
24 the PUCO orders.

25 MR. NOURSE: Well, your Honor, I don't

1 see anything about theory in this. And the
2 Commission was specifically rejecting arguments to
3 the contrary. And so I'm asking him whether his
4 understanding of this would suggest that the
5 Commission was not aware of staggering and laddering.
6 His answer is simply that staggering and laddering is
7 better.

8 MS. BOJKO: Your Honor, OMAEG joins the
9 theory in the next sentence that counsel is purposely
10 not reading which is the conclusion of the whole
11 paragraph. So he's mischaracterizing the record.

12 MR. NOURSE: Well, your Honor, they can
13 do that on redirect if they want to point out
14 different language, but this is a very specific
15 thing, it doesn't relate to the overall conclusion.

16 And, regardless, if you want to talk
17 about theory or the PPA rider conceptually, that's
18 the same question: Does he think the Commission did
19 not know about staggering and laddering when they
20 made these findings?

21 MS. MOONEY: I object, there's also the
22 issue of what is the SSO rate which is staggering and
23 laddering theory versus a nonbypassable distribution
24 rider which is the PPA. I'm not sure that the PPA
25 and the nonbypassable distribution rider on all bills

1 have anything to do with the SSO rates.

2 MR. OLIKER: Also asking what the
3 Commission knew and he's asking for speculation,
4 inappropriate. The order says what it says.

5 MR. NOURSE: Your Honor, the whole
6 sentence does relate to the nonbypassable charge
7 effect. At this point I've been focusing on the SSO
8 because that's the only part of the staggering and
9 laddering applies to but the sentence certainly
10 applies to both CRES rates that are market based and
11 SSO rates that are also market based.

12 MS. MOONEY: Staggering and laddering is
13 a reference to the SSO rate, nothing to do with the
14 PPA or whatever it is, the nonbypassable distribution
15 charge, which all customers pay. Only SSO customers
16 pay the SSO.

17 EXAMINER SEE: Any of the other
18 intervenors want to chime in at this point?

19 The objection is overruled. The witness
20 can answer the question.

21 A. And the question was whether the
22 Commission was -- is aware of the laddering and
23 staggering before they wrote this order?

24 Q. (By Mr. Nourse) Yes.

25 A. I'm almost certain that they are aware.

1 EXAMINER PARROT: I'm going to point you
2 to page 25, Dr. Choueiki. I'm going to help you out
3 here to move this along.

4 THE WITNESS: Okay. Where would you like
5 me to look, your Honor?

6 EXAMINER PARROT: The first paragraph in
7 the middle.

8 THE WITNESS: First paragraph?

9 Okay, so the Commission found that the
10 PPA rider may, if properly conceived, has the
11 potential to supplement the benefits derived. So
12 when you asked me the question about which one staff
13 finds the laddering and staggering is more effective,
14 the Commission is saying that it's yet more effective
15 to have a PPA on top of the staggering and laddering
16 in certain circumstances.

17 Q. Okay, and your position, you/staff, in
18 the ESP III was that staggering and laddering is good
19 enough by itself, right?

20 A. It's very good. It's a very good
21 approach.

22 Q. And your position in this case here today
23 is that staggering and laddering is good enough by
24 itself, correct?

25 A. Right.

1 Q. Can you turn to page 24. Actually, I'm
2 going to cover that later, strike that.

3 So the Examiner brought us to where I was
4 going to go anyway, so the page 25 language that you
5 were just reviewing about the PPA proposal if
6 properly conceived can supplement the benefits
7 derived from staggering and laddering, so did your
8 testimony incorporate that concept and make
9 recommendations that would, if properly conceived,
10 achieve this goal of additional stability?

11 A. Again, the testimony goes to first the
12 initial concept, the initial concept of a PPA, and we
13 recommend that the Commission deny it. Now, to the
14 extent the Commission wants to find that with all
15 these other adders, the PPA is in the public
16 interest, then they'll decide so accordingly.

17 Q. Okay, but is there part of your testimony
18 where you recommend based on your modifications that
19 the Commission would go beyond staggering and
20 laddering and use the PPA rider?

21 A. No, we don't recommend that. They would
22 have to decide that on their own. If they want a
23 PPA, then they can assess that situation themselves.

24 Q. Okay. I didn't think so, I just wanted
25 to make sure I didn't miss it.

1 So sticking to page 25, opinion and
2 order, just at the end of that paragraph, the "In
3 sum" paragraph we've been discussing, you see a
4 statement there that rate stability is an essential
5 component of ESP?

6 A. Yes.

7 Q. And you agree with that?

8 A. I agree that rate stability is very
9 essential, very important.

10 Q. And how in your testimony in your
11 recommendations have you incorporated that goal to
12 help achieve that goal?

13 A. I think again the laddering and
14 staggering where you're taking an average of six
15 clearing auctions together reduces the very small
16 variance one year to the other. So staff believes
17 this is already accomplishing that goal. So there is
18 no need for a PPA, that the only thing it's adding is
19 risk.

20 MR. NOURSE: Your Honor, I've got I'd say
21 at least an hour left but it's a good breaking point
22 before I move into his actual testimony and I would
23 suggest a lunch break so I can review my notes and
24 try to eliminate stuff he's already talked about.

25 EXAMINER SEE: With that, we'll take a

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1 lunch break until 2:15.

2 (Lunch recess taken.)

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1 Friday Afternoon Session,
2 October 23, 2015.

3 - - -

4 EXAMINER SEE: Let's go back on the
5 record. Mr. Nourse?

6 MR. NOURSE: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION (Continued)

9 By Mr. Nourse:

10 Q. And good afternoon, Dr. Choueiki.

11 A. Good afternoon.

12 Q. I wanted to take you in your testimony
13 where you discuss some of the factors from the ESP
14 III decision and ask you to turn to page 13, and
15 there you have a bullet, I guess it's from lines 11
16 to 16, that addresses the financial need criteria,
17 correct?

18 A. Yes.

19 Q. And is that the extent of your financial
20 need analysis in that bullet?

21 A. Yes. We basically looked at what's in
22 the company record in terms of revenues and costs and
23 weren't convinced that the power plants were in dire
24 straits.

25 Q. Well, is that what that bullet says,

1 Dr. Choueiki? Can you point me to the language that
2 refers to the concept you just stated?

3 A. Those were the assumptions that were used
4 in Dr. Pearce's testimony, 50/50 and the 11.24.

5 Q. And on line 14 through 16 you say, "Staff
6 believes the proposed ROE is excessive and,
7 therefore, Staff does not believe a demonstration of
8 financial need has been presented." Correct?

