

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Megan Addison,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 10:00 a.m. on Monday, July
11, 2016.

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REHEARING VOLUME I

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 FirstEnergy Corp.
3 By Ms. Carrie M. Dunn
4 76 South Main Street
5 Akron, Ohio 44308

6 Calfee, Halter & Griswold LLP
7 By Mr. James Lang
8 and Mr. N. Trevor Alexander
9 The Calfee Building
10 1405 East Sixth Street
11 Cleveland, Ohio 44114

12 Jones Day
13 By Mr. David A. Kutik
14 901 Lakeside Avenue
15 Cleveland, Ohio 44114

16 On behalf of the Applicants.

17 Bruce J. Weston, Consumers' Counsel
18 By Mr. Larry Sauer
19 Ms. Maureen R. Willis
20 Mr. Kevin F. Moore
21 Mr. Ajay K. Kumar
22 and Mr. William Michael
23 Assistant Consumers' Counsel
24 10 West Broad Street, Suite 1800
25 Columbus, Ohio 43215-3485

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

McNees, Wallace & Nurick LLC
By Mr. Frank P. Darr
Mr. Samuel C. Randazzo
and Mr. Matthew Pritchard
21 East State Street, 17th Floor
Columbus, Ohio 43215

On behalf of the Industrial Energy Users
of Ohio.

- - -

1 APPEARANCES: (Continued)

2 Bricker & Eckler, LLP
3 By Mr. Dane Stinson
4 and Mr. Dylan Borchers
5 100 South Third Street
6 Columbus, Ohio 43215-4291

7 Bricker & Eckler, LLP
8 By Mr. Glenn S. Krassen
9 1001 Lakeside Avenue East, Suite 1350
10 Cleveland, Ohio 44114

11 On behalf of the Northeast Ohio Public
12 Energy Council, Ohio Schools Council,
13 Buckeye Association of School
14 Administrators, Ohio Association of
15 School Business Officials, Ohio School
16 Boards Association, and Power4Schools.

17 Earthjustice
18 By Mr. Shannon Fisk
19 Northeast Office
20 1617 John F. Kennedy Boulevard, Suite 1675
21 Philadelphia, Pennsylvania 19103

22 Earthjustice
23 By Mr. Michael Soules
24 1625 Massachusetts Avenue NW, Suite 702
25 Washington, D.C. 20036

Sierra Club Environmental Law Program
Mr. Tony Mendoza
and Ms. Kristin Henry
85 Second Street, 2nd Floor
San Francisco, California 94105

Richard Sahli Law Office, LLC
By Mr. Richard C. Sahli
981 Pinewood Lane
Columbus, Ohio 43230-3662

On behalf of the Sierra Club.

- - -

1 APPEARANCES: (Continued)

2 IGS Energy
3 By Mr. Joseph Olikier
4 6100 Emerald Parkway
5 Dublin, Ohio 43016

6 On behalf of IGS Energy.

7 Vorys, Sater, Seymour & Pease, LLP
8 By Ms. Gretchen Petrucci
9 Mr. Stephen M. Howard
10 Mr. Michael J. Settineri
11 and Mr. Ilya Batikov
12 52 East Gay Street
13 Columbus, Ohio 43215

14 On behalf of Retail Energy Supply
15 Association, PJM Power Providers Group,
16 Electric Power Supply Association,
17 Constellation NewEnergy, Exelon
18 Generation, LLC, and Dynegy, Inc.

19 Carpenter Lipps & Leland LLP
20 By Ms. Kimberly W. Bojko
21 and Ms. Danielle Ghiloni Walter
22 280 North High Street, Suite 1300
23 Columbus, Ohio 43215

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

Mike DeWine, Ohio Attorney General
By Mr. William L. Wright,
Section Chief
Mr. Thomas G. Lindgren
Mr. Thomas W. McNamee
and Mr. Steven L. Beeler,
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

- - -

1 APPEARANCES: (Continued)

2 Boehm, Kurtz & Lowry
3 By Mr. Michael L. Kurtz
4 Mr. Kurt J. Boehm
5 and Ms. Jody Kyler Cohn
6 36 East Seventh Street, Suite 1510
7 Cincinnati, Ohio 45202

8 On behalf of the Ohio Energy Group.

9 Environmental Law & Policy Center
10 By Ms. Madeline Fleisher
11 21 West Broad Street, Suite 500
12 Columbus, Ohio 43215

13 Mr. Robert Kelter
14 35 East Wacker Drive, Suite 1600
15 Chicago, Illinois 60601

16 On behalf of the Environmental Law &
17 Policy Center.

18 Barth E. Royer, LLC
19 By Mr. Barth E. Royer
20 2740 East Main Street
21 Bexley, Ohio 43209

22 and

23 Taft, Stettinius & Hollister LLP
24 By Mr. Adrian D. Thompson
25 200 Public Square, Suite 3500
Cleveland, Ohio 44114-2300

On behalf of the Cleveland Municipal
School District.

