

1 APPEARANCES:

2 FirstEnergy Corp.
By Ms. Carrie M. Dunn
3 76 South Main Street
Akron, Ohio 44308

4 Jones Day
5 By Mr. David A. Kutik
901 Lakeside Avenue
6 Cleveland, Ohio 44114

7 On behalf of the Applicants.

8 Earthjustice
By Mr. Michael Soules (via speakerphone)
9 1625 Massachusetts Avenue NW, Suite 702
Washington, D.C. 20036

10 On behalf of the Sierra Club.

11 Vorys, Sater, Seymour & Pease, LLP
12 By Ms. Gretchen Petrucci (via speakerphone)
52 East Gay Street
13 Columbus, Ohio 43215

14 On behalf of Retail Energy Supply
Association, PJM Power Providers Group,
15 Electric Power Supply Association,
Constellation, and Exelon.

16 Environmental Law & Policy Center
17 By Ms. Madeline Fleisher (via speakerphone)
21 West Broad Street, Suite 500
18 Columbus, Ohio 43215

19 On behalf of the Environmental Law &
Policy Center.

20 Carpenter Lipps & Leland LLP
21 By Ms. Kimberly W. Bojko (via speakerphone)
and Ms. Danielle Ghiloni Walter (via s.phone)
22 280 North High Street, Suite 1300
Columbus, Ohio 43215

23 On behalf of the Ohio Manufacturers'
24 Association Energy Group.

1 APPEARANCES: (Continued)

2 Bruce E. Weston, Ohio Consumers' Counsel
3 By Ms. Maureen R. Willis (via speakerphone)
4 Assistant Consumers' Counsel
5 10 West Broad Street, Suite 1800
6 Columbus, Ohio 43215-3485

7 On behalf of the Residential Consumers of
8 Ohio Edison Company, The Cleveland
9 Electric Illuminating Company, and The
10 Toledo Edison Company.

11 ALSO PRESENT:

12 Attorney Examiner Greg Price (via speakerphone)

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8 Deposition Exhibit Identified

9 1 Responses to Request PUCO-DR-34
(Confidential) 2810 2 Responses to Request PUCO-DR-35
11 (Confidential) 82

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1 Friday Afternoon Session,
2 July 8, 2016.

3 - - -

4 (Witness sworn.)

5 MS. WILLIS: Before we get started I want
6 to note a couple of things. First of all, OCC would
7 note its objection to the treatment of this entire
8 deposition as confidential, but in the interest of
9 going forward without further delay, we are going to
10 agree to such treatment, but by our agreeing under
11 these circumstances, we are not waiving our right in
12 the future to challenge the confidential treatment of
13 the information gained today through the deposition.

14 Secondly, I would ask the court reporter
15 to note the individuals within the room as well as
16 the comings and goings of persons within the room
17 while the deposition is occurring. I would also ask
18 the court reporter to note on the record any
19 communications, written or oral, taking place between
20 the witness and any other person in the room
21 including counsel and that is to include any texting,
22 e-mail, phone messages, or computer communications.
23 Thank you.

24 MR. KUTIK: Well, I found -- I find the

1 last objection -- or last instruction to be obnoxious
2 because I wouldn't do that, but you can go ahead.

3 MS. WILLIS: Thank you.

4 MS. PETRUCCI: I would like to note on
5 the record as well that we concur with the first
6 statement Ms. Willis made about treating the
7 deposition as confidential.

8 MS. BOJKO: OMAEG joins in the objection
9 in the treatment of the entire transcript as
10 confidential. Thank you.

11 MR. SOULES: Sierra Club likewise would
12 like to state its objection to the companies' claims
13 that the responses to the staff's Data Request-34 and
14 35 are confidential, and we likewise reserve the
15 right to challenge those confidentiality claims.

16 If no one has anything further, I guess
17 we can get started with questions.

18 - - -

19 EILEEN M. MIKKELSEN

20 being by me first duly sworn, as hereinafter
21 certified, deposes and says as follows:

22 CROSS-EXAMINATION

23 By Mr. Soules:

24 Q. Good afternoon, Ms. Mikkelsen.

1 A. Good afternoon.

2 Q. Can you hear me clearly?

3 A. Yes.

4 Q. Great. My name is Michael Soules, and I
5 represent Sierra Club in this proceeding.

6 Ms. Mikkelsen, do you have before you a
7 copy of the companies' responses to Staff Data
8 Request-34 and 35?

9 A. Yes.

10 Q. Okay. And you were the sponsoring
11 witness for both of those discovery responses,
12 correct?

13 A. Yes.

14 Q. When did the companies receive these two
15 data requests?

16 A. I don't remember.

17 Q. When did the companies send their
18 response to Data Request-34 to the Commission staff?

19 A. June 28, 2016.

20 Q. When did the companies send their
21 response to Data Request-35 to the Commission staff?

22 MR. KUTIK: I'm sorry. Was the question
23 why?

24 MR. SOULES: I said "when." I am asking

1 about the response to Data Request-35, when it was
2 sent to staff.

3 MR. KUTIK: Didn't you just say that?

4 MR. SOULES: I asked about 34. Now, I am
5 asking about 35.

6 MR. KUTIK: I'm sorry.

7 A. June 28, 2016.

8 Q. Great. Thank you. Ms. Mikkelsen, could
9 you please turn your attention to the response to
10 Data Request-34 and specifically to subpart 1 of the
11 request listed near the top of the page. Please let
12 me know when you are ready.

13 A. I'm ready.

14 Q. Okay. I'm paraphrasing slightly but this
15 request asks for detail on how the companies benefit
16 from FirstEnergy Corp. remaining investment grade
17 from the major bond rating agencies; is that correct?

18 A. I mean, the document speaks for itself
19 but, yes.

20 Q. And then if you look down at the response
21 to subpart 1, there's a series of objections and then
22 there is a substantive response beneath that. Do you
23 see that?

24 A. Yes.

1 Q. And the response includes a
2 "non-exhaustive list of the benefits that FirstEnergy
3 Corp., and the Ohio utilities, receive from
4 maintaining an investment grade rating"; is that
5 correct?

6 A. Yes.

7 Q. And the information provided in this
8 response belongs to FirstEnergy Corp.; is that
9 correct?

10 MR. KUTIK: Objection.

11 A. May I ask you to rephrase the question,
12 please?

13 Q. What don't you understand about the
14 question?

15 A. The reference to "belonging to
16 FirstEnergy Corp."

17 Q. Is the information provided in this
18 response proprietary to FirstEnergy Corp.?

19 A. Well, the information was provided
20 confidentially in response to the staff data request.

21 Q. Did you personally prepare this response?

22 A. It was prepared under my direction.

23 Q. Did anyone assist you in preparing this
24 response?

1 A. Yes.

2 Q. And who was that?

3 A. Subject matter experts.

4 Q. And who are those subject matter experts
5 that assisted you in preparing this response?

6 A. I sent the inquiry to our treasury
7 department, and they provided a draft response to me.
8 I don't know who specifically in the treasury
9 department drafted the response.

10 Q. Okay. And is that -- is that the
11 treasury department for FirstEnergy Corp.?

12 A. The treasury department is part of
13 FirstEnergy Service Corp.

14 Q. Okay. So it was not -- so the treasury
15 department is not -- does not specifically serve only
16 the companies; is that correct?

17 MR. KUTIK: Objection.

18 THE WITNESS: May I have the question
19 reread, please, ma'am.

20 (Record read.)

21 A. Yes.

22 Q. Apart from the treasury department, did
23 anyone assist you in preparing this response?

24 A. The response would have been reviewed by

1 others in the rates and legal departments.

2 Q. Who were the others in the rate
3 department that reviewed this response?

4 A. Sonny Fanelli.

5 Q. Anyone else?

6 A. Not that I recall.

7 Q. Okay. Great. When the -- it's fair to
8 say that the treasury department prepared the initial
9 draft of this response; is that correct?

10 A. Yes, as it relates to the, you know,
11 specific substantive nonlegal response, yes.

12 Q. Okay. Thank you. Did you review any
13 documents in preparing this response?

14 A. None beyond the draft response.

15 Q. Okay. Apart from what we've already
16 discussed, is there anything that you relied on in
17 preparing this response?

18 A. I would have relied upon my professional
19 knowledge in reviewing the response.

20 Q. Okay. Apart from your professional
21 knowledge, anything else?

22 A. No.

23 Q. Okay. Thank you. If you could please
24 look at the first bullet point in this response, that

1 bullet point states "Easier and less-constrained
2 access to the capital markets." Do you see where it
3 says that?

4 A. Yes.

5 Q. So is it fair to say that the companies
6 access capital markets?

7 A. Yes.

8 Q. And when the companies need to access
9 capital markets, do they access those markets
10 directly?

11 A. May I ask you to rephrase the question,
12 please?

13 Q. What don't you understand about the
14 question?

15 A. "Directly."

16 Q. When you're referring to access to
17 capital markets, you're -- you are referring to going
18 out seeking loans, correct?

19 A. Yes.

20 Q. When the companies seek a loan in the
21 capital markets, do they directly -- do they --
22 strike that.

23 When the companies are seeking loans in
24 the capital markets, do they -- do the lenders

1 provide the loans directly to the companies or to
2 FirstEnergy Corp.?

3 THE WITNESS: May I have that question
4 reread, please.

5 (Record read.)

6 A. If the companies are seeking loans, then
7 the loans are to the companies.

8 Q. Okay. So sometimes the companies seek
9 access to capital without any involvement from
10 FirstEnergy Corp.; is that correct?

11 MR. KUTIK: Objection.

12 A. May I ask you to rephrase the question,
13 please?

14 Q. Could you tell me what you don't
15 understand about the question?

16 A. The reference to "FirstEnergy Corp."

17 Q. When -- so it's fair to say that the
18 companies will sometimes seek access to capital
19 without FirstEnergy Corp. being a party to that loan
20 transaction?

21 A. The companies may seek to access the
22 capital markets, but I think the access to the
23 capital markets is influenced by the parent as well
24 as the companies.

1 Q. How is it influenced by the parent?

2 A. I think lenders would look at not only
3 the company but the company's parent.

4 Q. It would -- are you suggesting that the
5 lenders would look at the parent's credit rating; is
6 that correct?

7 A. Yes.

8 Q. Okay. Thank you. Could you please turn
9 to the fourth major bullet in that response which is
10 the one at the top of the second page of the
11 document.

12 MR. KUTIK: That says "Preserves cash
13 collateral," that one?

14 MR. SOULES: That's correct, yeah.

15 Q. (By Mr. Soules) Ms. Mikkelsen, do you see
16 the bullet point stating "Preserves cash collateral
17 at utilities and FE Corp. on a consolidated basis"?

18 A. Yes.

19 Q. In this part of your response are you
20 referring to cash collateral for loans?

21 MR. KUTIK: Did you say "loan"?

22 Q. For loans, plural, yeah.

23 A. It may be loans or other bilateral
24 transactions.

1 Q. What types of bilateral transactions?

2 A. Contracts.

3 Q. What types of contracts?

4 A. Contracts with other parties that have
5 collateral requirements.

6 Q. Well, what would be an example of a
7 contract with another party that has collateral
8 requirements?

9 A. I am aware of a contract one of the
10 utilities has with a collateral requirement, but I
11 don't know the specifics of the underlying contract.

12 Q. Okay. Apart from that contract you just
13 referenced and loans, are there other circumstances
14 in which the companies need cash collateral?

15 A. There may be.

16 Q. Can you identify any such circumstances?

17 A. The ones that come to mind at this time
18 are the ones we've discussed.

19 Q. Okay. And you can't -- you can't think
20 of any others today.

21 A. I can't think of any others at this time.

22 Q. Okay. Do the companies and FirstEnergy
23 Corp. pool their cash when they seek loans?

24 THE WITNESS: May I ask you to reread the

1 question, please.

2 (Record read.)

3 A. No.

4 Q. Can you explain the significance of the
5 "consolidated basis" reference in your response?

6 MR. KUTIK: Objection.

7 A. If cash is preserved at the utilities,
8 when FE Corp. is reported on a consolidated basis,
9 that preserved cash would be reported as part of the
10 FE Corp. consolidated basis.

11 Q. Okay. And the companies and FE Corp.
12 have a consolidated balance sheet, correct?

13 MR. KUTIK: Objection.

14 A. No.

15 MR. SOULES: Sorry. Could I have the not
16 this -- this immediate past question and answer but
17 the one prior read back, Karen.

18 (Record read.)

19 MR. SOULES: Thank you.

20 Q. Ms. Mikkelsen, what do you mean by "FE
21 Corp. consolidated basis"?

22 A. Reporting for FE Corp. that includes a
23 consolidation of all of its subsidiaries.

24 Q. Does FE Corp. use cash being held at the

1 companies when FE Corp. is seeking loans?

2 MR. KUTIK: Objection.

3 A. No.

4 Q. With respect to this particular bullet
5 point listed in your response, would it be fair to
6 say that the benefit you are describing relates to FE
7 Corp.'s reporting of its financial condition?

8 A. May I ask you to rephrase the question,
9 please?

10 MR. KUTIK: And before you do that can we
11 go off the record?

12 (Discussion off the record.)

13 MR. KUTIK: Let's go back on the record.

14 MR. SOULES: I'm sorry. Could we have
15 the last -- Ms. Mikkelsen just asked me to rephrase.
16 Actually, Karen, can I get the last question and
17 answer read back.

18 (Record read.)

19 Q. Ms. Mikkelsen, can you explain what the
20 significance of preserving cash collateral at
21 utilities and FE Corp. on a consolidated basis is?

22 A. To the extent that the utilities don't
23 have to make a cash collateral payment, that leaves
24 them with additional cash.

1 Q. I'm sorry. Are you finished with your
2 answer?

3 A. Yes.

4 MR. SOULES: Karen, can I have that read
5 back as well.

6 (Record read.)

7 MR. SOULES: Okay. Thank you.

8 Q. (By Mr. Soules) Ms. Mikkelsen, how would
9 FE Corp.'s credit rating affect the cash collateral
10 available to the companies?

11 A. May I ask you to rephrase the question,
12 please?

13 Q. What don't you understand about the
14 question?

15 A. "Cash collateral available to the
16 companies."

17 Q. How would FE Corp.'s credit rating affect
18 the companies' ability to preserve cash collateral?

19 A. For example, S&P takes a family approach
20 to rating which means whatever they rate the parent,
21 all of the legal entities are rated at the same level
22 regardless of their stand-alone rating or
23 creditworthiness. So in that particular instance, if
24 the parent was downgraded, the utility would also be

1 downgraded which might give rise to a collateral
2 requirement.