9 A. Correct.

10 Q. So that is your conclusion on financial
11 need, that sentence I just read.

12 A. Yes.

13 Q. And have you ever testified on
14 return-on-equity issues?

15 A. No.

16 Q. And I believe earlier in your testimony
17 today you said the reason you believe, or staff
18 believes, 11.24 percent is excessive is for an
19 unregulated or deregulated generation asset; is that
20 correct?

21 A. I can't recall the words. What my point
22 was, this Commission hasn't granted recovery on an
23 unregulated asset before, so it's not like you can
24 compare and say 11 percent's reasonable or not.
25 Those are unregulated assets, so to the extent the

1 Commission rushes to grant a PPA and the objective of
2 the PPA would be to help these power plants, one of
3 the objections would be to help these power plants
4 stay in business to the extent they are in financial
5 need and they're not paying their bills.

6 Q. And I believe --

7 A. It hasn't been demonstrated.

8 Q. You stated earlier that you believe the
9 units would be profitable without the PPA?

10 A. What I stated is based on what Dr. Pearce
11 showed us over nine years and three months, it's
12 looking that it's in the positive -- I can't recall
13 the number -- \$570 million or something like that
14 over a nine-year and three-month period.

15 Q. And that analysis that Dr. Pearce set
16 forth assumes the PPA's in place, does it not?

17 A. Correct.

18 Q. Is it your testimony that the PUCO has
19 not established an ROE in an adjudicated case that
20 relates to generation assets?

21 A. They did in the AEP fixed capacity
22 compensation case 10-2929, but those assets at that
23 time, since AEP was a fixed resource requirement
24 company where it was the only provider of capacity,
25 it was treated like they were a regulated asset.

1 Q. And is that treatment that you're
2 attributing to the Commission's decision spelled out
3 in the Commission's order?

4 A. Which Commission order?

5 Q. The 10-2929 case.

6 A. I don't recall if it was in the
7 Commission's order in the 10-2929 case. I was
8 involved in it, but I don't remember what the
9 language of the order was. I know they granted a
10 ROE, or they used an ROE -- I can't remember what the
11 number is. It was adjusted from what the company
12 applied for, but I can't recall what the number was.

13 Q. Does 11.15 percent sound correct?

14 A. Yeah.

15 Q. And are you saying that the Commission's
16 adoption of that as an adjudicated decision was based
17 on the FRR status being equivalent to regulated
18 assets?

19 A. I don't know how the Commission thought
20 of it. That's how I thought of it. But the
21 observation was that it was still AEP Ohio, although
22 generation was a deregulated service back then, too.
23 It was still AEP Ohio, and it had already committed
24 its capacity to all the service territory by being a
25 fixed resource requirement under the reliability

1 assurance agreement by being in the RPM.

2 Q. So is it your understanding or is it your
3 opinion that if the Commission were to adopt a lower
4 ROE based on your opinion that 11.24 is excessive,
5 that would meet the financial need criteria?

6 A. If the Commission is convinced that based
7 on the record that these power plants require
8 assistance, then the Commission can decide to help.
9 The question is how, like, do they want to help pay
10 their bill? Do they want to help give them an
11 abundance, 650 basis points? They will decide. In
12 staff's opinion, 650 basis points is large. The
13 Commission can decide what to do.

14 Q. Do you know if the cost of debt during
15 the period applicable to the 10-2929 case was
16 significantly higher than it is today?

17 A. I don't know what it was.

18 Q. So you don't know whether the 11.15
19 adopted in that case was 650 basis points above the
20 cost of debt?

21 A. You can't compare the two. That's my
22 point. AEP company at that time, or Ohio Power,
23 owned that generation for most of that time. This
24 one now under this application, AEP Generation
25 Resources is an unregulated unit, so they're in the

1 market and their generation in the capacity market.
2 There's no more -- you can't compare the two, 11.15
3 then and now it's 11.2.

4 Q. I understand your position on that. But
5 what I asked you was whether you know if the 11.15
6 approved based on an adjudicated decision in the
7 10-2929 case was more than 650 basis points above the
8 cost of debt?

9 A. And I told you I didn't recall what the
10 cost of debt was in that case.

11 Q. Okay. Now, you indicated a few moments
12 ago that your staff's basis for concluding the ROE
13 was excessive was reviewing the numbers that
14 Dr. Pearce presented, correct?

15 A. Yes.

16 Q. And you indicated that you looked at the
17 nine-and-a-half-year period as a whole, correct?

18 A. Yes.

19 Q. So do you think there's any different
20 conclusions that would be reached regarding financial
21 need if one examined a shorter-term period such as
22 three years?

23 A. So if I'm a generator owner, and I'm not,
24 and I'm looking at whether to close a power plant or
25 not because of financial needs, I'm not going to look

1 at just one year or just two years. I'm going to
2 look in the long run because this asset is going to
3 earn enough to stay open and to provide a return or
4 not.

5 So if you were to take a shorter PSP --
6 shorter PPA, you'd have to look how far you would
7 have to go into the future and calculate the
8 cumulative rider, like, over four years, over five
9 years and see if it's in the positive or in the
10 negative.

11 Q. And I believe you stated earlier today
12 that anything beyond three years is very uncertain in
13 PJM markets, correct?

14 A. Correct. So that's why I'm recommending
15 lots of conditions where you put caps to the extent
16 that the market goes in a different direction than
17 what Dr. Pearce or the company -- because Dr. Pearce
18 didn't develop the forecast. Someone else developed
19 the forecast. But to the extent the company's
20 forecasts are not accurate, then at least there is
21 protection.

22 Q. If we look at the same period you're
23 recommending that the term be shortened to, which is
24 two-and-a-half years, correct?

25 A. Yes.

1 Q. Approximately. Do you believe there's a
2 financial need for that period of time?

3 A. The way staff is defining "financial
4 need" is not whether the rider is a negative or a
5 positive number. It's whether the owner of the
6 generator is able to pay all their bills without the
7 return on equity and income tax or a smaller amount
8 of return on equity and income tax.

9 Q. Did you do that calculation?

10 A. We've done some "back of the envelope"
11 calculations but nothing formal.

12 Q. And you didn't present anything in your
13 testimony about that, correct?

14 A. That is correct.

15 Q. Can you turn to page -- well, I think
16 you're on page 13. So the bottom of 13, carrying
17 over to 14 is another bullet where you talk about
18 grid reliability, correct?

19 A. Correct.

20 Q. And you basically say that we failed this
21 criteria because there was no -- well, let me just
22 state it like you did. We did not provide an
23 independent assessment of the impact on grid
24 reliability of the affiliate PPA units, correct?