Spilman, Thomas & Battle, PLLC
By Mr. Derrick Price Williamson
Ms. Carrie Harris
310 First Street, Suite 1100
Roanoke, Virginia 24011

On behalf of Wal-Mart Stores East, LP,
and Sam's East, Inc.

- - -

1 APPEARANCES: (Continued)

2 Mr. Richard L. Sites
3 155 East Broad Street
4 Columbus, Ohio 43215

5 Bricker & Eckler, LLP
6 By Mr. Matthew W. Warnock
7 100 South Third Street
8 Columbus, Ohio 43215-4291

9 On behalf of the Ohio Hospital
10 Association.

11 Ohio Environmental Council
12 By Mr. Trent A. Dougherty
13 and Ms. Miranda Leppla
14 1145 Chesapeake Avenue, Suite I
15 Columbus, Ohio 43212

16 On behalf of the Ohio Environmental
17 Council and the Environmental Defense
18 Fund.

19 Mr. Thomas R. Hays
20 8355 Island Lane
21 Maineville, Ohio 45039

22 On behalf of the Northwest Ohio
23 Aggregation Coalition and the Individual
24 Communities.

25 Ice Miller, LLP
By Mr. Christopher Miller
and Mr. Jeremy Grayem
250 West Street, Suite 700
Columbus, Ohio 43215-7509

On behalf of the Association of
Independent Colleges and Universities of
Ohio.

Mr. Craig I. Smith
15700 Van Aken Boulevard #26
Shaker Heights, Ohio 44120

On behalf of Material Sciences
Corporation.

1 APPEARANCES: (Continued)

2 Whitt Sturtevant LLP
3 By Mr. Mark A. Whitt
4 Mr. Andrew J. Campbell
5 and Ms. Rebekah J. Glover
6 88 East Broad Street, Suite 1590
7 Columbus, Ohio 43215

8 On behalf of Direct Energy Business, LLC,
9 and Direct Energy Services, LLC.

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Monday Morning Session,

July 11, 2016.

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

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

My name is Gregory Price. With me is
Megan Addison. We are the Attorney Examiners
assigned to preside over today's hearing.

I would just like to note that this
hearing was set pursuant to the Commission's order --
order indicating an additional hearing to be held on
rehearing in this proceeding.

At this time I would like to go off the
record briefly.

(Discussion off the record.)

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

1 At this time we will take appearances
2 starting with the company.

3 MS. DUNN: Good morning, your Honor. On
4 behalf of Ohio Edison Company, The Cleveland Electric
5 Illuminating Company, and the Toledo Edison Company,
6 Carrie Dunn, FirstEnergy Service Company, 76 South
7 Main Street, Akron, Ohio 44308. David Kutik from the
8 law firm of Jones Day, 901 Lakeside Avenue,
9 Cleveland, Ohio 44114. And James Lang and Trevor
10 Alexander from Calfee, Halter & Griswald, The Calfee
11 Building, 1405 East 6th Street, Cleveland, Ohio
12 44114. Thank you.

13 MR. KURTZ: Good morning, your Honors.
14 For the Ohio Energy Group, Mike Kurtz, Kurt Boehm,
15 Jody Cohn, Boehm, Kurtz & Lowry, 1510 URS Center,
16 Cincinnati.

17 MR. WHITT: Good morning, your Honors.
18 On behalf of Direct Energy Services, LLC, and Direct
19 Energy Business, LLC, Mark Whitt, Andrew Campbell,
20 and Becky Glover from the law firm of Whitt
21 Sturtevant, LLP, 88 East Broad Street, Suite 1590,
22 Columbus 43215.

23 MR. McNAMEE: On behalf of the staff of
24 the Public Utilities Commission of Ohio, Thomas
25 Lindgren, L-i-n-d-g-r-e-n, Steve Beeler, B-e-e-l-e-r,

1 and Thomas McNamee, M-c-N-a-m-e-e. The address is 30
2 East Broad Street, 16th floor, Public Utilities
3 Section, Columbus, Ohio 43215. Thank you.

4 MS. WILLIS: Thank you, yours Honor. On
5 behalf of the residential customers of the FE
6 Utilities, the Office of Consumers' Counsel, Bruce J.
7 Weston, Consumers' Counsel, by Larry Sauer, Kevin
8 Moore, Ajay Kumar, William Michael, and Maureen
9 Willis, 10 West Broad Street, Columbus, Ohio 43215.

10 MR. SETTINERI: Good morning, your
11 Honors. On behalf of the PJM Providers Group,
12 Electric Power Supply Association, Retail Energy
13 Supply Association, Dynegy, Inc., Constellation
14 NewEnergy, and Exelon Generation, LLC, Michael
15 Settineri, Gretchen L. Petrucci, and Ilya Batikov,
16 with the law firm of Vorys, Sater, Seymour, and
17 Pease, 51 East Gay Street, Columbus, Ohio 43215.
18 Thank you.