3 Q. When you say "a collateral requirement,"
4 you mean a collateral requirement that's in a
5 bilateral contract?

6 MR. KUTIK: Objection.

7 A. Yes.

8 Q. Okay. If you could go back to the first
9 page of this discovery response and specifically to
10 subpart 2. So this subpart 2 of Data Request-34 asks
11 the companies to "provide detailed projected
12 financial statements for years 2016-2018. This
13 should include balance sheets, income statements and
14 statements of cash flow for FirstEnergy Corp. and the
15 Ohio operating companies, separately. Also, list the
16 assets included in Electric Utility Plant for the
17 Ohio operating companies." Do you see where it
18 states that in the request?

19 A. Yes.

20 Q. And if you look down at the response to
21 this request, the companies objected entirely to
22 subpart 2, correct?

23 MR. KUTIK: Objection. It is what it is
24 so let's move on. This witness isn't responsible for

1 legal objections.

2 Q. Ms. Mikkelsen, the companies did not
3 provide the staff with any financial statements for
4 the years 2016 to 2018, correct?

5 A. Yes.

6 Q. And the companies did not provide any
7 information in response to subpart 2 of Data
8 Request-34, correct?

9 A. Yes.

10 Q. And the companies did not provide any
11 financial statements at all in response to any part
12 of Data Request-34, correct?

13 A. Yes.

14 Q. Did you discuss subpart 2 of Data
15 Request-34 with anyone at FirstEnergy Corp. or anyone
16 acting on behalf of FirstEnergy Corp.?

17 MR. KUTIK: Well, I'll object and
18 instruct you to exclude from your answer any
19 discussions that you had at the direction of counsel
20 or with counsel for the purpose of giving or
21 receiving legal advice.

22 A. I had no additional conversations.

23 Q. To the best of your knowledge, has staff
24 been provided the information requested in subpart 2

1 of Data Request-34?

2 MR. KUTIK: Well, I will instruct you to
3 exclude from your answer any information that you
4 received from counsel as part of giving or receiving
5 legal advice or any discussions that you are aware of
6 that were part of settlement discussions between the
7 companies and staff.

8 THE WITNESS: May I ask to have the
9 question reread, please, ma'am.

10 (Record read.)

11 A. No.

12 Q. Ms. Mikkelsen, could you please turn your
13 attention to Data Request-35. Please let me know
14 when you're there.

15 A. I'm there.

16 Q. Great. Now, paraphrasing again, but this
17 request asks for detail on the consequences for the
18 companies of FirstEnergy Corp. dropping below an
19 investment grade rating, correct?

20 A. I mean, the request is to "provide detail
21 on the consequences of FirstEnergy Corp. dropping
22 below an investment grade rating. What effects will
23 this have on The Illuminating Company, Ohio Edison,
24 and Toledo Edison?"

1 Q. Okay. Thank you. And if you could look
2 down at the response to that Data Request, there's a
3 series of objections and then there is a substantive
4 response beneath that. Do you see that?

5 A. Yes.

6 Q. Did you personally prepare this response?

7 A. It was prepared under my direction.

8 Q. Was this response prepared by the
9 treasury department?

10 A. The initial draft to the response would
11 have been prepared by the treasury department.

12 Q. Apart from the treasury department, did
13 anyone assist you in preparing this response?

14 A. No.

15 Q. Okay. Thank you. This response provides
16 "a non-exhaustive list of the adverse impacts that
17 would occur if FirstEnergy's credit rating were
18 downgraded to a non-investment grade rating,"
19 correct?

20 A. The response states "the following is a
21 non-exhaustive list of the adverse impacts of a
22 downgrade to a non-investment grade rating."

23 Q. Okay. Thank you. And if you could look
24 at the first major bullet in that response, do you

1 see where that bullet states "Constrained, limited,
2 and speculative access to the capital markets"?

3 A. Yes.

4 Q. If FirstEnergy Corp.'s credit rating were
5 downgraded, how much of an impact would that have on
6 the companies' ability to access capital?

7 MR. KUTIK: Objection.

8 A. May I ask you to rephrase the question,
9 please?

10 Q. What don't you understand about the
11 question?

12 A. "Downgraded."

13 Q. If FirstEnergy Corp.'s credit rating were
14 downgraded to a non-investment grade rating, how much
15 of an impact would that have on the companies'
16 ability to access capital?

17 MR. KUTIK: Objection.

18 A. As the response states, it would create a
19 "Constrained, limited, and speculative access to the
20 capital markets."

21 Q. And you consider that to be an adverse
22 impact of a downgrade to a non-investment grade
23 rating, correct?

24 A. Yes.

1 Q. Can you quantify the magnitude of that
2 impact?

3 A. No.

4 Q. Have you analyzed the magnitude of that
5 impact at all?

6 MR. KUTIK: Objection.

7 A. Yes.

8 Q. And what did you do to analyze that?

9 A. I think the analysis is included in the
10 response here of the things that could or would be
11 impacted as a result of a downgrade to a
12 non-investment grade rating.

13 Q. Could you look at the second bullet point
14 in that response. That bullet states "Increased
15 borrowing costs, higher interest rates, and more
16 onerous terms and conditions." Do you see where it
17 states that?

18 A. Yes.

19 Q. By how much would the companies'
20 borrowing costs increase if FirstEnergy Corp.'s
21 credit rating dropped below an investment grade
22 rating?

23 A. Calls for speculation.

24 Q. So you are unable to identify the

1 magnitude of this impact; is that correct?

2 MR. KUTIK: Objection.

3 A. Not based on the information provided in
4 the question.

5 Q. I'm sorry. Did you mean the information
6 provided in the response?

7 A. No, I meant your question.

8 Q. Oh, in my question. What information
9 would you need?

10 A. Again, I think it would call for
11 speculation with respect to a number of factors.

12 Q. And what are those factors?

13 A. For example, what is the non-investment
14 grade rating, what access to the capital markets is
15 being sought, you know, any other number of things, I
16 guess, that would come into play.

17 Q. Okay. Thank you. Have the companies
18 attempted to quantify the degree by which borrowing
19 costs would increase if FirstEnergy Corp.'s credit
20 rating dropped below an investment grade rating?

21 MR. KUTIK: May we have the question
22 read, please.

23 (Record read.)

24 A. Not that I'm aware of.

1 Q. Have the companies attempted to quantify
2 the degree to which their interest rates would
3 increase if FirstEnergy Corp.'s credit rating dropped
4 below an investment grade rating?

5 A. Not that I'm aware of.

6 Q. Did the companies otherwise -- in any
7 other way evaluate the degree to which interest rates
8 would rise if FirstEnergy Corp.'s credit rating
9 dropped below an investment grade rating?

10 MR. KUTIK: Objection.

11 A. May I ask you to please rephrase the
12 question?

13 Q. Can you tell me what you don't understand
14 about the question?

15 A. "Any other way interest rates would
16 rise."

17 Q. Have the companies performed any
18 evaluation of the degree to which their interest
19 rates would increase if FirstEnergy Corp.'s current
20 rating dropped below an investment grade rating?

21 A. Not that I'm aware of.

22 Q. Okay. If you could please look at the
23 fourth major bullet point in that response, the one
24 beginning "Collateral provisions." Do you see that

1 bullet point?

2 A. Yes.

3 Q. What is "a collateral provision" as it's
4 being used in that bullet point?

5 A. It is a provision that would require
6 additional collateral in the form of cash under some
7 prearticulated conditions.

8 Q. Okay. The companies did not provide the
9 staff with any financial statements in response to
10 Data Request-35, correct?

11 A. Yes.

12 Q. Yes, that's correct?

13 A. Yes.

14 Q. Okay. Is it your understanding that FE
15 Corp.'s creditors would be able to reach the
16 companies' cash assets to collect on a loan that was
17 made to FE Corp.?

18 MR. KUTIK: I didn't hear the beginning
19 part of your sentence.

20 Did you catch it, Karen? Can you read
21 it, please.

22 MR. SOULES: I will be happy to restate.

23 MR. KUTIK: You are kind of fading in and
24 out.

1 MR. SOULES: Can you hear me clearly now?

2 MR. KUTIK: Yes.

3 Q. (By Mr. Soules) Okay. Ms. Mikkelsen, is
4 it your understanding that FE Corp.'s creditors would
5 be able to reach the companies' cash assets to
6 collect on a loan made to FE Corp.?

7 A. I don't know.

8 MR. SOULES: Okay. And with that I have
9 no further questions and thank you for your time,
10 Ms. Mikkelsen.

11 MR. KUTIK: Ms. Willis.

12 MS. WILLIS: Thank you, Mr. Kutik.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Willis:

16 Q. Good afternoon, Ms. Mikkelsen.

17 A. Good afternoon.

18 Q. I'm going to direct at least the first
19 set of questions to Staff Data Request No. 34.

20 MS. WILLIS: And I am going to ask at
21 this time to have the court reporter mark that as
22 Deposition Exhibit No. 1.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Now, Deposition No. 1 has a heading at

1 the top of the page that says "Confidential Pursuant
2 to Ohio Revised Code 4901.16 and Common Interest
3 Privilege." Do you see that?

4 A. Yes.

5 Q. Can you tell me how your response is
6 confidential under Ohio Revised Code 4901.16?

7 MR. KUTIK: I am going to instruct you
8 not to answer. That's a legal conclusion. Go ahead.
9 Next question.

10 MS. WILLIS: Are you really instructing
11 her not to answer?

12 MR. KUTIK: I am really instructing her
13 not to answer.

14 MS. WILLIS: I don't believe that's a
15 proper basis for instructing the witness not to
16 answer.

17 MR. KUTIK: Well, she's not going to sit
18 here and -- and defend a designation that was made
19 with counsel and by counsel.

20 MS. WILLIS: Okay. Perhaps I can
21 rephrase my question.

22 Q. (By Ms. Willis) Do you understand -- is
23 it your understanding, Ms. Mikkelsen, that the
24 entirety of the data that's been provided in response

1 to Data Request 34 is confidential data?

2 A. Yes.

3 Q. And on what basis do you believe the
4 entirety of the response is confidential data?

5 MR. KUTIK: I'll instruct her not to
6 answer to the extent that calls for a legal
7 conclusion.

8 A. Just based on the face of the document.

9 Q. Do you consider this information to be
10 competitively sensitive as well as confidential?

11 A. No.

12 Q. Now, going to your response to subsection
13 34-1, one of the objections is that the information
14 is irrelevant. Can you tell me is it your belief
15 that this information is not relevant?

16 MR. KUTIK: I am going to instruct her
17 not to answer that question. She is not going to
18 defend objections that were made by counsel. Next
19 question.

20 Q. Ms. Mikkelsen, is it your opinion that
21 the PUCO should not consider how the utilities
22 benefit from FirstEnergy Corp. maintaining investment
23 grade ratings?

24 THE WITNESS: May I ask you to please

1 reread that question.

2 Q. Can you tell me what you don't understand
3 about that question?

4 MR. KUTIK: She wants it to be reread.

5 MS. WILLIS: Oh, I'm sorry. I misheard.

6 (Record read.)

7 A. No.

8 Q. So you believe it is appropriate for
9 purposes of reviewing the companies' proposal that
10 the PUCO should consider how the utilities would
11 benefit from FirstEnergy maintaining -- FirstEnergy
12 Corp. maintaining its investment grade ratings; is
13 that correct?

14 A. I think the Commission can review
15 whatever the Commission deems appropriate and
16 necessary to conduct its review.

17 Q. And do you deem it appropriate and
18 necessary to -- to the Commission in conducting its
19 review to consider if the utilities -- Ohio utilities
20 benefit from FirstEnergy Corp. maintaining its
21 investment grade ratings?

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

24 A. I stand by my prior answer.

1 Q. Is it your opinion, Ms. Mikkelsen, that
2 the PUCO should consider how FirstEnergy Corp.
3 benefits from maintaining investment grade ratings in
4 this proceeding?

5 A. I think the Commission is free to review
6 whatever elements it deems necessary to conduct its
7 review in this proceeding.

8 Q. Do you -- is it your opinion that it is
9 necessary for the PUCO in considering the proposal
10 before them to consider how FirstEnergy Corp.
11 benefits from maintaining investment grade ratings?

12 MR. KUTIK: Objection, asked and
13 answered.

14 A. I stand by my prior answer.

15 Q. Now, in the response to this data
16 request, you -- there is an objection that the
17 request is vague and ambiguous with respect to the
18 use of terms including benefit. Do you see that?

19 A. Yes.

20 Q. In answering the discovery request, how
21 did you define "benefit"?

22 A. In the manner contained in the response.

23 Q. Now, another part of this response states
24 that the "request seeks information pertaining to

1 confidential settlement discussions." Do you see
2 that?

3 A. Yes.

4 Q. Can you identify for me what confidential
5 settlement discussions are being referred to here?

6 MR. KUTIK: I will instruct you not to
7 answer that question to the extent it would divulge
8 the content of confidential settlement discussions.

9 Q. And, Ms. Mikkelsen, I am not asking for
10 the content. I am asking for when those confidential
11 settlement discussions that you are referring to
12 would have taken place.

13 MR. KUTIK: So let me make sure I
14 understand what your question is because that's a
15 different question. Are you now asking her when did
16 the companies have confidential settlement
17 discussions with the staff?

18 MS. WILLIS: I am not making my question
19 as broad. Maybe I can rephrase it.

20 Q. (By Ms. Willis) In this response there is
21 an objection stating that "This request seeks
22 information pertaining to confidential settlement
23 discussions." I am asking you to identify when those
24 confidential settlement discussions being referred to

1 there took place.

2 MR. KUTIK: Well, I will object and
3 instruct you not to answer that question to the
4 extent it would require you to speculate as to what
5 counsel was meaning with respect to that. If you
6 want to tell her when there were settlement
7 discussions with staff, you can go ahead and do that.

8 MS. BOJKO: I'm sorry. Can I hear
9 Mr. Kutik's objection again. Could you reread it,
10 please.

11 MR. KUTIK: I'll state it again. It
12 simply is this, that I'm instructing not to speculate
13 as to what counsel might have meant with reference to
14 the phrase "confidential settlement discussions" in
15 the objection, but she can tell you when there were
16 such discussions, that is, settlement discussions.

17 MS. BOJKO: For the record I am going to
18 object that counsel is coaching the witness with
19 regard to the question. It's inappropriate.

20 MR. KUTIK: What I am trying to do is
21 have the witness provide an answer that's appropriate
22 on the record. Go ahead.