25 A. Correct.

1 Q. And this independent assessment, can you
2 define what you mean by "independent"?

3 A. That the Commission and the company hire
4 an independent, someone who doesn't work for AEP and
5 the scope is not set by AEP, of what the problem is
6 that we're trying to solve and have them do an
7 independent assessment whether there is an impact on
8 reliability, and to the extent there is, how much,
9 what is an estimate of the impact.

10 Q. So did staff undertake that kind of
11 analysis?

12 A. No.

13 Q. Did staff recommend or suggest to the
14 company that such an independent contractor should be
15 hired?

16 A. No.

17 Q. So this condition, it was basically
18 impossible for the company to achieve under your
19 interpretation, wasn't it?

20 A. The company could have hired at that time
21 when they filed the application an independent party
22 to examine that problem.

23 Q. But I thought you said staff had to
24 approve it or the Commission would have to approve
25 the scope and the selection.

1 A. Correct, that you would have had to come
2 here first and ask.

3 Q. And yet we didn't know this was your
4 recommendation until a couple weeks ago, correct?

5 A. Correct. But it could have been
6 interpreted by AEP when they read the order back in
7 February 2014.

8 Q. Well, Doctor, I don't think we interpret
9 the order the same way. I think that's already been
10 established.

11 Can you turn to -- I think we may already
12 be on page 14. I want to ask you about your
13 statement starting on line 7 through 10, and the
14 sentence says, "To the extent there are issues of
15 prudence or concerns about rates, the Company states
16 that the Commission would have to pursue such issues
17 at FERC." Do you see that?

18 A. Yes.

19 Q. And you rely on Mr. Allen's testimony for
20 that statement?

21 A. Allen or Vegas, one of the two.

22 Q. And in your footnote to the prior
23 sentence it cites to the testimony of William A.
24 Allen at 10.

25 A. That is correct.

1 Q. So is that the company statements you're
2 referring to in that sentence?

3 A. If it says so, then that's probably it.
4 That's several statements about the Commission having
5 jurisdiction to conduct financial audits and
6 information.

7 Q. Let me try to shortcut this. Is it your
8 understanding today that on the one hand if there's a
9 concern about the actual wholesale rate, that would
10 go to FERC to decide; is that correct?

11 A. Right.

12 Q. And on the other hand, if there's a
13 concern or, as you put it here, an issue with
14 prudence of AEP Ohio's actions in implementing the
15 contract, is that also something the company has
16 directed the Commission to go to FERC about?

17 A. To the extent the Commission does not
18 want AEP Ohio to pay when they disallow an expense --
19 when they conduct a prudence review and they disallow
20 an expense, the concern is then under currently the
21 way it is, AEP Ohio must pay AEP Generation Resource
22 even if the Commission disallows that expense.

23 And to the extent the Commission
24 disagrees with that, that means the Commission
25 doesn't want AEP Ohio to pay for that expense, then

1 they would have to go to FERC because that's the
2 contract at FERC and that's where it can be
3 challenged.

4 Q. Well, again, I'm trying to distinguish
5 your statement here with what you're attributing to
6 the company. So when you say on line 8 "issues with
7 prudence or concerns about rates" the first part that
8 refers to "prudence," you're really also in that part
9 referring to wholesale rates, correct?

10 A. A cost that AEP Ohio has to pay to AEP
11 Generation, so I guess would be a wholesale matter.

12 Q. And by contrast or distinguished from
13 that kind of prudence issues would be AEP Ohio, the
14 buyer in the PPA, coming to the Commission for retail
15 recovery, and the Commission may review the prudence
16 of AEP Ohio's actions or prudence -- I guess I stated
17 that too many times. But do you appreciate that
18 distinction?

19 A. Correct.

20 Q. And that latter retail recovery is not a
21 FERC matter, is it?

22 A. That is correct.

23 Q. And the company has never stated that
24 that was a FERC matter, to your knowledge, have they?

25 A. To my knowledge, they have not. Again,

1 it's the prudence to the extent the AEP Ohio agrees
2 that that's an expense that should be incurred and
3 the Commission disagrees with that.

4 Q. I understand your position. I just
5 wanted to clarify that distinction.

6 A. Okay.

7 Q. Thank you.

8 Now let's turn to page 16. In lines 8
9 through 10 you're stating this preference for
10 staggering and laddering that we've talked a little
11 bit about earlier. I want to ask you a few more
12 questions about this.

13 Do you agree that when staggering and
14 laddering, you're not eliminating price premiums or
15 price risk that's reflected in the SSO rates?

16 A. Could you be more specific about price
17 premiums and price risk?

18 Q. Well, do you agree that SSO rates, SSO
19 auction clearing prices, reflect price premiums and
20 compensation for price risk?

21 A. So the SSO clearing price is a function
22 of many variables. The two largest components are
23 the forward energy markets and the capacity prices.
24 So they're exposed to these, to the volatility in
25 these prices. However, again, the volatility is not

1 hour to hour. We're talking about long-term
2 contract, 12 months, 24 months, 36 months. So you
3 can't even compare the two. One of them is very
4 high; the other one is not very high.

5 Q. I understand the definition of staggering
6 and laddering. You point that out in your footnotes
7 there on page 16. So I'm accepting that and I'm
8 using your terminology here. So let me try to
9 restate the question.

10 So with staggering and laddering, you're
11 not eliminating price premiums or price risk; you're
12 managing the volatility over time by levelizing or
13 smoothing it out you would agree with that, correct?

14 A. You're managing the volatility because
15 the Commission is buying six products for the same
16 year and averaging them out. That's how the
17 volatility is being managed.

18 Q. And you're not eliminating price premiums
19 or price risk as part of that, correct?

20 A. To the extent these risks are reflected
21 in the offers for our SSO auctions, they'll be there,
22 that is correct.

23 Q. And even with staggering and laddering,
24 there's some price volatility, correct?

25 A. Yeah. Anytime there is a change in the

1 capacity price to the extent, like, in the ATSI
2 region, the capacity price tripled one year, so that
3 increased the retail SSO auction clearing prices.
4 But given that we staggered and laddered the product,
5 the generation increased less than three times.

6 Q. So it reduces the volatility but not
7 eliminated it, correct?

8 A. I don't think you can eliminate the
9 volatility.

10 Q. And staggering and laddering only
11 mitigates volatility for nonshopping customers,
12 agreed?

13 A. So the staggering and laddering, in
14 addition to limiting the volatility for the SSO
15 customers, it also disciplines the market to
16 shoppers, so no one is going to market very far or
17 have a lot higher than what the SSO price is.

18 So it disciplines the market, so as long
19 as the variability in the SSO price is not very high,
20 the variability in the CRES offers would not be
21 higher because they're competing with the SSO offer.