19 MR. FISK: Good morning, your Honors. On
20 behalf of Sierra Club, Shannon Fisk and Michael
21 Soules from Earthjustice, 1617 JFK Boulevard, Suite
22 1130, Philadelphia, PA 19130.

23 MS. BOJKO: Thank you, your Honors. On
24 behalf of the Ohio Manufacturers' Association Energy
25 Group, Kimberly W. Bojko, Danielle Ghiloni Walter,

1 with the law firm of Carpenter, Lipps & Leland, 280
2 North High, Columbus, Ohio 43215.

3 MR. HAYES: On behalf of Wal-Mart Stores
4 East, LP, and Sam's East, Carrie Harris and Derrick
5 Williamson, from the law firm Spilman, Thomas &
6 Battle, 310 First Street, Suite 1100, Roanoke,
7 Virginia 24011.

8 MS. FLEISHER: Good morning. On behalf
9 of the Law and Policy Center, Madeline Fleisher, 21
10 West Broad Street, Suite 500, Columbus, Ohio 43215.

11 MR. DOUGHERTY: Good morning, your
12 Honors. On behalf of the Ohio Environmental Council
13 and Environmental Defense Fund, Trent A. Dougherty
14 and Miranda Leppla, 1145 Chesapeake Avenue, Suite I,
15 Columbus 43212.

16 MR. STINSON: On behalf of the Northeast
17 Ohio Public Energy Council, Ohio School Boards,
18 Buckeye Association of School Administrators, Ohio
19 Association of School Officials, and Ohio Schools
20 Council, the law firm of Bricker & Eckler, Dane
21 Stinson, Dylan Borchers, 100 South Third Street,
22 Columbus, Ohio 43215, and Glenn S. Krassen, Lakeside
23 Avenue, Cleveland, Ohio 44114.

24 MR. SMITH: On behalf of the Material
25 Sciences Corporation, Craig I. Smith, Attorney at

1 Law, 15700 Van Aken Boulevard, Suite 26, Shaker
2 Heights, Ohio 44120.

3 MR. ROYER: On behalf of the Cleveland
4 Municipal School District, Barth Royer, Barth E.
5 Royer, LLC, 2740 East Main Street, Bexley, Ohio
6 43209, and Adrian Thompson of Taft Stettinius &
7 Hollister, 200 Public Square, Suite 3500, Cleveland,
8 Ohio 44114.

9 MR. OLIKER: Good morning. On behalf of
10 IGS Energy, Joseph Olikier, 6200 Emerald Parkway,
11 Dublin, Ohio 43016.

12 MR. GRAYEM: Good morning. On behalf of
13 the Association of Independent Colleges and
14 Universities of Ohio, Jeremy Grayem and Chris Miller,
15 Ice Miller, 250 West Street, Columbus, Ohio 43215.

16 MR. HAYS: On behalf of the Coalition --
17 sorry. Northwest Ohio Aggregation Coalition and the
18 11 Individual Communities, Thomas Hays, 8355 Island
19 Lane, Maineville, Ohio 45039.

20 MR. WARNOCK: On behalf of the Ohio
21 Hospital Association, Matthew Warnock, Bricker &
22 Eckler, 100 South Third Street, Columbus, Ohio 43215,
23 and Richard L. Sites, the Ohio Hospital Association,
24 155 East Broad Street, Suite 301, Columbus, Ohio
25 43215.

1 MR. DARR: On behalf of the Industrial
2 Energy Users of Ohio, McNees, Wallace & Nurick, by
3 Sam Randazzo, Frank Darr, and Matt Pritchard, 21 East
4 State Street, Columbus, Ohio 43215.

5 EXAMINER PRICE: Everybody? Okay.

6 At this time we will rule on the motion
7 of extension filed July 6. That motion will be
8 denied. In the motion, discussion of supplemental
9 testimony to be filed by intervenors. We will not
10 permit the filing of supplemental testimony.

11 However, intervenor parties can file
12 rebuttal testimony to the staff testimony under the
13 following conditions: No. 1, they provide notice to
14 the Bench by noon on July 13 of the potential for
15 rebuttal testimony. It's not binding. If you
16 provide notice but choose not to, that's fine.

17 No. 2, provide FirstEnergy an opportunity
18 to depose the rebuttal witnesses prior to the
19 testimony.

20 And No. 3, the rebuttal testimony must be
21 filed by Friday, July 13, at 4 p.m.

22 I'd just like to note, rebuttal testimony
23 must directly address testimony given by the staff
24 and not other issues. The companies may file
25 surrebuttal testimony to any intervenor rebuttal

1 testimony scheduled to be announced; that's in
2 addition to the company's right to file rebuttal
3 testimony to intervenor and staff witnesses.

4 MS. WILLIS: Your Honor, I apologize. I
5 should have thought of this when we had the
6 discussion off the record, but will we have the
7 opportunity to depose the company witnesses on the
8 surrebuttal?