23 A. The discussions would have occurred
24 subsequent to filing the proposal.

1 Q. (By Ms. Willis) And can you tell me with
2 respect to those settlement discussions you just
3 referenced who would have been involved in those
4 settlement discussions?

5 MR. KUTIK: Well, now, I am going to
6 object on the basis that that is beyond the scope of
7 this deposition, and I will instruct her not to
8 answer.

9 MS. WILLIS: I am just going to note for
10 the record I take -- I object to that and this may
11 be -- I may just have a list -- put a list together
12 rather than stop the deposition right now and have
13 the attorney examiners come on. I'll just start a
14 list of questions that we'll need to resolve with the
15 attorney examiners' involvement.

16 MS. BOJKO: And OMAEG seconds that
17 objection and notation with regard to seeking
18 assistance from the attorney examiners.

19 Q. (By Ms. Willis) Now, is it your
20 testimony, Ms. Mikkelsen, the benefits -- the
21 benefits that you describe in this response were
22 specifically discussed with parties as part of
23 settlement negotiations?

24 MR. KUTIK: I will instruct you not to

1 answer that question on the grounds it would reveal
2 confidential settlement discussions.

3 Q. Now, another objection to this
4 information is that it is highly sensitive -- let me
5 strike that.

6 Well, let me -- let me go forward.
7 Another objection is that the information is not
8 otherwise publicly available. Do you see that
9 objection?

10 A. What I see is a statement that reads more
11 fully "This request also seeks to obtain information
12 that is highly sensitive, proprietary and not
13 otherwise publicly available."

14 Q. Thank you. And can you identify for me
15 with respect to the information contained in the
16 bullet point and the substantive response to that
17 DR-34-1 what -- what of that information is not
18 publicly available?

19 MR. KUTIK: Well, I'll object that it
20 mischaracterizes the response. The response -- the
21 objection is to the question, not to the answer, so
22 in limiting her discussion to the response, that's
23 improper because the material that's being discussed
24 that's highly sensitive, proprietary, and not

1 otherwise publicly available is information called
2 for by the question so I'll object.

3 Q. I think there is a pending question,
4 Ms. Mikkelsen.

5 THE WITNESS: May I ask to have the
6 question reread, please, ma'am.

7 (Record read.)

8 MR. KUTIK: So more specifically the
9 question assumes facts that are untrue and not
10 present in the answer. Go ahead.

11 A. The information provided in response to
12 subpart 1 is considered confidential by the company.

13 Q. And by that, Ms. Mikkelsen, do you mean
14 that it's not otherwise publicly available?

15 A. I don't know.

16 Q. And is your -- your response that you
17 don't know, is that related to the entirety of that
18 data provided or to specific portions of that data?

19 MR. KUTIK: Objection. It assumes that
20 the data provided in quotes is data that was not
21 publicly available. The objection is to the question
22 which asks for information that may be or conceivably
23 could be responsive and would be not publicly
24 available. So your question is improper. And if you

1 can't answer that question, Ms. Mikkelsen, you should
2 say so.

3 A. I can't answer that question.

4 Q. Now, in your response to staff Data
5 Request-4, you provide what you call "a
6 non-exhaustive list of the benefits that FirstEnergy
7 Corp., and the Ohio utilities, receive." Can you
8 tell me which of the benefits you identify in the
9 bullet points are received by the utilities, the Ohio
10 utilities?

11 A. May I ask you to please rephrase the
12 question?

13 Q. And what part of the question don't you
14 understand, Ms. Mikkelsen?

15 A. Your reference to "staff Data Request-4."

16 Q. I'm sorry. Staff Data Request-34-1,
17 which of the benefits you identify in your narrative
18 are received by the FirstEnergy utilities, the Ohio
19 utilities?

20 MR. KUTIK: And when you say dash 1, you
21 mean subpart 1?

22 MS. WILLIS: Yes, I'm sorry.

23 A. All of the items listed.

24 Q. Okay. And which of the benefits that you

1 identify as part of your response to PUCO Data
2 Request 34, subpart 1, are received by FirstEnergy
3 Corp.?

4 A. May I ask you to please rephrase the
5 question?

6 Q. And which part of the question did you
7 not understand?

8 A. It seemed as though it was an incomplete
9 question to me.

10 Q. Okay. Let me try to rephrase it. In
11 response to 34 -- PUCO Data Request-34, subpart 1,
12 you listed a -- you provided a non-exhaustive list of
13 benefits received from maintaining an investment
14 grade rating. Which of those benefits that you
15 identify are received by FirstEnergy Corp.?

16 MR. KUTIK: Objection, assumes facts.

17 A. To the extent that FirstEnergy Corp.
18 maintains an investment grade rating, all of the
19 benefits listed here, recognizing it's a
20 non-exhaustive list, would accrue to FirstEnergy
21 Corp.

22 Q. Are there any other benefits to either
23 FirstEnergy Corp. or the Ohio utilities of
24 maintaining an investment grade rating that you can

1 identify today?

2 A. No additional items come to mind today.

3 Q. Now, with respect to the first bullet
4 point contained under PUCO-Data Request-34, subpart
5 1, you claim there are "Easier and less-constrained
6 access to the capital markets." Can you define what
7 you mean by "Easier and less-constrained access to
8 the capital markets"?

9 A. Yes.

10 Q. Could you define that for me, please.

11 A. If an entity has an investment grade
12 rating, typically there are a group of investment
13 grade investors who are willing to make investments
14 in investment grade companies, so to the extent that
15 you are investment grade, it provides you an
16 opportunity to seek capital from those folks
17 investing in only investment grade companies.

18 Q. So if your -- your credit rating is less
19 than investment grade, would there be less -- a group
20 of less than investment grade investors that would be
21 willing to invest in the companies?

22 MR. KUTIK: Objection.

23 A. May I ask you to please rephrase the
24 question?

1 Q. And what part of the question don't you
2 understand?

3 A. "A group of less than investment grade
4 investors."

5 Q. Well, let me put it this way -- let me
6 strike that.

7 When -- when you refer to having "Easier
8 and less-constrained access to the capital markets,"
9 what entity are you referring to there that would
10 have "Easier and less-constrained access to capital
11 markets"?

12 A. An entity within investment grade rating.

13 Q. And by that reference are you referring
14 to either FirstEnergy Corp. or the Ohio utilities?

15 A. FirstEnergy Corp. and/or the Ohio
16 utilities, yes.

17 Q. Ms. Mikkelsen, generally under what
18 conditions would FirstEnergy Corp. need to have
19 access to the capital markets?

20 A. If they wanted to borrow money.

21 Q. And what would be the reasons that they
22 would want to borrow money generally, if you know?

23 A. They have cash requirements which can't
24 be met internally.

1 Q. And what kind of -- what kind of cash
2 requirements would you be referring to that they have
3 that could not be met internally?

4 A. I didn't have a specific example in mind.
5 It was when I responded.

6 Q. Do you have an idea of what -- generally
7 what cash requirements would -- that FirstEnergy
8 Corp. would have that would require them to have
9 access to capital markets?

10 A. Examples that come to mind are debt
11 redemption requirements, perhaps capital expenditure
12 needs, examples that come to mind -- are examples
13 that come to mind.

14 Q. And can you tell me what capital
15 expenditure needs FirstEnergy Corp. generally would
16 have, if you know?

17 A. I don't know.

18 Q. And do you generally know what debt
19 redemption needs FirstEnergy Corp. would have that
20 would require it to have access to capital markets?

21 A. I don't know.

22 Q. Over the next eight years, Ms. Mikkelsen,
23 do you know what the specific conditions are that
24 would cause FirstEnergy Corp. to need to have access

1 to the capital markets?

2 MR. KUTIK: May I have the question read,
3 please.

4 (Record read.)

5 MR. KUTIK: Hold off before you answer.
6 Let me think about that.

7 I think that question is likely beyond
8 the scope of this deposition but I will allow her to
9 answer that question but we will probably not go too
10 much further down this line. Go ahead.

11 A. No.

12 Q. And over the next three years, do you
13 know what the specific conditions are that would
14 cause FirstEnergy Corp. to need to have access to
15 capital markets?

16 A. No.

17 Q. Generally, Ms. Mikkelsen, under what
18 conditions would the Ohio utilities need to have
19 access to capital markets?

20 A. Examples would include maturing debt that
21 needs to be retired or capital expenditure programs
22 that need to be funded.

23 Q. Ms. Mikkelsen, are you aware of --
24 specifically of any maturing debt that needs to be

1 retired for the Ohio utilities that would require
2 them to have access to capital markets?

3 A. Yes.

4 Q. And can you identify what maturing debt
5 that would be?

6 A. The Ohio utilities need to access the
7 capital markets over the next -- through 2018 for
8 approximately \$700 million associated with retirement
9 of debt or debt maturing.

10 Q. And you mentioned that generally the Ohio
11 utilities would need to have access to capital
12 markets to fund capital expenditure programs,
13 correct?

14 A. No.

15 Q. Can you tell me what -- what is incorrect
16 about that?

17 A. I said "it may." I didn't say "it
18 would."

19 Q. Can you identify, Ms. Mikkelsen, any
20 specific capital expenditure program for the Ohio
21 utilities that would require the Ohio utilities to
22 have access to capital markets?

23 MR. KUTIK: Objection.

24 A. Expenditures associated with the grid

1 modernization program may require the utilities to
2 raise capital.

3 Q. And can you tell me for the grid
4 modernization program what specific amount of capital
5 may be needed to be raised to cover the cap
6 expenditure for that program?

7 A. No.

8 Q. Are there -- what -- what are the factors
9 that would determine the amount of grid modernization
10 capital expenditures -- let me strike that.

11 You said that the grid modernization
12 program may require capital expenditures that would
13 need to be funded through access to the capital
14 markets. What factors are there that would impact
15 whether or not access to the capital markets would be
16 needed for that project?

17 A. The level of cash required for the
18 project as compared to the level of cash available.

19 Q. And when you talk about the level of cash
20 required for the project, are you talking about the
21 initial outlay of cash prior to collecting that
22 revenue requirement from customers?

23 THE WITNESS: May I ask to have that
24 question reread, please.

1 (Record read.)

2 A. May I ask you to rephrase the question,
3 please?

4 Q. Can you -- can you explain to me what you
5 don't understand?

6 A. The comparison of the initial outlay of
7 cash versus the collection of revenue requirements.

8 Q. Is it your understanding, Ms. Mikkelsen,
9 that the company has a proposal to collect money from
10 customers for the grid modernization program?

11 MR. KUTIK: All right. At this point I
12 am going to object and instruct her not to answer.
13 We are now beyond the scope of the deposition.

14 Q. You mentioned that the Ohio utilities
15 need to access the capital markets over -- or you --
16 let me strike that.

17 You testified, Ms. Mikkelsen, the Ohio
18 utilities need to access capital markets for
19 \$700 million retirement of maturing debt. Can you
20 tell me whether or not the Ohio utilities have other
21 options than accessing the capital markets to fund
22 the debt maturity?

23 MR. KUTIK: I'll instruct her not to
24 answer that question as well. Beyond the scope.

1 Q. Ms. Mikkelsen, over the next eight years,
2 what are the specific conditions that you are aware
3 of that would cause Ohio utilities to have access --
4 to need access to capital markets beyond the
5 \$700 million retirement of debt that you previously
6 testified to?

7 MR. KUTIK: Objection, asked and
8 answered.

9 A. I stand by my prior answer.

10 Q. So you're not aware of any specific
11 conditions other than the \$700 million retirement of
12 debt maturity that would cause Ohio utilities to need
13 to have access to capital markets over the next eight
14 years.

15 MR. KUTIK: I'll object that it
16 mischaracterizes her testimony. She gave other
17 instances. You just chose in your question to ignore
18 them. So if you want to just refer to your prior
19 testimony, you can do so.

20 Q. Let me rephrase that. Ms. Mikkelsen, you
21 had specifically identified grid modernization
22 programs and a \$700 million retirement of debt as
23 potential conditions that would cause the Ohio
24 utilities to need to have access to capital markets,

1 correct?

2 A. No.

3 Q. Can you tell me why that is not correct?

4 A. Yes.

5 Q. Would you tell me why that is not
6 correct.

7 A. I testified that the Ohio utilities need
8 to access approximately or about \$700 million. That
9 wasn't a potential, and I think your question framed
10 it as a potential.

11 Q. Are there any other specific conditions
12 that you can identify that would cause Ohio utilities
13 to need to have access to capital markets over the
14 next eight years?

15 MR. KUTIK: Objection, asked and
16 answered.

17 A. There may be, as I said earlier,
18 additional debt maturing over the eight-year period,
19 there may be other capital expenditure requirements
20 are examples that come to mind that we've discussed.

21 Q. Over the next three years, let's limit it
22 to that, what are the specific conditions that you
23 are aware of that would cause Ohio utilities to need
24 to have access to the capital markets?

1 MR. KUTIK: Objection, asked and
2 answered.

3 A. I stand by my prior answers.

4 Q. So there are no other specific conditions
5 that you can identify beyond the debt retirement, the
6 \$700 million of debt requirement, and the grid
7 modernization that would cause Ohio utilities to need
8 to have access to capital markets --

9 MR. KUTIK: Objection, mischaracterizes.

10 Q. -- over the next three years? Sorry.

11 MR. KUTIK: Objection, mischaracterizes
12 her testimony.

13 A. As we discussed, there is the
14 \$700 million requirement to seek funds from the
15 market. There may be a requirement arising from the
16 grid modernization or from other capital expenditure
17 or business-related needs of the companies.

18 Q. Are there provisions in the stipulated
19 electric security plans that would cause Ohio
20 utilities to need to have access to the capital
21 markets in the next three years?

22 MR. KUTIK: I will now instruct her not
23 to answer that question. It's beyond the scope of
24 the deposition.

1 MR. SOULES: I'm sorry. Could we have
2 the last question read back. Sorry, Mo.

3 MS. WILLIS: That's okay.

4 (Record read.)

5 MR. SOULES: Thank you.

6 Q. (By Ms. Willis) Ms. Mikkelsen, how did
7 Ohio utilities -- the Ohio utilities benefit from
8 "Easier and less-constrained access to capital
9 markets"?

10 A. To the extent there are less constrained
11 markets, more participants in the market, I would
12 expect that to put downward pressure on the borrowing
13 costs, the interest rates.