22 Q. You talk on the same page, Dr. Choueiki,
23 about fixed-rate CRES contracts, do you not?

24 A. Yes.

25 Q. And to the extent that customers lock

1 into a CRES contract, they wouldn't have a choice of
2 going back to the SSO during the term of that
3 contract, would they?

4 A. They have a choice. Then they have to
5 pay a penalty, \$50 penalty or something.

6 Q. They don't have an unrestricted choice.

7 A. Yes.

8 Q. And to the extent that CRES providers are
9 locking down customers for periods of time under
10 those contracts, they wouldn't go back and revisit
11 those prices based on some subsequent SSO auction
12 result, would they?

13 A. No. I mean, if a customer is locked for
14 a contract, they're locked for a contract.

15 Q. And would you recommend that the PPA
16 rider mechanism offers a true hedge that offsets
17 market price trends?

18 A. The PPA rider has a lot of conditions
19 attached to it and a lot of uncertainties attached to
20 it, so unless staff sees one that is really
21 conditioned and really in a box in terms of how much
22 can the cost go up, how much is the exposures, what
23 is their limitation on the exposures of the
24 consumers, is there a limitation on the exposures of
25 the wires company that the Commission regulates, I

1 can't answer that question by just saying the PPA
2 rider provides a full hedge.

3 Q. Well, let me ask you to -- and I
4 understand your position in this case and all the
5 caveats you've given so far. I'm just trying to ask
6 you a few narrow and specific questions as relates to
7 staggering and laddering.

8 So if we could compare staggering and
9 laddering on the one hand to the PPA rider mechanism
10 on the other hand, I want to ask you to do a couple
11 comparisons there, okay? Are you with me so far?

12 A. Yes.

13 Q. And as between staggering and laddering
14 versus PPA rider, which mechanism or approach applies
15 to all customers?

16 A. The PPA rider definitely is
17 nonbypassable, so it's all customers. The staggering
18 and laddering is directly to SSO customers,
19 indirectly to shoppers.

20 Q. And which of the two mechanisms operate
21 in the opposite direction of market pricing trends?

22 A. Either of them would -- well, one of them
23 is if the market is up, the SSO -- let's go with the
24 SSO first. If the clearing price of the market is
25 up, future clearing prices are going to be higher,

1 reflect what the market is saying.

2 The PPA rider, I'm not sure because the
3 way the company is displaying the PPA rider has gone
4 opposite of the market, is just purely based on
5 revenues going up. So if the revenues go up, then
6 the consumers get a credit. If the revenues go down,
7 the consumers get a charge. But no one talks about
8 the cost, if the costs go up. So it could be if the
9 revenues go up and the costs go up, it could go
10 also -- there could still be a charge to consumers.
11 So that means it's going with the market.

12 Q. Do you think based on the track record of
13 cost efficiency for these units, PPA units, that the
14 cost is volatile?

15 MR. DARR: Objection, your Honor.
16 There's no evidence with regard to the cost
17 efficiency of these units in this record. Assumes a
18 fact not in evidence.

19 MR. NOURSE: I'm asking him his opinion,
20 so I think he can offer if he doesn't have any.

21 Let me try to rephrase, your Honor,
22 because I don't think what I'm reading here is what I
23 said.

24 Q. (By Mr. Nourse) So, Dr. Choueiki, do you
25 believe the costs for these PPA units is volatile?

1 A. So we're talking about the future now, in
2 the future do I expect them to be as volatile as the
3 market?

4 Q. I believe in your last answer you said
5 the volatility mitigating effect of the PPA could be
6 offset by price or cost increase, correct?

7 A. That is correct.

8 Q. So now I'm asking you whether you think
9 the cost of these units is volatile.

10 A. It's not as volatile as the revenue, as
11 the market prices, but to the extent a major
12 catastrophe happens at the power plants and there's a
13 \$500 million expense, then that's one event that
14 would cause a lot of --

15 Q. Have you reviewed the historical costs of
16 these units as part of your testimony here or
17 preparation for this case?

18 A. I think here was data requested someone
19 asked for, but I can't recall. I don't remember them
20 being volatile, let me put it this way.

21 Q. When you talk about fixed contracts in
22 your testimony on page 16, what's your definition of
23 a fixed-rate contract?

24 A. This is like CRES providers providing a
25 fixed-rate contract, a fixed rate for 12 months or 24

1 months.

2 Q. Fixed is fixed, there's no opportunities
3 for changing the rate; is that what you're talking
4 about?

5 A. Yes.

6 Q. Now, on pages 17 through 19, the section
7 in your testimony where you set forth, I think, half
8 a dozen conditions or recommended modifications to
9 the PPA rider, correct?

10 A. Yes.

11 Q. I think you said that before, but the
12 Commission only reaches this part of your testimony
13 if they reject your main recommendation of denying
14 the PPA outright, correct?

15 A. Correct. I mean, the Commission may
16 decide to -- no, that's true. The two options would
17 be -- unless they come up with a third option that I
18 can't think of right now, to the extent the
19 Commission disagrees with staff and decides they want
20 to grant a PPA, then those would be the conditions
21 that we recommend.

22 Q. And on page 17 you say on lines 5 and 6
23 that these six recommendations could mitigate staff's
24 concerns. Do you see that?

25 A. Yes.

1 Q. Are these your recommendations, or are
2 there other ones that are not reflected in your
3 testimony?

4 A. Well, I mean, there's always the big
5 concern that we're going in the opposite direction.
6 Like, we're in the market. Why are we going back and
7 bringing generation? So that's a big concern that
8 the Commission can figure out. To the extent they
9 want to add more things about that, more conditions
10 to address that concern, they can.

11 Q. Anything else?

12 A. The Commission may come up with others.

13 Q. Well, I'm asking you about your
14 testimony.

15 A. Yeah. We're addressing only, I think,
16 the necessary conditions that the Commission
17 articulated as interpreted by us.

18 Q. And it would be inaccurate or you
19 couldn't agree if we changed the language on lines 5
20 and 6 that I just read to say that these
21 modifications will or would mitigate staff's
22 concerns, correct?

23 A. Not until we look at all the details. So
24 this is a move in the right direction. The
25 Commission may think those are appropriate and those

1 are enough, or they may add more or they may
2 subtract.

3 Q. And these are -- these six things are
4 staff's preference as opposed to things that would be
5 required under the ESP III decision, correct?

6 A. By limiting the term of the expanded PPA
7 rider. I can't recall if the Commission had a
8 necessary condition on that. That's a condition that
9 staff proposes because staff is very concerned about
10 the exposure to risk in the future years and the
11 unknown years, the years that we don't know what the
12 capacity price is, what the energy prices are going
13 to be. We don't know if any power plants are going
14 to have any major catastrophes, so that's why there's
15 a limit on the PPA rider.