9 EXAMINER PRICE: I know that you have a
10 John Doe/Jane Doe witness notice of deposition on
11 rebuttal. I think just as we provided the company
12 the courtesy that they will have an opportunity to
13 depose rebuttal witnesses, you will have an
14 opportunity to depose any surrebuttal witnesses.

15 MS. WILLIS: Thank you, your Honor. I
16 appreciate that.

17 EXAMINER PRICE: Any other motions for
18 the Bench? Mr. Fisk.

19 MR. FISK: Thank you, your Honor. Yes.
20 Sierra Club would like to make a motion to compel the
21 production of a document that we requested in
22 discovery. The document in question is an Excel
23 spreadsheet described by Ms. Mikkelsen during her
24 June 29 deposition, and I have a copy of the
25 transcript if your Honors would like it.

1 The spreadsheet in question, based on --
2 obviously, we have not seen it, but based on the
3 description at the deposition is an evaluation of the
4 impacts of ESP IV with the modified rider RRS on the
5 companies' credit metrics.

6 We requested production of that
7 spreadsheet in a discovery request, Sierra Club Set
8 15, Interrogatory 1 -- Interrogatory 178 -- RPD --
9 I'm sorry, Interrogatory 178. The companies did not
10 produce the spreadsheet in their discovery responses
11 that we received at 5 o'clock on Friday.

12 We sent -- attempted to resolve the issue
13 over the weekend with an exchange of letters. The
14 company has stood by their objection that the
15 spreadsheet is not relevant.

16 We believe that it is relevant and should
17 be produced for at least three reasons. First, the
18 spreadsheet is relevant because it relates to the
19 provisions of the modified rider RRS proposal. As I
20 mentioned, the spreadsheet addresses how the ESP IV
21 with the modified proposal would impact the credit
22 metrics of the companies.

23 The spreadsheet that contains an
24 evaluation of the proposal's financial impacts is
25 plainly relevant to the Commission's consideration of

1 the proposal, and to the scope of the evidentiary
2 hearing identified in the June 3 entry saying that
3 the hearing was limited to the provisions of and
4 alternatives to the modified rider RRS proposal.

5 The second reason that we believe that
6 the spreadsheet is relevant and should be produced is
7 that in her deposition, Ms. Mikkelsen testified that
8 improving the companies' credit metrics is one of the
9 benefits of the modified RRS proposal. Given that
10 FirstEnergy's witness claimed this is a benefit of
11 their proposal, the parties are certainly entitled to
12 discovery on that benefit.

13 And third, even if FirstEnergy had not
14 made that claim in the deposition, the parties are
15 still entitled to seek information about the
16 proposal's financial impact on the companies.

17 The companies project that modified rider
18 RRS would result in their revenue being reduced by
19 \$623 million net present value, \$976 million nominal,
20 from 2019 through May 31, 2024. If that projection
21 were to actually come true, this would obviously
22 affect the company's finances and their credit
23 metrics and because customers are affected by the
24 companies' financial health, this type of financial
25 information regarding the credit metric impacts of

1 the ESP IV with a modified proposal is relevant to
2 the Commission's consideration of the proposal.

3 So for each of those reasons, we would --
4 we would request that your Honors grant the motion to
5 compel and FirstEnergy to produce the spreadsheet.

6 EXAMINER PRICE: Ask you a question about
7 your second point.

8 MR. FISK: Yes.

9 EXAMINER PRICE: I don't recall that
10 being in her actual testimony. You are saying she
11 made the statement in the deposition?

12 MR. FISK: Yes.

13 EXAMINER PRICE: And she made -- I mean,
14 did she volunteer that or did somebody ask her
15 whether that was a -- a benefit?

16 MR. FISK: The relevant conversation,
17 would your Honors like copies of the transcripts?

18 EXAMINER PRICE: If you want -- for now
19 go ahead and read it.

20 MR. FISK: Okay. Page 122, line 20, and
21 this was -- this was questioning done by, I believe,
22 by Ms. Willis. It says "Can you tell me what are the
23 benefits of the proposal to the FirstEnergy
24 utilities?"

25 Mr. Kutik had an objection.

1 Ms. Willis's -- and then the answer,
2 starting on page 123, discusses a number of benefits
3 including "The utilities are benefited, as we
4 discussed earlier, by additional inflow of cash in
5 the early years which would help to improve their
6 credit metrics of the early years in the proposal.
7 The utilities will be benefited by having the influx
8 of cash which will help them invest in things that
9 could include things like the grid modernization
10 plan, the investment in renewable resources in the
11 state of Ohio, or potentially battery technologies.
12 There may be others. Those are the benefits that
13 come to mind now."

14 EXAMINER PRICE: Thank you.

15 Ms. Willis.

16 MS. WILLIS: Yes. OCC also had requested
17 that information in a data request to the company and
18 we were also given the same response. We support the
19 motion to compel. And additionally, your Honor, an
20 additional reason, and I think a compelling reason,
21 is that the -- the -- that information is consistent
22 with the obligations of the company to provide
23 information, pro forma financial projections on the
24 effect of the ESP's implementation on the electric
25 utility for the duration of the ESP, and that's found

1 under the Ohio Administrative Code rules
2 4901:1-35-03(C) (2) .