14 Q. Ms. Mikkelsen, do the customers of Ohio
15 utilities benefit if there is downward pressure on
16 interest rates?

17 MR. KUTIK: Objection, instruct the
18 witness not to answer. Beyond the scope of the
19 deposition.

20 Q. When you mentioned that there are
21 benefits -- when you provided the non-exhaustive list
22 of benefits that FirstEnergy Corp. and the Ohio
23 utilities receive, can you tell me whether or not
24 these benefits are passed on to customers of the Ohio

1 utilities?

2 A. I think customers are benefited by these.

3 Q. Specifically are customers benefited by
4 the "Easier and less-constrained access to capital
5 markets"?

6 A. Yes.

7 Q. And can you tell me how that is?

8 A. To the extent that the companies are able
9 to access capital from a more liquid market at a
10 lower cost, that benefits the customers.

11 Q. And in your response, are you assuming
12 that the interest -- the lower cost of capital in the
13 capital markets is passed through to customers?

14 A. In part, yes.

15 Q. And how would that happen, if you know?

16 MR. KUTIK: Objection, beyond the scope
17 of the deposition.

18 Q. There's a question pending,
19 Ms. Mikkelsen. You can answer.

20 MR. KUTIK: Well, no. I have instructed
21 her not to answer. It's beyond the scope.

22 MS. WILLIS: Yeah, I heard it was beyond
23 the scope. I didn't hear the instruction.

24 MR. KUTIK: My bad.

1 Q. Do all customers of the Ohio utilities
2 benefit from "Easier And less-constrained access to
3 capital markets" associated with maintaining an
4 investment grade rating?

5 MR. KUTIK: Objection.

6 THE WITNESS: May I ask you to reread
7 that question, please, ma'am.

8 (Record read.)

9 A. Yes.

10 Q. Ms. Mikkelsen, how does FirstEnergy Corp.
11 benefit from "Easier and less-constrained access to
12 capital markets"?

13 A. More participants willing to loan money
14 at more favorable rates to investment grade entities.

15 Q. And if FirstEnergy Corp. receives these
16 benefits, are those benefits then passed on to the
17 Ohio utilities?

18 MR. KUTIK: Well, I'll object. Go ahead.

19 A. They could be.

20 Q. And what would determine whether or not
21 they could be passed on to Ohio utilities? What
22 conditions -- precedent would have to exist for those
23 benefits to be passed on to Ohio utilities?

24 A. I'm thinking of circumstances where the

1 parent might make an equity infusion into the
2 utilities.

3 Q. And can you explain to me how if they
4 make an equity infusion into the Ohio utilities that
5 would pass the benefits on to the Ohio utilities?

6 A. The Ohio utilities would have more equity
7 than they would have otherwise had.

8 Q. And if they have more equity, what's the
9 consequence of the Ohio utilities having more equity
10 in terms of providing a benefit?

11 MR. KUTIK: At this time I think this is
12 just a series of wasting -- wasting time questions.
13 And I am going to note that for the record because we
14 are on -- under a time constraint. If you want to
15 continue answering questions like this which are
16 obviously -- which are really far afield, you can
17 continue to do that, but you're not -- I will press
18 on -- on ending in three hours. Go ahead.

19 MS. WILLIS: And I do believe at that
20 point in time when there is that argument, we will
21 need to get the attorney examiner on the line.

22 MR. KUTIK: No. I want to make sure that
23 we are on the record, and I would ask Karen to note
24 this on -- note this portion on the record so I can

1 go back and talk to the attorney examiners about how
2 you've wasted time. Go ahead.

3 MS. WILLIS: I think there is a question
4 pending, correct?

5 MR. KUTIK: There is.

6 MS. WILLIS: If we could have an answer.

7 MR. KUTIK: Do you have the question in
8 mind?

9 A. It would serve to improve the utilities'
10 debt-to-equity ratios.

11 Q. And can you tell me if the -- if
12 FirstEnergy Corporation benefits from the "Easier and
13 less-constrained access of the capital markets" are
14 realized whether or not the customers of the Ohio
15 utilities would receive benefits?

16 MR. KUTIK: Well, I'll object and
17 instruct the witness not to answer. It's beyond the
18 scope of the deposition.

19 MS. WILLIS: Go off the record for a
20 moment.

21 (Recess taken.)

22 Q. (By Ms. Willis) Ms. Mikkelsen, I'm
23 referring to 34, PUCO Data Request-34, subsection 2.
24 There you indicate -- I'm sorry, I'm under subsection

1 1 where you identify lowering -- "lower borrowing
2 costs, lower interest rates, and favor terms and
3 conditions" are a benefit of remaining investment
4 grade. Do you see that?

5 A. Yes.

6 Q. And you've identified that is a benefit
7 to FirstEnergy Corp. and the Ohio utilities, correct?

8 A. Yes.

9 Q. Is that a benefit to the customers of the
10 Ohio utilities?

11 A. Yes.

12 Q. Can you explain how that would benefit
13 customers of Ohio utilities?

14 A. They would be benefited by the lower cost
15 of debt as well as cash that is freed up from what
16 would have otherwise been a higher debt rate that
17 could be used in the business.

18 Q. Does FirstEnergy Corp. have to borrow
19 money in order for this benefit to be realized?

20 MR. KUTIK: Objection. I guess my
21 question is to whom.

22 Q. Let me try to rephrase it. You
23 identified that the maintaining investment grade
24 rating benefits FirstEnergy Corp. and the Ohio

1 utilities. My question is in order for that benefit
2 to be realized, does -- benefit to FirstEnergy Corp.
3 to be realized, does FirstEnergy Corp. have to
4 borrow?

5 A. No.

6 Q. And why not?

7 A. Well, I guess when I am thinking of
8 borrow, I'm also thinking this could give rise to
9 lower costs on credit facilities or revolvers as well
10 as debt. I thought your question was specifically to
11 debt.

12 Q. And with respect to the benefit of
13 providing lower costs on credit facilities or
14 revolvers, you would be talking about any new credit
15 facilities or revolvers, is that correct, as opposed
16 to existing?

17 A. I think where I was going is to the
18 extent that the parent is -- becomes non-investment
19 grade, then the costs associated with the credit
20 facility or revolver would increase.

21 Q. So is it your understanding that there
22 are revolving credit facilities in First -- for
23 FirstEnergy Corp. that would be where the interests
24 could be changed if the investment grade was lowered

1 to a non-investment grade?

2 A. I think that's a potential, yes.

3 Q. Do you know -- I understand you are
4 saying it's a potential. Do you know if there are
5 specific credit facilities -- revolving credit
6 facility arrangements that FirstEnergy Corp. has that
7 would require or cause the costs to increase under
8 the arrangement if the investment goes below -- or if
9 the rating goes below investment grade?

10 MR. KUTIK: Objection.

11 A. No.

12 Q. With respect to FirstEnergy utilities --
13 let me strike that.

14 Now, earlier today you testified that you
15 had not quantified the difference between the
16 investment grade borrowing costs and below investment
17 grade borrowing costs; is that correct?

18 MR. KUTIK: Objection, mischaracterizes
19 her testimony.

20 A. I think the discussion was more around
21 the fact that there were a number of variables that
22 would need to be identified in order to answer the
23 question.

24 Q. Do you know as a rule of thumb if there

1 is -- do you know if there is a rule of thumb that
2 would apply to the difference in -- the difference in
3 costs between borrowing on an investment grade rating
4 versus a below investment grade rating?

5 A. I'm not aware of anything that -- any
6 such rule of thumb.

7 Q. And you indicated, Ms. Mikkelsen, you had
8 not done an analysis looking at the -- quantifying
9 the cost associated with going below investment
10 grade; is that generally a correct --

11 MR. KUTIK: Objection, asked and answer.

12 Q. -- characterization?

13 MR. KUTIK: Objection, asked and
14 answered.

15 A. I stand by my prior testimony.

16 Q. Has FirstEnergy Service Corporation done
17 an analysis which it would have looked at the
18 difference -- which would have quantified the
19 difference in costs of borrowing between an
20 investment and a non-investment grade rating?

21 A. I don't know.

22 Q. Can you tell me how the benefit of
23 "Easier and less-constrained access to capital
24 markets" -- I'm sorry. Can you tell me how the lower

1 borrowing costs and the lower interest rates differ
2 from the "Easier and less-constrained access to
3 capital markets" that you've listed?

4 A. The first one I think deals with the
5 number of participants in the market, whereas, the
6 second one deals with the costs associated with
7 participation in the market.

8 Q. Thank you. Now, the next thing that you
9 mentioned as a benefit of remaining investment grade
10 is the parent rating is -- where you have the bullet
11 about the parent rating having an influence on the
12 rating of the Ohio utilities. And by the parent here
13 you are referring to FE Corp.?

14 MR. KUTIK: Objection, wasting time. Go
15 ahead.

16 A. Yes.

17 Q. Does the parent rate -- does FE Corp.'s
18 rating also influence the rating of all the
19 subsidiaries within FirstEnergy Corp.?

20 A. From an S&P perspective, yes.

21 Q. And that would include FirstEnergy
22 Solutions and the other operating companies that are
23 part of FirstEnergy Corp.?

24 MR. KUTIK: Objection, wasting time.

1 A. Yes.

2 Q. And would you consider this a direct
3 influence or an indirect influence?

4 MR. KUTIK: Objection.

5 A. May I ask you to rephrase the question,
6 please?

7 Q. And what part of it do you not
8 understand?

9 A. "Direct influence," "indirect influence."

10 Q. Well, when you say that the parent -- the
11 parent rating has influence on the ratings of the
12 Ohio utilities in that response, what do you mean by
13 influence?

14 A. As the response states, from an S&P
15 perspective, they take the family approach so that
16 whatever the parent's investment grade rating is
17 would be the rating of the Ohio companies as well,
18 whereas, Moody's rates each legal entity
19 individually, but a non -- an investment grade parent
20 is credit positive to the subsidiaries and a
21 non-investment grade parent is credit negative to the
22 subsidiaries or in this case the Ohio companies.

23 Q. And you're familiar -- and -- or the
24 information you've provided was provided by the

1 treasury department; is that correct?

2 MR. KUTIK: Objection, asked and
3 answered.

4 Q. Let me -- let me withdraw that.

5 Do you have any independent knowledge of
6 the parent rating's influence on the Ohio utilities
7 other than the knowledge that was provided to you by
8 the treasury department?

9 A. Coupled with, as I testified earlier, my
10 business experience.

11 Q. Does your business experience include
12 experience associated with capital markets and rating
13 agencies?

14 A. Yes, from time to time over my career it
15 has.

16 Q. Do you know what the stand-alone
17 creditworthiness of the Ohio utilities are?

18 MR. KUTIK: Objection.

19 A. May I ask you to rephrase the question,
20 please?

21 Q. Well, Ms. Mikkelsen, I believe using your
22 terms that are contained in your response where you
23 say -- where you describe the S&P family approach and
24 you refer to a stand-alone rating/creditworthiness.

1 And I guess my reference is to using those terms, do
2 you know what the stand-alone or creditworthiness of
3 the Ohio utilities are?

4 MR. KUTIK: Objection, mischaracterizes
5 the document.

6 A. What this response is stating is that
7 under the S&P family approach, whatever investment
8 grade rating is assigned to the parent would be
9 assigned to all of the legal entities associated with
10 that parent regardless of what their individual
11 credit rating would be.

12 Q. And do you know the individual credit
13 rating of the Ohio utilities?

14 MR. KUTIK: Objection, asked and
15 answered.

16 A. It would be the same under the S&P
17 methodology as the parent rating.

18 Q. And do you know how the individual credit
19 ratings of the Ohio utilities compared to the
20 subsidiaries that are in FirstEnergy Corp.?

21 A. Again, under the S&P family approach,
22 they would all be the same.

23 Q. Outside of the S&P family approach, do
24 you know how the individual credit ratings of the

1 Ohio utilities compare to the other subsidiaries in
2 FirstEnergy Corp.?

3 A. If -- from a Moody's perspective, the --
4 of the three Ohio utilities, two are one notch above
5 investment grade, and one is three notches above
6 investment grade.

7 Q. Can you identify for me what -- which
8 ones are -- are one notch above investment grade?

9 A. Yes.

10 Q. Could you -- would you identify, please,
11 identify those, please.

12 A. Toledo Edison and The Cleveland Electric
13 Illuminating Company.

14 Q. And so the Ohio Edison is three notches
15 above investment grade; is that your understanding?

16 A. Yes, recognizing that three notches above
17 investment grade still puts Ohio Edison in the lowest
18 tranche of investment grades from a Moody's
19 perspective.

20 Q. Do you know how these investment grades
21 compare to other subsidiaries within the FirstEnergy
22 Corp.?

23 MR. KUTIK: I'll note we are far afield,
24 but I will let the witness answer if she knows.

1 THE WITNESS: May I have the question
2 reread, please.

3 (Record read.)

4 Q. Let me limit -- let me withdraw that
5 question and limit my question to do you know how
6 these credit ratings for the Ohio utilities compare
7 to the subsidiary FirstEnergy Solutions?

8 MR. KUTIK: Same objection.

9 A. Under the S&P methodology, all of the
10 affiliates would have the same credit rating as the
11 parent, so the utilities would have the same as FES
12 under Moody's. I believe Toledo Edison and Ohio
13 Edison -- pardon me, Toledo Edison and the Cleveland
14 Electric Illuminating Company would have the same
15 Moody's credit rating as FirstEnergy Solutions.

16 Q. Thank you. Now, the next benefit that
17 you indicate -- you identified there that maintaining
18 an investment grade rating will "preserve cash
19 collateral at the utilities and FE Corp. on a
20 consolidated basis." Do you see that?

21 A. Yes.

22 Q. Can you tell me how preserving cash
23 collateral at the utilities and the FE Corp. -- FE
24 Corporation -- let me strike that.

1 Explain to me why preserving cash
2 collateral at the utilities -- let me strike that
3 again.

4 Please explain to me how preserving cash
5 collateral at the utilities and FE Corp. on a
6 consolidated basis would benefit customers of the
7 Ohio utilities.

8 MR. KUTIK: Objection, beyond the scope
9 of the deposition, but you can answer it if you can.

10 A. To the extent that the utilities do not
11 have to make cash payments subject to collateral
12 requirements, that cash would remain in the -- at the
13 utilities for use in their business operations.

14 Q. Over the next eight years, what are the
15 specific conditions that you are aware of that would
16 cause FirstEnergy Corp. to need to preserve cash
17 collateral?

18 MR. KUTIK: Objection, beyond the scope.
19 You can answer if you know.

20 THE WITNESS: May I have the question
21 reread, please.

22 (Record read.)