16 Q. Well, let me clarify your recommendation
17 here. Are you saying that the term of the PPA should
18 be reduced to -- the wholesale contract of the PPA
19 should be reduced to match the current remaining ESP
20 III term?

21 A. Yes.

22 Q. Can I ask you to turn back to the opinion
23 and order on page 24.

24 A. Okay.

25 Q. And if you can read the second paragraph,

1 "Although," I'm going to ask you some questions about
2 that.

3 A. Okay.

4 Q. And would you agree that in this
5 paragraph the Commission stated that the company did
6 not propose in the PPA rider extend beyond the ESP
7 term, and in the very last sentence found that the
8 company has made no offer to ensure "the customers
9 receive the alleged long-term benefits of the PPA
10 rider or even a commitment or any type of proposal to
11 continue the rider in subsequent ESP proceedings."
12 Do you see that?

13 A. Yeah, I see that.

14 Q. And do you recall in that proceeding and
15 in this proceeding allegations or criticisms of the
16 proposal being that the company would collect the
17 charge during the period there's a charge and then
18 terminate or cut and run or terminate the PPA when
19 it's in the money? Do you recall that?

20 A. I recall hearing it. I can't recall if
21 neath hearing or I cross the hall but could have been
22 in both.

23 ****(it's in this hearing.

24 Q. Is it fair to read this this paragraph
25 your, Inc. of it that the Commission was being

1 critical with am company did not commit to ensure
2 that the alleged long-term benefits of the PPA rider
3 would continue beyond the ESP term?

4 A. Yes, correct.

5 Q. Do you recall reading a letter in this
6 docket today, the case we're talking about today,
7 that was a cover letter for the amended application
8 on May 15, 2015?

9 A. A letter was filed on May 15? With the
10 amended application?

11 Q. Do you recall the cover letter?

12 A. I don't know.

13 Q. How about if I show it to you to refresh
14 your memory?

15 MR. NOURSE: Your Honor, I'd like to
16 approach and mark AEP Exhibit 49.

17 EXAMINER SEE: You may.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. And, Dr. Choueiki, this is a letter over
20 the signature of Pablo A. Vegas president and chief
21 operating officers AEP Ohio, correct?

22 A. Yes.

23 Q. And does this refresh your recollection
24 that this was the cover letter to the amended
25 application filed on the same date?

1 A. Do I remember the letter exactly, no.
2 But would I agree that was the cover letter? There
3 was an application, I can't recall what was in the
4 application and where was amended. If you say that
5 it was, then and it looks like it's official and it
6 was filed with the Commission.

7 Q. Well, thank you. And if you look at the
8 last page, does that also help you confirm it was
9 filed in this case in docketing?

10 A. Yes.

11 Q. And then if I could direct your attention
12 to the very last sentence of the letter before
13 signing off, can you read that aloud?

14 A. AEP Ohio is author offering a long-term
15 commitment think the PPA to dedicate generation
16 assets to continue its service to Ohio for the
17 remaining economic life of the power plant.

18 Q. And so do you believe it's possible to
19 achieve the purpose of the PPA and ensure any
20 long-term benefits that do exist would be received by
21 customers under a two and a half year term?

22 A. The Commission could decide to do so not
23 because of only interest to like customers would be
24 one of the important issues. Another one would be to
25 the extent the Commission decides that these power

1 plants are essential to the Ohio economy and they
2 want them to stay in business just for the two or
3 three years that are struggling years, then they may
4 do so anyways.

5 Q. And can you tell me whether your
6 recommended two and a half year term of the PPA
7 addresses the financial need factor outlined in the
8 ESP III decision?

9 A. Staff doesn't believe there is a
10 financial need.

11 Q. The two and a half year term does not
12 address financial need regardless of whether it
13 exists, does it?

14 A. No, but to the extent the Commission
15 wants to grant a PPA for some reason, they find out
16 that it's in the public interest, then staff's
17 position is to limit the exposures of consumers and
18 the exposure of AEP Ohio.

19 Q. Well --

20 A. To risk.

21 Q. Let me put it this way, any of the
22 reasons the Commission stated in their ESP decision
23 for adopting the PPA rider and any of the factors
24 stated on page 25 of the opinion and order, does this
25 two and a half year term recommendation advance any

1 of those things?

2 A. To the extent the Commission thinks this
3 is important to the Ohio economy, then it addresses
4 it. To the extent they believe it's a generation
5 diversity issue they want to preserve these power
6 plants for the next three years, then that will
7 address it. Public interest is a lot larger than
8 just the financial need or a rider charge or credit.
9 By Ms. Bojko: May have E I have the anxious reread
10 please

11 Q. Dr. Choueiki, if you can turn to fajj 18.
12 Top of the page. You're again stating this concept I
13 guess that the Commission will have to file FERC
14 challenging cost components under the PPA and the
15 FERC approval on the Commission to demonstrate its
16 case do you see that?

17 A. Yes.

18 Q. Is that the same position staff had in
19 the ESP III proceeding?

20 A. I believe it is. Because there we had a
21 concern about also to the extent that the Commission
22 wanted to disallow specific expense, then that was a
23 wholesale contract between the company and OVEC.

24 Q. And did the Commission impose any
25 conditions or factors that incorporate that concern?

1 A. Well, they did articulate that those are
2 necessary but the Commission isn't bound by these
3 conditions. So they may -- that may be one of the
4 conditions that they also are concerned about.

5 Q. Okay.

6 A. Maybe specifically they did not say it.
7 But they left it open.

8 Q. So this is an example where staff is
9 recommending an additional condition, it doesn't
10 relate to the factors spelled out in the order,
11 correct?

12 A. Yes.

13 Q. The top of page 19, and this is under the
14 risk sharing mechanism bullet.

15 A. Yes.

16 Q. You basically concluding that under this
17 factor that the parties to the PPA would have to
18 commit to be responsible for a portion of the costs
19 associated with the PPA in can change for a portion
20 of the reaf news social Yates wed the expanded PPA.
21 And you see that Dr. Choueiki?

22 A. Yes.

23 Q. And is this explicit obligation something
24 that's found in the ESP III opinion and order?

25 A. No. This is one of the methodologies

1 that staff would like the Commission to consider.
2 Another one is the capping on the credit and on the
3 cost.

4 Q. Okay thank you.?

5 MR. NOURSE: Thank you Dr. Choueiki.
6 That's all I have. Thank you, your Honor.

7 EXAMINER SEE: Mr. Margard any redirect?

8 MR. MARGARD: Your Honor, I don't believe
9 I will but I would like just a moment with my witness
10 to find out.

11 (Discussion off the record.)