3 So it is information that is required to
4 be filed with an ESP, so certainly it's consistent
5 with the Excel spreadsheets showing that the
6 financial projections are consistent with the rules
7 the Commission has with respect to ESP plans and
8 being able to have the financial information
9 available with respect to the impact of the ESP on
10 the companies' financial projections.

11 EXAMINER PRICE: Ms. Petrucci.

12 It was designed by a Michigan graduate.

13 MR. FISK: Michigan State.

14 MS. PETRUCCI: There we go.

15 I would also like to note on the record
16 that P3 EPSA also requested, during discovery, a copy
17 of the Excel spreadsheet that Sierra Club and OCC
18 have discussed already.

19 We did allow the company, when we
20 followed up after getting the same answer, we
21 followed up and we asked that it be responded to by
22 noon today, but given the fact that the motion is
23 being raised at this point, I wanted to note on the
24 record we also support it.

25 EXAMINER PRICE: Mr. Kutik.

1 MR. KUTIK: Your Honor, part of the
2 companies' position here is hindered by the fact that
3 these requests are being made under a very quick time
4 frame and over a weekend, so that our ability to be
5 coordinated between our rates personnel and legal has
6 been less than we would like it to be.

7 But, in essence, let me make three
8 points. First, with respect to Ms. Willis's point
9 about the updated forecasts. ESP cases last a long
10 time, as this case is certainly testament to, and the
11 company certainly isn't under any open obligation to
12 modify its forecasts based upon its changes in its
13 proposal, other parties' changes to the proposal,
14 staff changes to the proposal. We filed our
15 proformas when we filed our application. That's what
16 we are required to do. That's what we did do.
17 That's No. 1.

18 No. 2, with respect to the issue of
19 relevance, as Ms. Mikkelsen testified in her
20 deposition, she did not see this spreadsheet prior to
21 her testimony. She did not rely upon it in
22 formulating her testimony. And she's not relying on
23 it now.

24 Ms. Mikkelsen was asked in her deposition
25 in a question just before the one that was pointed

1 out by counsel, she was pointed to her testimony
2 about -- "...on page 4, lines 16 through 17, you
3 indicate that 'Rider RRS will continue to provide all
4 the rate stabilization benefits recognized in the
5 order, but without reliance on the PPA.' Can you
6 identify for me what the rate stabilization benefits
7 you are referring to there?" And she gave an answer.
8 She said nothing about credit mechanism.

9 She was then asked the question which,
10 again, isn't in her testimony. "Can you tell me what
11 are the benefits of the proposal to the FirstEnergy
12 utilities?" And then she went on and she indicated,
13 among other things, it would help credit metrics.
14 And she was asked how does she know that, and then
15 this -- this spreadsheet was discussed.

16 So it's not relevant because it is not
17 something that the company is relying on. It was
18 never something the company was relying on and
19 there -- and it's not part of the companies' case.

20 Further, it is not an analysis of the
21 companies' financial health per se. What it is is an
22 analysis of two specific metrics; one, that is used
23 by Moody's, called "cash from operations to debt;"
24 and one that's used by S&P called "future funds from
25 operations FFO to net." That's what's shown.

1 Now, in looking at this last night with
2 Ms. Mikkelsen and others, what we -- what we learned
3 is that that information that's on this document is
4 actually material, not public information, that we
5 cannot disclose, because there are only two people in
6 the entire world or two groups of people in the
7 entire world who would know this information. One is
8 FirstEnergy and two is either Moody's or S&P because
9 there are very sensitive ways of calculating that.
10 So you can't get this information from looking at our
11 financial statements and you can't get the
12 information in looking at Moody's.

13 So this information hasn't even been
14 shared with Moody's or hasn't been shared with S&P
15 and we could not share this information with anyone
16 even if we did.

17 So given the fact that this information
18 is not relevant it's not something we are relying on
19 and we couldn't produce it even if you ordered us to,
20 we should not have to produce it and the motion
21 should be denied.

22 EXAMINER PRICE: One second. The issue
23 isn't admissibility. The test is whether it's
24 reasonably calculated to lead to admissible evidence
25 which is a pretty low bar. Can you explain how this

1 is not reasonably calculated to lead to admissible
2 evidence even if she didn't rely upon it? I get it
3 may not be admissible.

4 MR. KUTIK: Well, again, your Honor, this
5 is the company's calculation of its version of two
6 credit metrics which hasn't been shared with anyone.
7 It is not something that we would disclose. It's not
8 something that we intended to disclose. This was not
9 something that, you know, would be part of the
10 evidence in this case. So since we couldn't disclose
11 it to anyone anyway, we can't rely upon it. It can't
12 be admissible.

13 EXAMINER PRICE: Why -- we've got two
14 levels of protective agreements -- orders in this
15 case, one was the super competitive. Why is that not
16 sufficient to protect your interests?