23 A. I don't know.

24 Q. Over the next three years, what are the

1 specific conditions that you are aware of that would
2 cause FirstEnergy Corp. to need to preserve cash
3 collateral?

4 MR. KUTIK: Same objection.

5 A. May I ask you to rephrase the question,
6 please?

7 Q. And what is it about the question you
8 don't understand?

9 A. The reference to "need to preserve cash
10 collateral." I don't understand that in the context
11 of this discussion of benefits.

12 Q. Okay. Let me rephrase then. Over the
13 next three years, what are the specific conditions
14 that you are aware of that would cause -- cause
15 FirstEnergy Corporation to preserve cash collateral?

16 A. Well, as the response states, to the
17 extent that the parent and the utilities maintain
18 investment grade rating, one of the benefits then of
19 that is preserving cash collateral at the utilities
20 and at FE Corp. on a consolidated basis.

21 Q. Over the next eight years, what are the
22 specific conditions that you are aware of that would
23 cause Ohio utilities -- Ohio utilities to need to
24 preserve cash collateral?

1 A. May I ask you to rephrase the question,
2 please?

3 Q. Over the next eight years, what are the
4 specific conditions that you are aware of that would
5 cause Ohio utilities -- that would be important for
6 Ohio utilities to preserve cash collateral?

7 MR. KUTIK: Objection.

8 A. I'm not sure I understand the question;
9 but, again, the response here goes to the extent that
10 the utilities remain investment grade, they avoid
11 cash collateral payments which allows them to retain
12 cash that they might otherwise have to pay pursuant
13 to a collateral commitment.

14 Q. Over the next three years, what are the
15 specific conditions that you are aware of that would
16 require Ohio utilities to avoid cash collateral
17 payments?

18 MR. KUTIK: Objection, mischaracterizes
19 her testimony.

20 A. I'm going to stand by my prior answers on
21 this.

22 Q. Ms. Mikkelsen, that was over a three-year
23 period. It is a different question.

24 MR. KUTIK: Well, your question has

1 garbled so many things and misrepresents what she had
2 previously said that it's not -- the change in year
3 isn't the problem.

4 Q. Let me try to rephrase it again. Over
5 the next three years, what are the specific
6 conditions that you are aware of that would cause
7 Ohio utilities to need to avoid cash collateral
8 payments?

9 A. In --

10 MR. KUTIK: Objection. Go ahead.

11 A. In any circumstance the utilities would
12 like to avoid cash payments relative to collateral
13 provisions. What this data request is saying is that
14 to the extent the utility remains investment grade,
15 it avoids cash collateral payments that it would
16 otherwise have to make.

17 Q. Now, you indicate that another benefit of
18 maintaining investment grade rating is that it
19 "Strengthens ability to transact with suppliers and
20 counterparties." Do you see that?

21 A. I think the answer in its entirety reads
22 it "Strengthens" -- pardon me. It "Strengthens
23 ability to transact with suppliers and counterparties
24 on most favorable terms."

1 Q. And whose ability are you referring to
2 there?

3 A. The ability of the companies and/or
4 FirstEnergy Corp.

5 Q. You are also referring to other entities
6 within the FirstEnergy Corp.?

7 A. No.

8 Q. Can you tell me what suppliers and
9 counterparties you are referencing there?

10 A. The suppliers and counterparties that the
11 utilities do business with.

12 Q. And what kind of transactions are you
13 speaking of there?

14 MR. KUTIK: Objection, asked and
15 answered.

16 A. Transactions with suppliers and
17 counterparties to the distribution utility.

18 Q. Are you speaking specifically of
19 distribution versus generation? Are you making
20 that -- that distinction?

21 MR. KUTIK: Objection.

22 THE WITNESS: May I have the question
23 reread, please.

24 (Record read.)

1 A. May I ask you to rephrase the question,
2 please?

3 Q. You indicated -- you mentioned in your
4 response distribution -- let me -- actually let's
5 have your response --

6 MS. WILLIS: Karen, could you read her
7 response to the prior question where she mentioned
8 distribution.

9 (Record read.)

10 Q. When you mentioned, Ms. Mikkelsen, a
11 transaction to the distribution utility, were you
12 specifically referring to transactions related to
13 distribution business that the electric distribution
14 utility conducts?

15 THE WITNESS: May I ask you to reread the
16 question, please, ma'am. I apologize.

17 (Record read.)

18 A. Yeah. I was referring very broadly to
19 any transaction the distribution utilities might
20 enter into with a supplier and/or a counterparty.

21 Q. But would you agree the benefit you
22 identify, the ability -- the strengthening of the
23 ability to transact with suppliers and counterparties
24 would also go to nondistribution business --

1 MR. KUTIK: Objection.

2 Q. -- transactions?

3 MR. KUTIK: Objection.

4 A. May I ask you to rephrase the question,
5 please?

6 Q. What is it you don't understand about my
7 question, Ms. Mikkelsen?

8 A. What you mean by "nondistribution
9 transaction."

10 Q. Generation -- generation business that is
11 conducted by an entity beyond the electric
12 distribution utility.

13 MR. KUTIK: Well, now, I don't even
14 understand the question. I'll object.

15 Q. Let me strike that. Let me try to define
16 it. Do -- would you agree with me that this benefit,
17 the benefit you mentioned, "strengthens ability to
18 transact with suppliers and counterparties," that
19 benefit goes beyond the electric distribution
20 utility?

21 MR. KUTIK: Objection. I am not sure
22 what that means either. Go ahead.

23 A. The question that was posed in PUCO-Data
24 Request-34 was to "provide detail on how The

1 Illuminating Company, Ohio Edison, and Toledo Edison
2 benefit from FirstEnergy Corp. remaining investment
3 grade" so these answers relate to the benefits that
4 accrue to the Illuminating Company, Ohio Edison, and
5 The Toledo Edison Company as well as FirstEnergy
6 Corp.

7 Q. Yes. And so my question is -- let me
8 strike that.

9 Why is it important for the FirstEnergy
10 utilities to -- let me strike that.

11 Now, let's go to -- let's have the court
12 reporter mark as Deposition Exhibit No. 2 the
13 companies' response to the PUCO-Data Request -- let
14 me strike that.

15 I'm sorry. I am getting ahead of myself.
16 If you give me a moment, please.

17 Now, Ms. Mikkelsen, referring to the
18 Staff Data Request-34, subsection 2, is it your
19 opinion that the PUCO should consider the Ohio
20 utilities projected financial statements for 2016
21 through 2018 as part of considering the companies'
22 proposal in this proceeding?

23 MR. KUTIK: Objection. It has nothing to
24 do with her response. I'll instruct her not to

1 answer.

2 MS. WILLIS: Is it objection, beyond the
3 scope; is that what your objection is?

4 MR. KUTIK: Yes, it is.

5 MS. WILLIS: Okay.

6 MR. KUTIK: And I should also say she has
7 already testified on this twice, so it's asked and
8 answered as well.

9 Q. (By Ms. Willis) Now, earlier on you
10 answered questions from Mr. Soules about whether or
11 not the information that was requested by the staff
12 in this subsection 2 was provided to the staff. Do
13 you recall those questions?

14 A. Yes.

15 Q. I am going to ask a slightly different
16 question, Ms. Mikkelsen. Did the companies discuss
17 any of that information with the PUCO staff?

18 MR. KUTIK: I will instruct you not to
19 answer the question to the extent it would require
20 you to reveal either privileged communications or as
21 communications with counsel or conversations that
22 took place as part of confidential settlement
23 discussions with the staff.

24 Q. Apart from that counsel's instruction,

1 can you answer my question?

2 A. No.

3 Q. Did the companies show the PUCO staff any
4 of this information?

5 MR. KUTIK: Same objection, same
6 instruction.

7 Q. Considering your counsel's advice, can
8 you answer my question without revealing privileged
9 information?

10 A. No.

11 MS. BOJKO: This is Kim Bojko. I am
12 going to note on the record an objection to the
13 objections. Whether or not a meeting occurred or
14 something happened, a "yes" or "no" answer is not
15 confidential.

16 MR. KUTIK: It is confidential if it
17 discloses the substance of the conversation by
18 showing them something that is the substance of the
19 conversation which was what the question was asking.

20 MS. WILLIS: I would agree with Ms. Bojko
21 that the question was not designed to and did not --
22 was not designed to illicit the substance of the
23 communication but rather that -- whether or not a
24 communication occurred.

1 MR. KUTIK: It's communication -- that's
2 a communication about a specific thing, did you do
3 this in the conversation.

4 MS. WILLIS: Actually it was did you --
5 did you show the company -- the staff information
6 that you -- that is pertaining to this data request.

7 MR. KUTIK: Yeah, and that's exactly --
8 that's exactly the problem. It is asking about a
9 specific thing that took place within the
10 conversation potentially.

11 MS. WILLIS: Okay. We can agree to
12 disagree. I don't think that reveals privilege.

13 MR. KUTIK: Well, again, you are just
14 wasting time by arguing with my objections, both of
15 you.

16 MS. WILLIS: That's why I am shutting it
17 down, Dave. We are moving on.

18 MR. KUTIK: Good. I appreciate that.

19 Q. (By Ms. Willis) With respect to -- let me
20 strike that.

21 Referring to the staff Data Request-34,
22 subsection 3, you reference -- or the request asks
23 for forecasted funds from operations. Are there
24 forecasted funds for operations calculated for

1 FirstEnergy Corp., if you know?

2 A. May I ask you to rephrase the question,
3 please?

4 Q. What is it about my question you don't
5 understand?

6 A. Time frame.

7 Q. Let's go to subsection 3. The staff
8 requested that you provide a forecasted funds from
9 operations for the years 2016 through 2018. For that
10 same time frame are you aware of whether forecasted
11 funds for operations are calculated for FirstEnergy
12 Corp.?

13 MR. KUTIK: I'm sorry. May I have the
14 question read, please.

15 (Record read.)

16 A. I mean, as the response states, "This
17 request seeks financial information that is highly
18 sensitive, proprietary, and not otherwise publicly
19 available."

20 Q. And that's not my -- that's -- what I am
21 asking. I'm asking you whether or not there are in
22 existence FFOs calculated for FirstEnergy Corporation
23 for the years 2016 through 2018 to your knowledge.

24 MR. KUTIK: Well, apparently this witness

1 feels that would reveal information that is not
2 publicly available. What I would -- what I would
3 suggest is allow me to go off the record and consult
4 with the witness. So I will do that now.

5 You can note we are leaving the room.

6 (Discussion off the record.)

7 MR. KUTIK: Let's go back on the record.

8 There was a question pending. May we have it.

9 MS. WILLIS: There was.

10 MR. KUTIK: May we have it, please.

11 (Record read.)

12 A. As I stated earlier, the response to the
13 request states that the "request seeks to obtain
14 financial information that is highly sensitive,
15 proprietary, and not otherwise publicly available."

16 Q. So there is -- so -- so the information
17 is in existence and available but not publicly
18 available; is that your response?

19 A. As well as being highly sensitive,
20 proprietary, yes.

21 Q. Thank you. And do you know if there are
22 forecasted adjusted debt values as the staff uses
23 that term for the years 2016 through 2018 for
24 FirstEnergy Corporation?

1 THE WITNESS: I'm sorry. May I ask to
2 have that question reread, please, ma'am.

3 (Record read.)

4 MR. KUTIK: Objection.

5 A. The response reads that the "request
6 seeks to obtain financial information that is highly
7 sensitive, proprietary, and not otherwise publicly
8 available."

9 Q. Ms. Mikkelsen, do you know if there are
10 forecasted funds for operations for the years 2016
11 through 2018 in existence for FirstEnergy utilities
12 or the Ohio utilities?

13 A. The same answer applies.

14 Q. And with respect to the adjusted debt
15 values for the Ohio utilities, are there forecasted
16 adjusted debt values for the years 2016 through 2018
17 for the Ohio utilities?

18 A. I think the question sort of -- your
19 question misreads the question posed by the staff.
20 And that was really going to the calculation of the
21 CFO to adjusted debt ratio by Moody's. But as we
22 said in response to 4, the "request seeks to obtain
23 financial information that is highly sensitive,
24 proprietary, and not otherwise publicly available."

1 Q. And with respect to -- with respect to
2 subsection 4, is it your testimony that the
3 forecasted cash from operations and the forecasted
4 debt values for the years 2016 through 2018 does
5 exist for FirstEnergy Corporation?

6 A. As the response states, "This request
7 seeks to obtain financial information that is highly
8 sensitive, proprietary, and not otherwise publicly
9 available."

10 Q. And is your response the same for the
11 forecasted cash from operations and the forecasted
12 adjusted debt values for the Ohio utilities for the
13 years 2016 through 2018?

14 A. Yes.

15 Q. So is it your understanding that the
16 forecasted -- let me strike that.

17 Can you tell me what the forecasted funds
18 for operations would show generally?

19 MR. KUTIK: Well --

20 Q. What's your understanding of that?

21 MR. KUTIK: To the extent it would
22 require you to reveal information that is not
23 publicly available, I will instruct you not to
24 answer.

1 A. It would show what your forecasted cash
2 is from operations pursuant to a calculation laid out
3 by Moody's.

4 Q. And why is the cash from operations an
5 important -- an important factor?

6 MR. KUTIK: Objection.

7 A. May I ask you to rephrase the question,
8 please?

9 Q. You indicate that the FFO would show cash
10 from operations, and I'm trying to understand why
11 cash from operations is important as related to the
12 investment -- maintaining an investment grade rating.
13 Can you tell me how -- how that fits into maintaining
14 an investment grade rating?

15 MR. KUTIK: Objection, compound question.
16 You can answer the last question, if you can.

17 A. It is used to calculate the CFO to
18 adjusted debt ratio used by Moody's as one of the
19 credit metrics it reviews.

20 Q. Is the information -- is the -- is the
21 FFO the funds -- forecast -- forecast -- let me
22 strike that.

23 Can the forecasted -- can one determine
24 the forecasted funds from operations from any

1 publicly available information for the years 2016
2 through 2018 for FirstEnergy Corp.?

3 A. Again, as the response states, it "seeks
4 to obtain financial information that is highly
5 sensitive, proprietary, and not otherwise publicly
6 available."

7 Q. Can you tell me what forecasted adjusted
8 debt values -- let me strike that.

9 Can you tell me why forecasted adjusted
10 debt values are significant in terms of -- in
11 maintaining an investment grade rating?

12 MR. KUTIK: Objection. All these
13 questions are just a total waste of time. And
14 it's -- all you are doing is just wasting our time,
15 and I think you are doing it on purpose to waste
16 time. I don't know why you want to waste everybody's
17 time, but you are wasting time. Go ahead and answer
18 the question.