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

14 Mr. Margard?

15 MR. MARGARD: Thank you, your Honor. I
16 have no redirect.

17 And I would at this time renew my motion
18 to admit Staff Exhibit No. 1.

19 EXAMINER SEE: Any objections to the
20 admission of Staff Exhibit 1?

21 MR. NOURSE: No, your Honor.

22 EXAMINER SEE: Staff Exhibit 1 is
23 admitted into the record.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER SEE: Mr. Michael?

1 MR. MICHAEL: Yes, your Honor, at this
2 time we would move for the admission into the record
3 of what we have marked as OCC Exhibit No. 20.

4 EXAMINER SEE: Are there any objections?

5 MR. NOURSE: Yes, your Honor. I don't
6 think it's appropriate to put the witness' testimony
7 in from this prior case, particularly given the
8 intervening Commission decision, and I believe there
9 was very limited questioning about it. The relevant
10 parts he was asking about are already in the existing
11 record, so I don't think this exhibit needs to be
12 admitted.

13 MR. MICHAEL: My recollection, your
14 Honor, is that I cross-examined Dr. Choueiki quite
15 extensively on it. There were objections made at the
16 time I was asking the questions that were overruled
17 because the issue was the degree to which staff's
18 opinion changed or did not change, and the testimony
19 will certainly contribute to a full, complete, and
20 accurate record and put the Commission in the best
21 position to have as much information before it that
22 is germane to its decision as possible.

23 EXAMINER SEE: The objection is
24 overruled. OCC Exhibit 20 is admitted into the
25 record.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER SEE: Mr. Darr?

3 MR. DARR: Move the admission of IEU 17,
4 your Honor.

5 EXAMINER SEE: Are there any objections
6 to the admission of IEU Exhibit 17?

7 MR. NOURSE: Yes, your Honor. The
8 witness stated he was not familiar with the
9 accounting requirements that apply to AEP Generation
10 Resources. He had no knowledge of this document, or,
11 again, the accounting requirements that purported to
12 be addressed here, and he didn't review this issue
13 for purposes of his testimony.

14 MR. DARR: Once again, I have to thank
15 Mr. Nourse for pointing out the relevance of the
16 document. IEU 17 is self-authenticating inasmuch as
17 it's a government record produced by FERC and is
18 readily available on the FERC website.

19 The relevance of the document goes to the
20 analysis and the depth of the analysis performed by
21 the staff with regard to the availability of methods
22 to adequately monitor AEPGR's behavior under the
23 proposed PPA. Certainly that's central to the
24 staff's position, that the Commission should adopt a
25 means of doing careful monitoring, rigorous

1 monitoring of AEPGR.

2 Given that AEPGR has asked the FERC to
3 withdraw its requirement or to waive its requirement
4 to file a FERC Form 1 and a Form 3Q, it's going to be
5 a little tough for the Commission to do that. So
6 that demonstrates not only the issues related to
7 Mr. Choueiki's issues, but primarily fundamental
8 issues in this case whether or not the review process
9 can take place whatsoever.

10 MR. NOURSE: First of all, Mr. Darr
11 believes this is some sort of a smoking gun. He had
12 a witness he could have put in testimony about it.

13 I think to purport all the things that
14 he's read into, this document, it's a simple notice.
15 I think it says way too much about the implications
16 of it, and I certainly disagree. And to that extent
17 if that's what he's using it for, I think it's
18 prejudicial.

19 And, again, the fact that the witness
20 didn't review the issue, had no knowledge about it,
21 suggests that he couldn't otherwise explain it, the
22 significance or insignificance of it, and there's
23 been no evidence to suggest that the staff asked for
24 any kind of information about cost or accounting from
25 the company that was not provided in all the

1 thousands of discovery responses we've responded to
2 in this case. If that what he thinks it is, I think
3 it's prejudicial.

4 MR. DARR: I find that amazing as a
5 response, your Honor. The issue is is the ongoing
6 supervision of the company, not what they provided to
7 the staff in the past or what the staff requested.
8 What it does go to and what the notice specifically
9 says in the first paragraph is that AEP Generation
10 Resources has submitted a request for a waiver of the
11 reporting requirements for Federal Energy Regulatory
12 Commission FERC Form 1 and Form 3Q. That's what we
13 offered it for. And it goes to the review process
14 that Mr. Choueiki specifically says is supposed to
15 take place here under the staff's recommendation.

16 MR. NOURSE: And if the FERC thought this
17 was somehow unjust and outlandish, as Mr. Darr does,
18 then who knows how it will turn out. This is a
19 notice of request, and there's no other information
20 so I think it's irrelevant and prejudicial.

21 EXAMINER SEE: The Bench is going to deny
22 admission of IEU Exhibit 17.

23 MR. NOURSE: Your Honor, company would
24 move for admission of AEP Exhibit 49.

25 MR. DARR: Objection, your Honor. It was

1 submitted for the purpose of refreshing recollection.
2 The portion that the witness or that AEP Ohio
3 requested the witness to consider he actually read
4 into the record. There's no reason for admitting AEP
5 49.

6 MR. NOURSE: Your Honor, I gave him
7 plenty of time to read the document if he wanted to,
8 asked him questions about it. It does reflect --
9 first of all, it's already been filed in this case,
10 but it does reflect the context of what Dr. Choueiki
11 did and didn't review in making his recommendations
12 and observations, so I think it's relevant and should
13 be admitted for that reason.

14 MR. DARR: The document shouldn't have
15 been offered for the purpose of refreshing
16 recollection because under the standard practice,
17 that doesn't serve as a basis for offering it as an
18 exhibit, your Honor.

19 EXAMINER SEE: Mr. Michael?

20 MR. MICHAEL: Your Honor, I was just
21 going to point out that -- I'm not going to get
22 between Mr. Darr and Mr. Nourse, but OCC Exhibit 2
23 was the May 15, 2015, letter and it was admitted into
24 evidence, so.

25 EXAMINER SEE: I'm sorry, OCC, give me

1 that again.

2 MR. MICHAEL: No. 2, your Honor --

3 MR. DARR: I withdraw the objection, your
4 Honor.

5 EXAMINER SEE: I'm sorry, say that again,
6 Mr. Darr?

7 MR. DARR: I withdraw the objection. If
8 it's already in the record, there's no point in
9 arguing this point.

10 EXAMINER SEE: With that, do we really
11 need AEP Exhibit 49 in the record?

12 MR. DARR: Unfortunately it's been
13 referred to as 49 in the transcript.

14 MR. NOURSE: As long as we can stipulate
15 the references with Dr. Choueiki's cross-examination
16 through AEP 49 would be read as cross-referencing OCC
17 Exhibit 2, I'm fine with that. I don't think it's
18 the only exhibit that overlaps other exhibits though,
19 your Honor.