17 MR. KUTIK: Because that protective order
18 does not include sufficient protections against
19 making sure that individuals would represent to us in
20 the world that they would not trade on this
21 information. Without that type of information and
22 that type of assurance we would -- we believe that we
23 could be potentially subject to federal securities
24 law violations and so we would not produce it.

25 EXAMINER PRICE: Can you write a revised

1 protective order for people who are willing to say
2 they will not trade on this?

3 MR. KUTIK: No, we would not do this
4 because it doesn't give us sufficient protection,
5 your Honor, to make sure we could indeed represent
6 our -- or protect ourselves against claims of federal
7 securities laws violations.

8 What I would be willing to do, your
9 Honor, is I would -- I would be willing to provide
10 this document with all that information redacted and
11 I could -- I would be willing to show you in -- in
12 camera what I would be willing to do with the
13 document.

14 EXAMINER PRICE: Okay. One last question
15 for you. You indicated that you have not had enough
16 time to coordinate with the rates department. If we
17 defer dealing with this issue until tomorrow, will
18 that help?

19 MR. KUTIK: No, your Honor. I guess what
20 I am saying is our -- I don't want anyone to argue
21 that somehow we have waived our right to assert that
22 it was material and nonpublic information because,
23 frankly, we didn't have the opportunity to sit down
24 with the witness and others in the company, with
25 counsel, to understand the significance of this

1 information.

2 EXAMINER PRICE: Okay. Ms. Willis.

3 MS. WILLIS: Your Honor, this was -- this
4 was written discovery served within the -- within the
5 discovery time frame so it was served before the
6 cutoff for discovery. The responses were due this
7 week before the weekend. There was no objection made
8 when the -- when the written responses came back.
9 There was no objection made with respect to this
10 being super confidential and there was no objection,
11 whatever. It was that objection was waived. The
12 failure to raise an objection in response to written
13 discovery waives the objection.

14 They should not be permitted now to
15 change a written discovery response having nothing to
16 do with the weekend. They had a full week which was
17 consistent with your Honor's discovery schedule to
18 respond to discovery. They did not object on the
19 basis that we are hearing today. This is the very
20 first we've heard this. So I believe they've waived
21 their right to object at this point, your Honors.

22 MR. KUTIK: Your Honor, we don't waive
23 our right to protect ourselves against violations of
24 the law.

25 EXAMINER PRICE: Mr. Fisk.

1 MR. FISK: I would -- I would share with
2 Mrs. Willis's explanation of why it's improper to
3 come up with this last-minute objection to producing
4 the spreadsheet. And I believe that in terms of the
5 confidentiality issue there are two -- there is an
6 NDA in this proceeding that should adequately protect
7 the companies. We would be willing to consider
8 reasonable amendments to that as necessary, but we
9 don't -- I do not believe that the information cannot
10 be produced subject to some sort of an NDA.

11 You know, if the spreadsheet discusses
12 CFO to debt, FFO to debt, these are issues that
13 Moody's and S&P discuss in their -- in their reports,
14 their credit reports on FirstEnergy and FirstEnergy
15 Corp. So those numbers, you know, come out
16 through -- through those reports.

17 As for relevance, I believe it could
18 reasonably be calculated to lead to admissible
19 evidence. The fact that Ms. Mikkelsen did not
20 specifically talk about credit metrics in her
21 testimony and did not specifically reference these
22 spreadsheets is certainly not the standard for
23 whether something is discoverable.

24 The simple reality is there is an
25 analysis the company has of the impact of the

1 proposal and ESP IV on their credit metrics that is
2 an issue that is directly relevant to whether this
3 proposal should be approved by the Commission to
4 become even more relevant since the staff has filed
5 its own proposal discussing a new proposal that would
6 address credit metrics issues with regards to the
7 companies and FirstEnergy Corp.

8 So for all those reasons, we believe that
9 the information is relevant and can be produced in a
10 way that will protect whatever interests the
11 companies have.

12 EXAMINER PRICE: At this time we are
13 going to defer ruling on this. We will review this,
14 the redacted version, in camera over lunch, so when
15 we get to lunch let's discuss that and we'll --

16 MR. KUTIK: So you would like us to
17 provide you with the redacted version?

18 EXAMINER PRICE: Yes, yes. And we will
19 review that over lunch and we will get back to you.

20 Any other motions, Mr. Fisk? Let's go on
21 the record on the confidential issues

22 MR. FISK: Yes. My understanding, based
23 on discussions off the record, the confidentiality
24 issue was going to be addressed by Mr. Kutik so.

25 EXAMINER PRICE: Yeah.

1 MR. KUTIK: I'm not sure.

2 MR. FISK: On the PUCO -- on the staff
3 DR34 and 35.

4 EXAMINER PRICE: We don't say "PUCO"
5 around here.

6 MR. FISK: Sorry.

7 EXAMINER PRICE: Okay. Just to -- just
8 to recap where we were. Off the record, Sierra Club
9 had asked whether the confidentiality claims with
10 respect to the staff data requests would be waived.
11 I believe the company said they would waive those.