19 A. It is a data element used to calculate
20 one of the credit metrics used by Moody's and by
21 Standard & Poor's.

22 Q. Have the companies conducted any analysis
23 aimed at determining how much money is needed in
24 order for FE Corp. -- let me strike that.

1 Have the companies done any analysis
2 aimed at determining how much money is needed in
3 order for FE Corp. to maintain its investment grade
4 rating?

5 MR. KUTIK: Objection, instruct you not
6 to answer. Beyond the scope of the deposition.

7 Q. Are the companies aware of other
8 activities that can be undertaken to maintain
9 investment grade rating for FE Corp.?

10 MR. KUTIK: Objection, beyond the scope
11 of the deposition and just because you've asked these
12 questions in discovery doesn't mean you get to ask
13 them now. Another example of how you are wasting
14 everyone's time.

15 MS. WILLIS: Let's go to Exhibit 2. If I
16 had not moved to mark PUCO -- your response to
17 PUCO-Data Request-35 as Exhibit 2, I would now ask
18 the court reporter to mark that as Deposition Exhibit
19 No. 2.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Is it your opinion, Ms. Mikkelsen, that
22 the PUCO should consider the consequences of
23 FirstEnergy Corp. dropping below investment grade
24 rating in determining whether to approve the

1 companies' proposal?

2 MR. KUTIK: Objection, beyond the scope
3 but I will allow her to answer this question if she
4 knows.

5 A. I think the PUCO can review whatever
6 information it deems relevant and necessary in order
7 to make a determination.

8 Q. Do you believe it is relevant and
9 necessary to make a determination on the companies'
10 proposal to consider the consequences of FirstEnergy
11 Corp. dropping below investment grade rating?

12 MR. KUTIK: Objection, beyond the scope.
13 She can answer. I would also object to the extent it
14 has already been asked and answered.

15 THE WITNESS: May I ask you to reread the
16 question, please.

17 (Record read.)

18 A. I think the PUCO will determine what is
19 relevant and necessary in order for them to make a
20 determination regarding the companies' proposal.

21 Q. Do you have no opinion on that question,
22 Ms. Mikkelsen?

23 MR. KUTIK: Objection, asked and
24 answered.

1 A. I think I've already stated what my
2 opinion is on that.

3 Q. Is it your opinion, Ms. Mikkelsen, that
4 the PUCO should consider the consequences of
5 FirstEnergy -- let me strike that.

6 Is it your opinion that the PUCO should
7 consider the consequences of -- let me try again.

8 Is it your opinion that the PUCO should
9 consider -- let me strike that.

10 Now, in your response to Staff Data
11 Request-35, you provide what you call "a
12 non-exhaustive list of the adverse impacts of a
13 downgrade to non-investment grade rating." Can you
14 tell me which of these adverse impacts affect the
15 Ohio utilities?

16 A. All of these are --

17 Q. I think --

18 MR. KUTIK: Excuse me. She is not
19 finished.

20 Q. Sorry. I apologize. It's a little bit
21 hard to know.

22 A. All of these, recognizing it's a
23 non-exhaustive list of adverse impacts, would affect
24 the companies if they were downgraded to

1 non-investment grade.

2 Q. And which of the adverse impacts affect
3 FirstEnergy Corp. that you identify?

4 MR. KUTIK: Objection, beyond the scope
5 of the deposition. You can answer this question.

6 No, I will withdraw my objection. Go
7 ahead.

8 A. The entire list I think potentially could
9 also apply to FirstEnergy Corp.

10 Q. Are there any other adverse impacts to
11 Ohio utilities of a downgrade to a non-investment
12 rating that you can identify today?

13 A. There may be but there are none that come
14 to mind as I sit here today.

15 Q. And are there any other adverse impacts
16 to FirstEnergy Corp. of a downgrade to non-investment
17 rating that you can identify today?

18 A. There may be but none that occur to me as
19 I sit here today.

20 Q. And would you characterize the -- the
21 adverse impacts as short-term or long-term impacts?

22 MR. KUTIK: Objection.

23 Q. Let me withdraw my question and try to do
24 it this way, let's go through each of the bullets

1 where you have -- you are listing the non -- you are
2 providing a non-exhaustive list of adverse impacts,
3 and I want you to identify whether that is a -- that
4 is a short-term or a long-term issue.

5 MR. KUTIK: Objection.

6 Q. Let's start with the first one.

7 "Constrained, limited, and speculative access to
8 capital markets," is that a long-term or a short-term
9 adverse impact?

10 A. May I ask you to rephrase your question,
11 please?

12 Q. Can you tell me what you don't understand
13 about my question?

14 A. How you would define "short term" versus
15 "long term."

16 Q. Let's -- let's define short term as
17 within the next three years and long term in four to
18 eight years. With that understanding, can we -- can
19 you tell me whether the "Constrained, limited, and
20 speculative access to capital markets" is a
21 short-term or long-term impact?

22 A. It could be a short-term or a long-term
23 impact.

24 Q. And what would -- what would determine

1 whether or not it was a short-term or a long-term
2 impact?

3 MR. KUTIK: Objection, wasting time.

4 A. The investment or non-investment grade
5 rating.

6 Q. Let's move to the second bullet point.

7 "Increased borrowing costs, high interest rates, and
8 more onerous terms and conditions," is that a
9 short-term or long-term adverse impact?

10 A. It could be both.

11 Q. And the third bullet point, is that a
12 short-term or a long-term adverse impact?

13 A. It could be both.

14 Q. And with respect to the collateral
15 provision requiring additional cash calls for the
16 utilities and FE Corp. on a consolidated basis, is
17 that a short-term or long-term adverse impact?

18 A. Short term I would expect, although I
19 wouldn't rule out potential long-term implication.

20 Q. With respect to the "Suppliers and
21 counterparties may enact more stringent terms," is
22 that a short-term or long-term adverse impact?

23 A. Could be both.

24 Q. And with respect to the overall higher

1 cost of doing business and much more challenging to
2 be competitive with peers, is that a short-term or a
3 long-term adverse impact?

4 A. It could be both.

5 Q. Now, the collateral provisions that you
6 refer to in the fourth bullet point, are those
7 collateral provisions relating to FirstEnergy Corp.
8 or to -- or collateral provisions relating to the
9 Ohio utilities?

10 A. The response reads the "Collateral
11 provisions would require additional cash calls for
12 utilities and FE Corp. on a consolidated basis."

13 Q. Do you know how much additional cash
14 would be required from the utilities and/or FE Corp.
15 under those collateral provisions that you indicate?

16 MR. KUTIK: Objection, incomplete
17 hypothetical. Calls for speculation.

18 A. I don't know.

19 Q. Would the collateral provisions that
20 would require additional cash calls for the utilities
21 and FE Corp. on a consolidated basis be terms that
22 are set out in agreements?

23 MR. KUTIK: Objection, asked and
24 answered.

1 A. Yes.

2 Q. And do you know the specific agreements
3 that they would be set out in?

4 MR. KUTIK: Objection, asked and
5 answered.

6 A. Bilateral agreements with counterparties.

7 Q. If there are additional cash calls for
8 the utilities, where would the cash come from?

9 A. The --

10 MR. KUTIK: Excuse me. Objection, beyond
11 the scope but go ahead.

12 A. The utilities.

13 Q. And would the additional cash calls
14 from -- for the utilities, how would that affect the
15 Ohio utilities customers?

16 MR. KUTIK: Objection, beyond the scope
17 but you can answer if you know. And also objection,
18 I think that's been asked and answered.

19 A. As I described earlier, that would leave
20 less cash available to the utilities for use in the
21 business.

22 Q. Ms. Mikkelsen, do you believe it's
23 appropriate to set electric security plan rates to
24 assure a particular credit rating such as investment

1 grade?

2 MR. KUTIK: Objection, beyond the scope
3 of the deposition. You can answer, if you can.

4 THE WITNESS: May I have that reread,
5 please.

6 (Record read.)

7 MR. KUTIK: Also assumes facts since
8 there are no rates that are being set based upon
9 credit rating. Go ahead.

10 A. I think the Commission can rely on
11 whatever information it deems necessary to make a
12 determination with respect to provisions of an
13 electric security plan.

14 MS. WILLIS: May I have that answer
15 reread, please.

16 (Record read.)

17 Q. Do you believe -- Ms. Mikkelsen, do you
18 believe it's appropriate -- or do you believe it is
19 necessary to -- let me strike that.

20 Ms. Mikkelsen, are you aware of instances
21 in the past where the PUCO has established ESP rates
22 to assure a particular credit rating such as an
23 investment grade credit rating?

24 MR. KUTIK: Now I will instruct her not

1 to answer. It's beyond the scope of the deposition.

2 Q. Now, earlier you testified,

3 Ms. Mikkelsen, that you were -- you did not remember
4 when the companies received the Data Requests-34 and
5 35. Do you recall that testimony?

6 A. I do.

7 Q. And do you recall how -- what form the --
8 these discovery responses came to you in? Was it by
9 e-mail?

10 A. Yes.

11 Q. And was it addressed to -- who was -- who
12 did the data requests come from, if you know?

13 A. The PUCO staff.

14 Q. I was trying to be specific whether you
15 could recall an individual within the PUCO staff that
16 would have sent the e-mail data requests.

17 MR. KUTIK: Objection. And your question
18 is?

19 Q. The question is who -- who is -- do you
20 recall who of the PUCO staff sent you the e-mail
21 containing these data requests?

22 A. Yes.

23 Q. And who would that be?

24 A. Mr. Barber.

1 Q. Can you spell that for me, please?

2 A. No.

3 Q. Do you know Mr. -- you said Farber?

4 A. Barber, B as in boy.

5 Q. Okay.

6 MR. KUTIK: Well, that's a start.

7 Q. Mr. Barber, do you know Mr. Barber's
8 position at the staff?

9 MR. KUTIK: Well, at this point I'll
10 object as beyond the scope, but if she knows, she can
11 answer.

12 A. I don't remember.

13 Q. Do you know if there were conversations
14 with the staff prior to you receiving the written
15 e-mail requesting these -- these data as -- this
16 data?

17 A. May I ask you to rephrase the question,
18 please?

19 Q. What is it that you don't understand
20 about the question, Ms. Mikkelsen?

21 A. Conversations with the staff, we have
22 conversations with the staff continually in the
23 discharge of our responsibilities.

24 Q. Let me try to be more specific. Were --

1 did you -- are you aware of any conversation with the
2 staff about the effect of FirstEnergy dropping below
3 an investment grade rating and maintaining an
4 investment grade rating prior to receiving a written
5 data request from the staff?

6 MR. KUTIK: I will instruct you not to
7 answer that question to the extent it would require
8 you to reveal information that you obtained from
9 attorney-client privileged communications or
10 confidential privileged settlement discussions with
11 staff.

12 A. I have no additional response.

13 Q. Did you have any conversations with the
14 staff -- PUCO staff after you sent the written
15 responses to the staff that is Data Request-35 and 34
16 with respect to the substance of the responses?

17 A. No.

18 Q. Did you have any communication, whether
19 it was oral or written, with the staff after you sent
20 them the written responses to Data Request-34 and 35?

21 A. May I ask you to rephrase the question,
22 please?

23 Q. Can you tell me what it is about my
24 question you don't understand?

1 A. The broad nature of "discussions with
2 staff." Again, we have a number of discussions and
3 iterations with staff with respect to the day-to-day
4 discharge of our responsibilities.

5 Q. Thank you. Were there any -- did you
6 have conversations with the staff with respect to the
7 substance of the response contained within Data
8 Request-34 and 35 after you sent them the written
9 response?

10 A. No.

11 Q. Now, you refer in your response in the
12 bullet -- last bullet -- or one of the -- I guess it
13 is the last bullet, the "Overall higher cost of doing
14 business" and "much more challenging to be
15 competitive with peers." Can you tell me what
16 business you are referring to there?

17 A. The distribution business.

18 Q. Is it also referring to the generation
19 business?

20 A. No.

21 Q. And what peers are you referring to?

22 A. Distribution utilities.

23 Q. And can you tell me why it is more
24 challenging, "much more challenging to be competitive

1 with peers," if you have a downgrade to
2 non-investment grade?

3 A. As -- as the response states, it gives
4 rise to an overall higher cost of doing business
5 which makes your cost to do business higher than a
6 peer that might be investment grade which makes it
7 difficult to be competitive with that investment
8 grade peer.

9 Q. And when you talk about being competitive
10 peers, you are talking about competitive for
11 distribution service?

12 MR. KUTIK: Objection.

13 A. I'm thinking of it in terms of being
14 competitive with peers if you are trying to compete
15 to site perhaps a new customer is an example that
16 comes to mind.

17 Q. And your peer -- are you assuming that
18 your peers are all at least investment grade?

19 MR. KUTIK: Objection, assumes facts.

20 A. I mean, what we are saying here is that
21 to the extent you are non-investment grade and it
22 increases your cost of doing -- your overall cost of
23 doing business, it is more challenging to be
24 competitive with your peers who may not have that

1 higher cost of doing business.

2 Q. And my question goes to whether or not
3 those -- what you define as your peers. Is it your
4 understanding that all of your peers are investment
5 grade -- hold investment grade ratings?

6 A. I don't know about all, but I think the
7 main distribution utilities are of investment grade.

8 Q. Ms. Mikkelsen, do you know whether or not
9 the Ohio utilities have been downgraded below
10 investment grade rating in the past?

11 A. I don't remember.

12 MS. WILLIS: If I may have a moment -- if
13 I may have a minute, that would be great to check
14 through my notes, and then I believe I will be done.

15 MR. KUTIK: You may have a minute.

16 MS. WILLIS: That's all the questions I
17 have. Thank you, Ms. Mikkelsen.

18 MR. KUTIK: We need to go off the record
19 for a minute. Ms. Mikkelsen left the room for a
20 comfort break. We will be back in a minute.

21 (Recess taken.)

22 MR. KUTIK: Let's go back on the record.

23 Ms. Bojko.

24 MS. BOJKO: Thank you.

1 CROSS-EXAMINATION

2 By Ms. Bojko:

3 Q. Good afternoon, Ms. Mikkelsen. I will
4 attempt not to ask questions again but some might be
5 foundational.

6 I am going to start with Data Response
7 34, please. Do you have that in front of you?

8 A. Yes.

9 Q. Could another benefit of FirstEnergy
10 Corp. be that there could be an avoidance of a
11 decrease in FirstEnergy Corp.'s stock price?