20 EXAMINER SEE: Okay. Recognizing that
21 it's already in the record but has been referred to
22 as AEP Exhibit 49 in the examination of Dr. Choueiki,
23 AEP Exhibit 49 is admitted into the record.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER SEE: Thank you, Dr. Choueiki.

1 THE WITNESS: Thank you.

2 MR. NOURSE: Thank you, your Honor.

3 I'm sorry, are we done?

4 EXAMINER SEE: Yes, we are.

5 MR. NOURSE: The company would like to
6 discuss permission to file rebuttal testimony.

7 EXAMINER SEE: Okay.

8 MR. NOURSE: And I guess I'll try to
9 describe our proposal for the record. We plan to
10 file two pieces of rebuttal testimony. I would say
11 they're relatively narrow and short, and I expect the
12 total of the narrative portion of the testimony to be
13 approximately 20 pages between the two pieces total.

14 There's also some exhibits. They're not
15 voluminous. Our proposal would be to file the
16 rebuttal testimony on this coming Monday, the 26th,
17 at 3:00 p.m. -- by 3:00 p.m., and electronically
18 serve it on all the parties along with any
19 workpapers. Those would be served by email, not
20 filed.

21 And given the relative brevity of the
22 rebuttal and the desire to move this case toward
23 briefing, we would propose that we come back on
24 Friday, the 30th, to do the rebuttal testimony.

25 EXAMINER SEE: I don't hear any of the

1 intervenors saying anything, which is very unusual.

2 MR. DARR: We're waiting for permission
3 to go forward on that one, your Honor.

4 EXAMINER SEE: Let's hear it.

5 MR. MENDOZA: May I have a point of
6 clarification? Mr. Nourse, when you say "two
7 pieces," do you mean two witnesses?

8 MR. NOURSE: Two witnesses, yes.

9 MS. BOJKO: And you made a point to
10 separate narrative versus nonnarrative. What's the
11 extent of the charts or attachments?

12 MR. NOURSE: I said they weren't
13 voluminous. I'm not sure of the final number of
14 pages. I can tell you that, again, there's not going
15 to be a lot of -- there's not like a new economic
16 study or new modeling or any kind of voluminous data
17 involved here.

18 MR. MENDOZA: Are you willing to offer
19 which witnesses it will be?

20 MR. NOURSE: Yeah. It's Karl Bletzacker
21 and Bill Allen.

22 So, I guess, your Honor, there's two
23 questions: A, we want to get permission to file
24 rebuttal; B, when are we coming back to put the
25 witnesses on the stand.

1 And I would suggest that if once -- the
2 reason we wanted to file Monday by 3:00 p.m. was to,
3 again, given the brevity of it, give folks the
4 testimony, actually have a chance to look at it by
5 the end of the day, and, again, would suggest we come
6 back on Friday to complete the rebuttal live
7 testimony

8 And if for some reason people think
9 that's not enough time after they look at it, perhaps
10 we could have another status conference or something
11 on Tuesday, but I don't think that will be necessary.

12 EXAMINER SEE: So you're proposing a
13 status conference for Tuesday, the 27th.

14 MR. NOURSE: Only if parties, after they
15 review the testimony, believe they wouldn't be
16 prepared by Friday and we had to talk about a
17 different date or something. I don't expect that to
18 occur, but I'm just throwing that out as a relief
19 valve if for some reason a discussion is needed.

20 MR. KURTZ: Can I weigh in?

21 EXAMINER SEE: You may.

22 MR. KURTZ: The FirstEnergy rebuttal case
23 is going to be on four, at least I think, four days
24 next week. The only thing I would request is to not
25 have the hearing on Friday, the 30th, but as early

1 as the following Monday.

2 I'm not speaking for anyone else, but
3 next Friday would be very difficult, your Honor.
4 Even just moving it to Monday or Tuesday the
5 following week would be very helpful.

6 MR. DARR: I'm struggling with the same
7 problem, your Honor. As you're aware, I have travel
8 plans beginning on Friday, the 30th, and will be
9 out of town through the end of the day on Sunday.

10 Normally I'd say somebody else could pick
11 it up for me, but of the three attorneys in our
12 office that handle these sorts of matters, two of us
13 are traveling, and so I've got a staffing problem on
14 top of everything else for that Friday.

15 Like Mr. Kurtz, I request if we could
16 push the beginning of the hearing to the beginning of
17 next week with the expectation we could finish it in
18 a day or two on that basis, and a lot of that will
19 depend, obviously, on the scope of Mr. Bletzacker's
20 testimony. Both Mr. Bletzacker and Mr. Allen were
21 long live witnesses in this hearing, I think we
22 devoted a day of time to each. I don't know at this
23 point what the scope is going to be.

24 MR. MENDOZA: And, your Honor, I'll add,
25 while we're on the subject, Sierra Club would prefer

1 the hearing not occur on Monday. Just because of our
2 various issues with our counsel, we'd prefer that
3 this hearing start on Tuesday of next week.

4 MS. BOJKO: Your Honor, OMAEG, and I have
5 has also been asked to speak for ELPC who is in
6 depositions in the FirstEnergy case right now, we are
7 in the FirstEnergy, there's five witnesses for there.
8 We are doing those in four or five days. Friday
9 might be a live witness day in there, so we have
10 scheduling concerns.

11 And then on top of that getting the
12 testimony on Monday at 3:00 p.m. and expecting to
13 cross-examine on Friday is a very short time for
14 20-some, and we don't know what the exhibits are. We
15 don't know what the workpapers look like.

16 That, coupled with the FirstEnergy
17 hearing, is very problematic for us, and we would
18 prefer to go the following week, fine going on
19 Tuesday or Monday. We could agree to go Tuesday, and
20 ELPC needs to state that for herself.

21 MR. NOURSE: I'd like to respond, but
22 I'll let anybody else go first.

23 MS. PETRUCCI: We've had a lot of overlap
24 between the two hearings, and it has been a long,
25 difficult several weeks for many of us. I know it's

1 at the tail end of each of these hearings, but trying
2 to avoid some more overlap would be welcome.

3 MR. DOUGHERTY: We agree, everyone's been
4 very flexible over the past however many weeks.
5 Dealing with these two days, I think adding an extra
6 couple days to get us beyond hopefully the final days
7 of that hearing across the hall.

8 MR. NOURSE: And can I ask, because the
9 last I checked, which was late yesterday, there was
10 not a FirstEnergy schedule that had been tied down.
11 Is that actually tied down?