12 MR. KUTIK: With respect to the specific
13 request, yes. There were objections within those
14 responses which we will still stand on but the
15 document itself, the response itself, we would be
16 willing to waive the confidentiality on that as well
17 as Ms. Mikkelsen's deposition transcript on that as
18 well.

19 MS. BOJKO: And, your Honor, as well as
20 the testimony of Staff Witness Buckley who cited
21 those data requests?

22 MR. KUTIK: Yes. We would be willing to
23 waive that, your Honor.

24 MS. BOJKO: Thank you.

25 EXAMINER PRICE: Make your life easier.

1 OCC.

2 MR. MICHAEL: Your Honor, Bill Michael
3 from OCC. OCC moves to strike the rehearing
4 testimony of Ms. Mikkelsen in its entirety as
5 admitting it would violate Ohio Revised Code 4903.10.
6 That statute provides that the Commission shall not,
7 upon such rehearing, take any evidence that, with
8 reasonable diligence, could have been offered upon
9 the original hearing. So rehearing is limited to
10 evidence already taken unless additional evidence
11 could not, with reasonable diligence, been offered in
12 the original hearing.

13 The companies could have and should have
14 offered Ms. Mikkelsen's rehearing testimony during
15 the original hearing had they exercised minimal
16 diligence, let alone reasonable diligence.

17 OCC Witness Ramteen Sioshansi spent no
18 less than five pages of his direct testimony
19 explaining how FirstEnergy's proposal violated FERC
20 rules. And your Honor, that testimony can be found
21 in the Sioshansi direct at pages 29 through 34 that
22 was filed in December of 2014.

23 Witness Sioshansi pointed out the
24 premises underlying FirstEnergy's waiver, which they
25 had relied on, that retail customers are not captive

1 and the presence of a state-mandated procurement
2 process subjecting affiliate transactions to
3 transparent and competitive bidding were not true in
4 connection with FirstEnergy's proposed PPA.

5 Quoting Witness Sioshansi. In the case
6 of the common --

7 MR. KUTIK: Your Honor, I must --

8 MR. MICHAEL: Can I finish my argument,
9 your Honor?

10 MR. KUTIK: Can I explain why I'm
11 interrupting?

12 MR. MICHAEL: Yes.

13 MR. KUTIK: Because you are going to
14 quote stuff that's been withdrawn.

15 MR. MICHAEL: OCC did not withdraw
16 that --

17 MR. KUTIK: Yes, you did.

18 MR. MICHAEL: -- testimony. I haven't
19 even read it, so I don't know how you would know.

20 EXAMINER PRICE: Why doesn't he make his
21 record and then you can address the withdrawal part.

22 MR. MICHAEL: Thank you, your Honor.

23 EXAMINER PRICE: Page and line, please.

24 MR. MICHAEL: Page 31, line 19, through
25 page 32, line 5.

1 EXAMINER PRICE: You can go ahead and
2 quote it.

3 MR. MICHAEL: Thank you, your Honor.

4 "In the case of the Companies' proposed
5 PPA and Rider RRS, however, retail customers would
6 have no market-based alternative if the PPA proves to
7 be overpriced due to the non-bypassable nature of
8 Rider RRS. Moreover, as outlined in my response to
9 Q20, all of the Companies' captive monopoly customers
10 will bear the full risk of the PPA and cannot bypass
11 that risk. Because market competition cannot
12 discipline PPA costs and Rider RRS prices, it may be
13 necessary for FERC to act to address the Program's
14 deficiencies if the proposal is approved by the
15 PUCO."

16 As the PUCO is well aware, your Honor,
17 this is exactly the issue and exactly the concerns
18 that caused FERC to rescind FirstEnergy's waiver.

19 Importantly, Witness Sioshansi wasn't the
20 only one that raised these issues. Dr. Joseph
21 Bowring on behalf of the Independent Market Monitor
22 for PJM raised the issues in his December 2015
23 testimony at page 3; and Lael Campbell, on behalf of
24 the Constellation NewEnergy and Exelon Generation
25 Company, raised the issues in his December 2014

1 testimony at pages 18 and 19.

2 Instead of taking on these issues, your
3 Honor, FirstEnergy basically said they were
4 irrelevant. Only now on rehearing has FirstEnergy
5 been forced by FERC to accept the relevance. The
6 rehearing testimony is wholly in response to FERC's
7 decision to rescind FirstEnergy's --

8 EXAMINER PRICE: Can I ask you a
9 question?

10 MR. MICHAEL: Certainly, your Honor.

11 EXAMINER PRICE: Can you cite to any
12 previous instance where FERC has withdrawn the waiver
13 over a party's -- an affiliate waiver over a party's
14 objections?

15 MR. MICHAEL: Could you please say it
16 again, your Honor, just so I understand.

17 EXAMINER PRICE: Can you cite to any
18 previous instance where FERC withdrew an affiliate
19 waiver over the holder of the waiver's objections?