12 A. Perhaps.

13 Q. And, Ms. Mikkelsen, you are the witness
14 in the rehearing; is that correct?

15 A. Yes.

16 Q. And you are representing the companies in
17 the rehearing; is that correct?

18 A. Yes.

19 Q. And when you prepared the data response
20 to 34, who were you representing when you prepared
21 that data response?

22 MR. KUTIK: Objection.

23 A. The companies.

24 Q. You were not speaking on behalf of

1 FirstEnergy Corp.?

2 MR. KUTIK: Objection. She is a witness
3 in this case for FirstEnergy -- FirstEnergy utilities
4 so let's move on.

5 MS. BOJKO: Well, she has made many --

6 MR. KUTIK: Well, I will instruct -- I
7 will make it easy. I will instruct her not to answer
8 that question. Her testimony is what it is. She is
9 being sponsored by the FirstEnergy Ohio utilities.
10 Let's go.

11 MS. BOJKO: Well, that we are going to
12 have to take up with the examiners. I object to your
13 objection.

14 Q. (By Ms. Bojko) You spoke earlier today
15 with -- with the preceding examiner that --
16 cross-examiner that the information was proprietary.
17 Do you recall that discussion?

18 A. Not specifically, no.

19 Q. Okay. Well, I will just ask do you
20 believe that the information contained in staff Data
21 Request 34 is proprietary to FirstEnergy Corp.?

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

24 MS. BOJKO: Actually I think that's a

1 different question than was asked before.

2 MR. KUTIK: No, it was. Objection.

3 Q. You can answer.

4 A. The information is being provided on a
5 confidential basis.

6 Q. And is the information that is provided
7 on a confidential basis all of the responses
8 including the objections or just the portions that
9 are included in subpart 1 that are in bullet form?

10 A. All of the responses.

11 Q. And would your answers be the same with
12 regard to whether the information is proprietary to
13 the companies?

14 A. May I ask you to rephrase the question,
15 please?

16 Q. Sure. I had asked you previously if you
17 believed that the information was proprietary to
18 FirstEnergy Corp. Now I am asking if you believe the
19 information contained in Data Request-34 is
20 proprietary to the companies.

21 MR. KUTIK: Objection, asked and
22 answered.

23 A. Again, the information is being provided
24 on a confidential basis by the companies.

1 Q. I'm sorry. You said company. Did you
2 mean companies?

3 A. I did.

4 Q. And would your answer to the
5 confidentiality, proprietary questions be the same
6 with regard to Data Request No. 35?

7 A. Yes.

8 Q. And in prior questions you stated that
9 the treasury department is housed in the FirstEnergy
10 Service Corp., and it serves the companies. Does the
11 treasury department also serve other subsidiaries of
12 FirstEnergy Corp.?

13 A. While I think that goes beyond the
14 information included in DR-34 and 35, the answer is
15 yes.

16 Q. And when referencing access to the
17 capital markets, it's true that FirstEnergy Corp. may
18 provide parental guarantees to subsidiaries; is that
19 correct?

20 MR. KUTIK: May I have the question read,
21 please.

22 (Record read.)

23 MR. KUTIK: I will object and instruct
24 that is beyond the scope of the deposition.

1 MS. BOJKO: Are you instructing her not
2 to answer?

3 MR. KUTIK: Yes, I am.

4 Q. (By Ms. Bojko) In response to one of
5 OCC's questions, you said that -- there was a
6 question -- there was a question about whether
7 discussions happened with -- settlement discussions
8 happened with parties subsequent to the filing and
9 you used the words that "discussions would have
10 occurred subsequent to the filing of the proposal."
11 When you use the word "the proposal," you were
12 referring to the companies' modified RRS proposal; is
13 that correct?

14 A. Yes.

15 MR. KUTIK: Well, I will also object
16 that's beyond the scope but go ahead.

17 MS. BOJKO: I am just trying to
18 understand her definition. I don't think that was
19 established at the beginning.

20 MR. KUTIK: It's still beyond the scope
21 of the deposition but go ahead.

22 A. Yes.

23 MS. BOJKO: It wasn't in the context.

24 Q. In response to one of your questions with

1 the -- with Ms. Willis, you said that the parent
2 company could make an equity infusion into the Ohio
3 utilities. Do you recall that?

4 A. I recall a discussion regarding equity
5 infusion, yes.

6 Q. Okay. And the FirstEnergy Corp., the
7 parent, could also make an equity infusion into other
8 subsidiaries; is that correct?

9 MR. KUTIK: Objection, beyond the scope
10 of the deposition. I'll instruct her not to answer.

11 MS. BOJKO: Well, Mr. Kutik, it's not
12 beyond the scope of the deposition when she raises
13 these issues in response to the questions. I am
14 trying to shortcut and not ask all the underlying
15 questions related to the DR. If you want me to go
16 back and start over --

17 MR. KUTIK: Well, you have -- you have
18 about 5 more minutes left before I walk out. So go
19 ahead. You do whatever you want to do. I have
20 already made my instructions so go ahead and ask your
21 next question, please.

22 MS. BOJKO: Well, again, this is all
23 noted for the record as inappropriate behavior, and
24 you can walk out all you want while we call the

1 attorney examiners and get a ruling on everything
2 that you've objected to a couple hundred times
3 throughout this deposition.

4 MR. KUTIK: Well, this deposition was
5 sufficiently narrowed, and the fact you can't follow
6 the rules is your problem, not mine. What's your
7 next question?

8 Q. (By Ms. Kutik) Ms. Mikkelsen, could you
9 turn to Data Request-35, please. Are you there?

10 A. Yes.

11 Q. Okay. Another adverse impact of a
12 downgrade to a non-investment grade rating as
13 referenced in your response to Data Request-35 could
14 be a drop in stock price of FirstEnergy Corp.; is
15 that correct?

16 MR. KUTIK: Objection, asked and
17 answered.

18 A. Perhaps.

19 MS. BOJKO: It was not asked and
20 answered.

21 MR. KUTIK: Yes, it was. You know, every
22 time I object you don't have to argue with my
23 objection. You are just wasting time, but if you
24 want to argue with me, go ahead. We'll just make

1 Karen rich by making a nice fat record of you and me
2 just arguing. Is that what you want to do, or do you
3 want to ask questions?

4 MS. BOJKO: I want -- I would like for
5 you to let the witness answer.

6 MR. KUTIK: I did let the witness answer.
7 I said it was asked and answered and she answered.
8 She gave the same answer she gave the last time which
9 was the word "perhaps."

10 MS. BOJKO: The last question was with
11 regard to DR-34. This is with regard to DR-35.

12 MR. KUTIK: All right. I guess you have
13 no other questions because you are just arguing. If
14 you want to continue arguing, I'm walking out. Are
15 you going to ask questions, or are you going to
16 argue?

17 MS. BOJKO: Karen, could you please read
18 the witness's response because the attorney is being
19 so ridiculous that we cannot even hear the witness
20 responding.

21 MR. KUTIK: So the ridiculous answer was
22 "perhaps" she said before I said something because
23 you were talking.

24 Read the answer, Karen.

1 (Record read.)

2 Q. Thank you. Request 35 asks about the --
3 "Please provide detail on the consequences of the
4 FirstEnergy Corp. dropping below an investment grade
5 rating." Do you see that?

6 A. Yes.

7 Q. FirstEnergy Corp. is currently at an
8 investment grade rating; is that correct?

9 A. Yes.

10 MR. KUTIK: Objection.

11 Q. And their investment grade for Moody's is
12 Baa3; is that true?

13 A. Yes.

14 Q. Okay. And each individual public debt is
15 rated separately on Moody's; is that correct?

16 A. I don't know.

17 Q. After asking for the detail and the
18 consequence of FirstEnergy Corp. dropping below an
19 investment grade rating, the question then asks what
20 effects will this have on the operating companies; is
21 that correct?

22 MR. KUTIK: Objection.

23 A. Yes.

24 Q. And after the response -- after the

1 objections and the response, you provide the
2 non-exhaustive list of adverse effects of a downgrade
3 that you have been discussing today, and from your
4 discussions with other counsel, it appears that
5 you're stating that that exhaustive list is
6 responsive to both of the questions posed in DR-35;
7 is that correct?

8 MR. KUTIK: Well, first, you
9 mischaracterized the response. It's a non-exhaustive
10 list. And otherwise it's objectionable because asked
11 and answered, but she can go ahead and answer.

12 A. Yes, it applies to both.

13 Q. And in this list you explain one of the
14 adverse impacts is that "Suppliers and counterparties
15 may enact more stringent terms." Do you see that?

16 A. Yes.

17 Q. A "more stringent terms" of what?

18 MR. KUTIK: Objection.

19 A. More --

20 MR. KUTIK: Also asked and answered. Go
21 ahead.

22 A. More stringent terms and agreements
23 between the companies and/or FirstEnergy Corp. and
24 suppliers and/or counterparties.

1 Q. I'm sorry. I just didn't hear you,
2 Ms. Mikkelsen. Did you say "in agreements" or "and
3 agreements"? "Terms and agreements" or "terms in
4 agreements"?

5 MR. KUTIK: Why don't we have the court
6 reporter read her answer.

7 (Record read.)

8 Q. Okay. And that's what I am trying to
9 understand. Terms of what?

10 MR. KUTIK: Objection, asked and
11 answered.

12 A. For example, if you have a purchase order
13 and one of the terms of the purchase order is the
14 number of days you have between invoice date and
15 invoice due date, that term may -- that particular
16 purchase order or contract term may, if you are
17 non-investment grade, result in a shorter period of
18 time that you are -- have between the receipt of the
19 invoice and the due date on the invoice, for example.
20 That's the type of terms I'm talking about.

21 Q. Okay. Likely terms embedded within
22 contracts or purchasing agreements, things of that
23 nature?

24 A. Yes.

1 Q. If one of the utility's debt instruments
2 is downgraded, would that downgrade have a negative
3 impact on the suppliers and counterparties doing
4 business with the parent company assuming there are
5 no changes in the parent company's investment grade?

6 MR. KUTIK: May I have the question read,
7 please.

8 (Record read.)

9 MR. KUTIK: Objection, beyond the scope
10 of the deposition. You can answer if you know.

11 A. The response here goes to the credit
12 rating of the companies and FirstEnergy Corp.

13 Q. Okay. If the utility's debt instrument
14 was downgraded but the parent company remained at
15 investment grade and there are no other changes,
16 would the downgrade of a subsidiary cause the parent
17 company to lose its investment grade or get
18 downgraded?

19 MR. KUTIK: Objection, beyond the scope,
20 also incomplete hypothetical.

21 A. May I ask you to rephrase the question,
22 please?

23 Q. Sure. Would the downgrade of a
24 subsidiary cause the parent company to lose its

1 investment grade or get downgraded assuming that the
2 parent company is -- financials have not changed?

3 A. It's difficult for me to answer because
4 it seems as though the question suggests there was a
5 circumstance that changed in one of the underlying
6 entities which caused them to be downgraded but at
7 the same time asked me to assume there is no change
8 at the consolidated parent level, and I am having
9 trouble reconciling that in the question.

10 Q. Okay. Well, under Moody's, not under S&P
11 where the family is considered, under Moody's where
12 each individual utility is separately rated, if
13 Moody's downgrades one of the subsidiaries, one of
14 the utilities, would it necessarily downgrade the
15 parent company?

16 MR. KUTIK: Objection, asked and
17 answered.

18 A. No.

19 Q. Ms. Mikkelsen, do the companies have a
20 common interest agreement with the staff?

21 MR. KUTIK: Objection, instruct you not
22 to answer.

23 Q. Ms. Mikkelsen, is there any writing
24 memorializing a common interest agreement between

1 staff and the companies?

2 MR. KUTIK: Same instruction.

3 Q. In both DR-34 and DR-35 you as the
4 respondent stated there were confidential settlement
5 discussions or that the information sought is
6 pertaining to confidential settlement discussions.
7 In that response with whom are the confidential
8 settlement discussions that you were referring to?

9 A. As the witness on response 34 and 35, I'm
10 responsible for the answers, and the legal team is
11 responsible for the objections, so the reference that
12 you are talking to is really part of the legal
13 objection and not part of the answer that I'm
14 responsible for.

15 Q. But didn't in a previous response you
16 discuss the highly sensitive and proprietary nature
17 that's also in a legal response?

18 MR. KUTIK: No, she did not. What's your
19 next question?

20 Q. Ms. Willis asked you whether you had had
21 discussions with staff regarding the discovery
22 responses before or after the discovery responses
23 were served, and I believe you said you did not; is
24 that correct?

1 A. I frankly would have to go back and look
2 at the questions and answers at this point.

3 Q. Well, did you have settlement discussions
4 with staff regarding the discovery responses before
5 they were served?

6 MR. KUTIK: Objection, asked and
7 answered. The record is what it is. Why don't you
8 just move on.

9 MS. BOJKO: Well, my question to her I
10 was trying to lay some foundation, sir.

11 Q. Was I believe you answered in response to
12 the word "you" and I was -- I would like to know
13 whether you are aware -- to your knowledge did any
14 other individual at the companies have discussions
15 with staff before the discovery responses were
16 issued?

17 MR. KUTIK: Well, I think, as the witness
18 has previously testified, they have discussions all
19 the time about all kinds of things. That's No. 1.
20 And, No. 2, I would instruct the witness not to
21 answer the question to the extent it would -- or to
22 exclude from her answer any information that she
23 learned as part of attorney privileged
24 communications.

1 MS. BOJKO: Well, I mean, per the rules
2 the existence of a settlement discussion and whether
3 it occurred or did not occur is not protected by
4 attorney-client privilege.

5 MR. KUTIK: Well, you have -- you have --
6 as usual, you don't understand my objection. I am
7 not going to argue with you any more. I am giving
8 you as much time as you can possibly have to ask
9 questions. I have given my instruction. Don't argue
10 with me about the instruction. If the witness can
11 answer the question, she will answer the question.

12 MS. BOJKO: All right. Well, the witness
13 has already responded to this question with regard to
14 "you."

15 Q. (By Ms. Bojko) So, Ms. Mikkelsen, to your
16 knowledge did anyone at the companies have
17 discussions surrounding the discovery responses with
18 staff after they were issued?

19 MR. KUTIK: Same instruction.

20 MS. BOJKO: Okay. Then at this time I am
21 requesting -- well, I guess we have to wait until
22 other parties go, but I am requesting a conference
23 with the attorney examiners regarding your objections
24 and your behavior throughout this deposition.