12 MS. BOJKO: No. There's two witnesses on
13 Monday, a witness on Tuesday, a witness on Wednesday,
14 a witness on Thursday, possibly, depending on --
15 there's two date-certain witnesses, so depending on
16 when the other three get done, it may flow over to
17 Friday.

18 MR. MENDOZA: If I may add one thing I'd
19 like to mention, I would just like to state for the
20 record we reserve the right to seek to depose these
21 witnesses, of course, depending on what their
22 testimony actually says. Counsel for AEP has been
23 reasonable in this case about scheduling depositions,
24 and I don't foresee that as being a problem.

25 MS. BOJKO: And having the weekend to

1 prepare would be very helpful.

2 MR. NOURSE: Are we done? Your Honor, I
3 guess despite my checking late yesterday I was not
4 aware of the FirstEnergy schedule being set but it
5 sounds like Friday's still open, but kicking it to
6 Monday would be our second choice. I guess this
7 limited testimony I don't think is going to take
8 people a week to look at.

9 And so I guess certainly my offer to file
10 by 3:00 p.m. Monday was for the purpose of trying to
11 go back, come back on Friday. So that's out.
12 There's no reason we want to file it by 3:00 p.m.

13 And as far as going beyond Monday, again,
14 I think we're trying to be very narrow in our
15 rebuttal. We want to move this case to briefing, we
16 haven't talked about a briefing schedule yet but
17 based on when the rebuttal hearing is scheduled, we
18 are trying to make arrangements so that all the
19 transcripts will be filed in Docket by then and so
20 again, the company would like to move forward with
21 this case as expeditious as possible and so I think
22 if Monday is the backup plan, then we'd be okay with
23 that and we would plan to file our testimony by the
24 end of the day this coming Monday, October 26.

25 MR. KURTZ: Are we off the record?

1 EXAMINER SEE: No, we are a not. Would
2 you like to be?

3 MR. KURTZ: Yeah, do you mind?

4 EXAMINER SEE: Let's go off the record.
5 (Off the record.)

6 EXAMINER SEE: Let's go back on the
7 record.

8 Given the discussion that's taken place,
9 company's rebuttal is due to be filed with the
10 Commission and electronically served on the parties
11 with a courtesy copy to the AEs by end of business on
12 October 27th. We'll reconvene the hearing on
13 Tuesday, November 3, starting at 9:00 a.m.

14 MR. NOURSE: Thank you, your Honor.

15 EXAMINER SEE: And at this point we're
16 not sure what room it will be in. We probably need
17 to take all of your materials with you. If you're a
18 party to the case taking place down the hall, you may
19 be able to box up your items and put them there. But
20 you'll need to make arrangements to get them out of
21 that room when that hearing concludes.

22 MR. NOURSE: And, your Honor, I'm sorry
23 if you weren't finished, I was just going to say I
24 think I said that off the record, maybe not, we are
25 trying to make arrangements to get the transcripts

1 filed, the complete set of transcripts, at least
2 everything but the rebuttal day by the time we come
3 back for the rebuttal hearing. Under the -- in
4 advancing the goal of doing a quick briefing
5 schedule, you want to talk about a briefing schedule
6 now?

7 EXAMINER SEE: You can.

8 MR. NOURSE: Because I mean, reality is
9 there is with this schedule some additional space in
10 time, many of the parties have multiple counsel and
11 abundant resources to begin working on briefs, so
12 what I was going to suggest was two weeks after
13 rebuttal hearing for an initial, two weeks after that
14 for reply, which adjusting for the dates you just set
15 up I guess would be the 10th and the 24th of
16 November, to get us done in time for Thanksgiving.

17 MS. BOJKO: Two weeks after.

18 EXAMINER SEE: November 17 and
19 December 1? Two and two, is that what you're
20 proposing?

21 MR. NOURSE: Yeah, two and two.

22 MS. BOJKO: Your Honor, I think it goes
23 without saying that I don't know who except for AEP
24 that might have abundant counsel and abundant
25 resources but we certainly do not, and there are two

1 simultaneous hearings going on and it's made it very
2 difficult, the one that started before this one
3 that's going to end before this one, so I'm assuming
4 they're going to make the same argument to have their
5 briefs done along this same path. So we would oppose
6 two weeks and two weeks.

7 This length of hearing I struggle to sit
8 here and think of a two-week briefing schedule being
9 proposed. I think that we appreciate the transcripts
10 being filed, we do appreciate that, but we would
11 propose much longer than that. I mean, usually it's
12 three weeks for briefs and two or three weeks for
13 reply. Or a week per week of the hearing.

14 MR. NOURSE: Well, your Honor, I do think
15 first of all, it is more like three and a half weeks
16 from today. We're done with the main part of the
17 hearing.

18 Secondly, the FirstEnergy case involves
19 an ESP that is not expired until the middle of next
20 year. I don't think, with all due respect, it has
21 the same urgency as this case and so if anything I
22 think we the parties should focus on getting AEP's
23 case briefed.

24 MR. MICHAEL: Your Honor, OCC is much
25 more supportive of Ms. Bojko's suggestion than

1 Mr. Nourse's. And at the very minimum it should be
2 three weeks for initial brief and three for reply.

3 MR. MENDOZA: Sierra Club will join in
4 the Bojko proposal.

5 MS. BOJKO: Which is three to four weeks.

6 MS. PETRUCCI: And given that I believe
7 we'll be doing multiple briefs, I'm joining in with
8 the intervenors that have commented thus far.

9 MR. DOUGHERTY: OEC and EDF also follow
10 Counsel Bojko.

11 MS. MOONEY: As does OP&E.

12 MR. O'BRIEN: And we do also.

13 MS. MOONEY: We'd also like to comment
14 that the FirstEnergy group would be pushed back
15 further as a result of this. But I don't know who's
16 going to make that.

17 EXAMINER SEE: Wrong hearing, Ms. Mooney.

18 We'll take the briefing schedule under
19 advisement.

20 With that, we're adjourned until we
21 reconvene on November 3rd at 9:00.

22 (Thereupon, the hearing adjourned at 3:42
23 p.m.)

24 - - -

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Friday, October 23, 2015, and carefully compared with my original stenographic notes.

Julieanna Hennebert,
Registered Professional
Reporter RMR, and Notary
Public in and for the
State of Ohio.

My commission expires February 19, 2018.

Rosemary Foster Anderson,
Registered Professional
Reporter and Notary Public
in and for the State of Ohio.

My commission expires April 5, 2019.

(rfa-79556kg)

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Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM

Summary: Transcript In the Matter of the application of Ohio Power Company hearing held on 10/23/15 - Volume XVI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.