1 MR. KUTIK: Are you done?

2 MS. BOJKO: That's what I said, sir.

3 Maybe if you would listen.

4 MR. KUTIK: All right. Is there anyone
5 else? Have any further questions?

6 MS. PETRUCCI: Yes. This is Gretchen. I
7 do.

8 MR. KUTIK: You have 3 minutes. Go
9 ahead.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Petrucci:

13 Q. Ms. Mikkelsen, can you turn to DR-35,
14 please, what was marked as Deposition Exhibit 2. And
15 focus on the last bullet on the page, please, where
16 it indicates that the effect would have overall
17 higher costs of doing business. Were you indicating
18 earlier that it's a higher cost of doing business on
19 each of the individual distribution companies?

20 MR. KUTIK: May I have the question read,
21 please.

22 (Record read.)

23 A. Yes.

24 Q. And where it indicates it's more

1 challenging to be competitive with peers, is that
2 also -- meaning that the effect that it is more
3 challenging on each of the individual distribution
4 companies to be competitive with peers?

5 A. Yes.

6 Q. And when you described "competitive"
7 earlier, I want to make sure I heard correctly that
8 you stated that competitive is for trying to site new
9 customers?

10 MR. KUTIK: Objection.

11 Q. I am not sure I heard the word that you
12 used.

13 MR. KUTIK: Objection, asked and
14 answered. Go ahead.

15 A. I used that as an example, yes.

16 Q. Okay. And was the word "site"? Do you
17 mean S-I-T-E?

18 MR. KUTIK: No.

19 Q. Okay. That's what I am trying to
20 understand. What did you mean?

21 MR. KUTIK: Well, go ahead. Answer the
22 question.

23 A. What I meant was if you as a utility have
24 an overall higher cost of doing business and you are

1 trying to have a new company set up operations in
2 your service territory and you are competing with
3 other companies that have an overall lower cost of
4 doing business, it is much more challenging to be
5 competitive in that arena in terms of getting that
6 new customer to set up shop as opposed to site
7 operations in your service territory.

8 MR. KUTIK: And when you say "site,"
9 spell that word for us, please. S-I-T-E?

10 THE WITNESS: Yes.

11 MR. KUTIK: Thank you.

12 Q. (By Ms. Petrucci) And who are the peers
13 that would be competitive for Ohio Edison Company?

14 MR. KUTIK: Objection, asked and
15 answered.

16 A. As I said earlier in my testimony, that
17 would refer to other distribution utilities.

18 Q. And what other distribution utilities did
19 you mean?

20 MR. KUTIK: Objection.

21 A. It was a very general reference. I did
22 not have a specific utility or two in mind but rather
23 generally referencing distribution utilities.

24 Q. Where would they be located? Within

1 Ohio? Outside of Ohio?

2 MR. KUTIK: Objection.

3 A. Both.

4 Q. Would -- would there be a region in which
5 those peers are located?

6 MR. KUTIK: Same objection, asked and
7 answered.

8 A. Not necessarily, no.

9 Q. Earlier you indicated that you did not
10 recall when you -- when FirstEnergy received the --
11 these two data requests. Do you know if it was
12 before or after you filed your rehearing testimony in
13 this proceeding?

14 A. It was well after I filed my rehearing
15 testimony.

16 Q. Can you give me any kind of time frame as
17 to when you believe you received the request?

18 MR. KUTIK: Objection, asked and
19 answered. She said she doesn't know.

20 A. I don't know specifically, but I would
21 expect it was 7 to 10 days before we responded.

22 Q. Going back to the bullet that we were
23 just talking about a moment ago, the -- the answer,
24 is that also indicating that there -- the

1 consequences of FirstEnergy Corp. dropping below
2 investment grade ratings has an overall higher cost
3 of doing business on FirstEnergy Corp.?

4 A. Yes.

5 Q. And, likewise, does that consequences of
6 dropping -- FirstEnergy Corp. dropping below
7 investment grade make it more challenging for
8 FirstEnergy Corp. to be competitive with peers?

9 A. Well, in the context of trying to, as we
10 discussed earlier, to the extent that you move below
11 investment grade, it -- as we talked about earlier,
12 constrains or limits your access to capital markets,
13 so in that respect your peers who are investment
14 grade would have a better opportunity to access those
15 capital markets than FirstEnergy Corp. would under
16 that circumstance.

17 Q. And under that circumstance the peers are
18 not -- the peers that you are referring to for
19 FirstEnergy Corp. are whom?

20 A. I think in the context of the answer I
21 just provided, it is just investment grade entities
22 seeking to secure funds from the capital markets.

23 Q. And then the competition that's taking
24 place is with respect to obtaining the funds; is that

1 correct?

2 A. Yeah, among other things that we
3 discussed with respect to the distribution utilities.
4 And these are examples.

5 Q. Ms. Mikkelsen, the heading on each of the
6 discovery responses, was that part of your
7 responsibility in responding to the data requests?

8 MR. KUTIK: Well, I'll answer that. No,
9 it wasn't. It was counsel.

10 Q. Ms. Mikkelsen, were you consulted in --
11 with respect to the headers that were included on the
12 two discovery data responses?

13 MR. KUTIK: I will instruct her not to
14 answer that question to the extent it would call for
15 revealing attorney-client privileged communications.

16 A. No.

17 Q. I'm sorry. I didn't actually hear your
18 answer.

19 MR. KUTIK: "No."

20 MS. PETRUCCI: Okay. Thank you. I'm
21 checking to make sure if there is anything else. One
22 moment, please.

23 Q. Is there any other circumstance that you
24 can think of where the distribution companies are

1 competing with peers other than for that customer who
2 is considering setting up shop in the FirstEnergy
3 distribution companies' territory? I'm sorry. Let
4 me start again.

5 Is there any other competitive
6 circumstance other than the one that you described
7 earlier that would be involved in the answer to the
8 Discovery 35 discovery response?

9 THE WITNESS: May I ask that you reread
10 that question, please.

11 (Record read.)

12 MR. KUTIK: Objection.

13 A. I think we discussed two instances. You
14 know, one, the instance of an economic development
15 perspective, and the second being trying to secure
16 access to the capital markets. Those are the two
17 examples that I can think of now. There may be
18 others.

19 MS. PETRUCCI: I don't have any further
20 questions. Thank you.

21 MR. KUTIK: Karen, please indicate we
22 will read the transcript, and with that we are off
23 the record. Thank you.

24 (Discussion off the record.)

1 EXAMINER PRICE: Go back on the record.

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3 FURTHER CROSS-EXAMINATION

4 By Ms. Bojko:

5 Q. Ms. Mikkelsen, I have a few follow-up
6 questions for you referring to staff DR-34. Do you
7 have that in front of you?

8 A. Yes.

9 Q. After the objections and substantive
10 response, there is a non-exhaustive list of the
11 benefits and that non-exhaustive list of benefits
12 could apply to FirstEnergy Corp. and the utilities;
13 is that correct?

14 MR. KUTIK: Your Honor, I object. This
15 is now not what we talked about off the record. The
16 question was going to be who does she represent.
17 She's already asked these questions previously of
18 this witness.

19 MS. BOJKO: Your Honor, I am just trying
20 to lay a little foundation.

21 EXAMINER PRICE: It is not the questions
22 we discussed, but we'll give Ms. Bojko a little bit
23 of leeway. So go ahead and answer the question.

24 THE WITNESS: I'm sorry. May I ask you

1 to please reread the question.

2 (Record read.)

3 A. Yes. As the response states, "The
4 following is a non-exhaustive list of the benefits
5 that FirstEnergy Corp. and the Ohio utilities receive
6 from maintaining an investment grade rating."

7 Q. And would your response be the same to
8 DR-35 that the non-exhaustive list that appeared in
9 the response to DR-35 also applies to both
10 FirstEnergy Corp. as well as the companies?

11 MR. KUTIK: Objection, asked and
12 answered. Go ahead.

13 A. Yes.

14 Q. And, Ms. Mikkelsen, you are the witness
15 appearing for the companies in this case; is that
16 correct?

17 A. Yes.

18 Q. And when you drafted the responses to
19 both staff DR-35 -- 4 and staff DR-35, were you
20 drafting the discovery responses on behalf of
21 FirstEnergy Corp. or on behalf of the utilities?

22 A. I was drafting and providing the
23 responses on behalf of the companies, Ohio Edison,
24 The Cleveland Electric Illuminating Company, and

1 Toledo Edison Company.

2 Q. So it's your testimony you were not
3 providing any information on behalf of FirstEnergy
4 Corp.?

5 MR. KUTIK: Objection, mischaracterizing
6 the witness's testimony.

7 A. No.

8 Q. Well, I didn't ask who you were
9 representing. I was asking you when you were
10 drafting the discovery responses if you were
11 responding on behalf of the FirstEnergy Corp.

12 MR. KUTIK: Well, now, you are arguing
13 with the witness. So what's the question, please?

14 Q. Ms. Mikkelsen, were you drafting the
15 discovery responses on behalf of the FirstEnergy
16 Corp.?

17 MR. KUTIK: Objection, asked and
18 answered.

19 A. We were -- I was providing the responses
20 on behalf of Ohio Edison, The Cleveland Electric
21 Illuminating Company, and Toledo Edison Company, and
22 in providing those responses on behalf of those
23 companies, the companies attempted to be responsive
24 to staff's requests regarding information with

1 respect to FirstEnergy Corp.

2 Q. So who provided you information to
3 include in your discovery responses from FirstEnergy
4 Corp.?

5 MR. KUTIK: Well, now I object, and I
6 will object now to our Attorney Examiner. These
7 questions were exhaustively discussed with the
8 witness at least two prior occasions, counsel from
9 Sierra Club, counsel -- and counsel from OCC. And as
10 we indicated in an off-the-record discussion, the
11 witness previously indicated where she got the
12 information from, particularly and specifically from
13 the treasury department. So I'll object and ask --
14 and ask for a ruling.

15 EXAMINER PRICE: Ms. Bojko, response?

16 MS. BOJKO: Well, every question is
17 worded differently on purpose, and Mr. Kutik keeps
18 objecting as asked and answered. If you try to
19 change up the question to ask as a follow-up, then he
20 objects to asked and answered. This is a pure
21 follow-up. The question is about the treasury and
22 where she got the response because we weren't allowed
23 to ask these other questions. Could have meant that
24 the treasury department provided the responses on

1 behalf of the companies. So, now, I am trying to ask
2 who provided the responses on behalf of the
3 FirstEnergy Corp. now that she's made the distinction
4 that she wasn't allowed to make previously.

5 MR. KUTIK: Well, no one testified that
6 any information provided by the company -- by the
7 treasury department was "on behalf of FirstEnergy
8 Corp." Certainly information can be had about the
9 treasury department relating to FirstEnergy Corp. and
10 it's not "FirstEnergy Corp." providing that
11 information. So the question assumes facts that
12 aren't established by the record and, in fact, are
13 contradicted by the record, and we've already been
14 through this exhaustively.

15 EXAMINER PRICE: Okay. I am going to
16 sustain the objection.

17 Q. (By Ms. Bojko) Just to be clear,
18 Ms. Mikkelsen, you are not testifying through these
19 discovery responses as to the information related to
20 FirstEnergy Corp.

21 MR. KUTIK: Objection.

22 A. I am providing the responses on behalf of
23 the distribution utilities in Ohio; and, again, in an
24 effort to be responsive to staff, those responses

1 include information about FirstEnergy Corp. which I
2 am sponsoring as part of my response on behalf of the
3 companies.

4 Q. Okay. So you are sponsoring information
5 related to FirstEnergy Corp. --

6 MR. KUTIK: Objection.

7 Q. -- is that correct?

8 MR. KUTIK: Objection. Again, this --

9 EXAMINER PRICE: We are going to allow
10 this question, but we're -- we're rapidly exceeding
11 the number of questions we agreed we would ask here.

12 MR. KUTIK: I think we are well over that
13 number, your Honor; but, yes, I understand your
14 ruling.

15 A. If I understand the question, the answer
16 is yes.

17 Q. And there will be no other witnesses
18 presented in the case that would provide the
19 FirstEnergy Corp. that you are testifying to in DR-34
20 and 35; is that correct?

21 MR. KUTIK: I object, your Honor. You
22 know, certainly we have a right to rebuttal. We have
23 made no -- no determination whether we are going to
24 have rebuttal or not. These issues certainly as we

1 all know relate to the staff's proposal which isn't
2 part of our affirmative case, and so I would object
3 to that question.

4 EXAMINER PRICE: Sustained.

5 MS. BOJKO: Okay. I have nothing
6 further. Thank you.

7 THE WITNESS: Thank you.

8 MR. KUTIK: Okay. Are we concluded at
9 this point?

10 EXAMINER PRICE: Okay.

11 MR. KUTIK: All right. Thank you, your
12 Honor, and thanks to all. We are now concluded.

13 (Thereupon, the deposition was concluded
14 at 5:15 p.m.)

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1 State of Ohio :
2 County of _____ : SS:

3 I, Eileen M. Mikkelsen, do hereby certify that
4 I have read the foregoing transcript of my deposition
5 given on Friday, July 8, 2016; that together with the
6 correction page attached hereto noting changes in
7 form or substance, if any, it is true and correct.

6

7

Eileen M. Mikkelsen

8

9 I do hereby certify that the foregoing
10 transcript of the deposition of Eileen M. Mikkelsen
11 was submitted to the witness for reading and signing;
12 that after she had stated to the undersigned Notary
Public that she had read and examined her deposition,
she signed the same in my presence on the _____
day of _____, 2016.

13

14

Notary Public

15

16 My commission expires _____, _____.

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1 CERTIFICATE

2 State of Ohio :
3 County of Franklin : SS:

4 I, Karen Sue Gibson, Notary Public in and for
5 the State of Ohio, duly commissioned and qualified,
6 certify that the within named Eileen M. Mikkelsen was
7 by me duly sworn to testify to the whole truth in the
8 cause aforesaid; that the testimony was taken down by
9 me in stenotypy in the presence of said witness,
afterwards transcribed upon a computer; that the
foregoing is a true and correct transcript of the
testimony given by said witness taken at the time and
place in the foregoing caption specified and
completed without adjournment.

10 I certify that I am not a relative, employee,
11 or attorney of any of the parties hereto, or of any
12 attorney or counsel employed by the parties, or
financially interested in the action.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand and affixed my seal of office at Columbus, Ohio,
on this 9th day of July, 2016.

15 _____
16 Karen Sue Gibson, Registered
17 Merit Reporter and Notary Public
in and for the State of Ohio.

18 My commission expires August 14, 2020.

19 (KSG-6217)

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