20 MR. MICHAEL: Not off the top of my head,
21 your Honor. Sorry.

22 EXAMINER PRICE: Okay. So if FERC's
23 action was unprecedented, then how is it that
24 FirstEnergy with reasonable diligence should have
25 foreseen this?

1 MR. MICHAEL: Well, I am not willing to
2 say, your Honor, that it was unprecedented.

3 EXAMINER PRICE: If you can't cite it
4 today then you can't cite it today. I looked.

5 MR. MICHAEL: What I can say --

6 EXAMINER PRICE: Let me finish. You will
7 let me finish. The legal department did look for
8 this and we were unable to find a precedent. So if I
9 can't find the precedent today, then --

10 MR. MICHAEL: Well, there are certainly,
11 as your Honor would probably agree, a lot that is
12 unprecedented about this entire case. But what I
13 would say, your Honor, is that at the very least
14 three witnesses testified during the original hearing
15 that the proposal had major issues under the FERC
16 rules, as I went through them, Ramteen Sioshansi,
17 Dr. Bowring, and Lael Campbell.

18 So the degree to which it was
19 unprecedented as a legal matter, your Honor, I would
20 respectfully argue is not as germane as the testimony
21 from the witnesses, because as I said earlier, there
22 is a lot about this case that is unprecedented. And
23 the germane fact is that no less than three witnesses
24 brought this to the attention of the Commission and
25 the companies.

1 So in light of what 4903.10 says, there
2 is no colorable argument that, first, that the
3 companies were not on notice of this issue, and had
4 they exercised minimal diligence, let alone
5 reasonable diligence, they would have addressed it
6 and they decided not to.

7 EXAMINER PRICE: But they had a waiver.
8 At the time of the hearing they had a waiver, right?

9 MR. MICHAEL: At the time of the hearing
10 my understanding is they did have a waiver.

11 EXAMINER PRICE: They had a valid waiver.

12 MR. MICHAEL: Yes, you Honor. But what
13 they did not have was a nonbypassable PPA rider
14 proposal. So, again, given the nature of that
15 proposal and given the nature of the testimony that
16 FirstEnergy had no less than eight months before the
17 hearing, as I said, there was no colorable arguments
18 that they weren't aware of the problems under the
19 FERC rules in their proposals.

20 EXAMINER PRICE: I don't understand. If
21 you acknowledge that FERC has never taken this action
22 before, how that's not a colorable reason.

23 MR. MICHAEL: Because of Witness
24 Sioshansi's testimony, which they had for eight
25 months, because of Lael Campbell's testimony, and

1 because of Dr. Bowring's testimony.

2 And, your Honor --

3 EXAMINER PRICE: Two of those three
4 witnesses are not lawyers. This was a legal
5 question. Lael Campbell was testifying, giving legal
6 opinions.

7 MR. MICHAEL: Well, were that true, your
8 Honor, the fact of the matter is that various parties
9 throughout the course of this case have raised it as
10 a legal issue and briefed the issue and addressed it
11 head on. I mean, nobody in this room was under any
12 false impression that we wouldn't have to visit this
13 argument. The question is did the companies --

14 EXAMINER PRICE: The companies didn't
15 think so.

16 MR. MICHAEL: Well, they did so to their
17 peril, your Honor, under 4903.10 which says no new
18 evidence if the evidence could have been found
19 exercising reasonable diligence. The issue was
20 briefed. The issue was discussed. The issue was
21 testified about after, I forget how long the hearing
22 was because I was involved in AEP, but six or
23 eight --

24 EXAMINER PRICE: 41 days.

25 MR. MICHAEL: 41 days. Lucky you.

1 The fact of the matter is we would have
2 to basically bury our head in the sand to say that
3 the degree to which the PPA proposal was commensurate
4 with the FERC rules was not known and understood by
5 and raised by parties throughout the course of this
6 hearing.

7 So our point is, your Honor, that
8 Ms. Mikkelsen's testimony should be stricken because
9 under the statute's plain language, the testimony
10 cannot be heard because it could have and should have
11 been offered during the original hearing had first --
12 the companies exercised minimal diligence, let alone
13 reasonable diligence.

14 EXAMINER PRICE: Okay. If I were to take
15 that argument, I would say that you should not be
16 able to provide testimony regarding staff's proposal
17 because you should realize that staff may, out of the
18 blue, make this total proposal because it was a
19 possibility. There are many -- don't interrupt me
20 again. There were many claims made. Are you saying
21 the companies should have provided evidence in the
22 alternative on all of those various claims that were
23 made?

24 MR. MICHAEL: I'm suggesting, your Honor,
25 that the companies should have provided alternatives

1 to the testimony and the argument that their program
2 violated FERC rules.

3 Staff's testimony that they recently
4 filed, nobody saw coming. I mean, it's entirely --
5 it's a brand new rider and so there's absolutely --

6 EXAMINER PRICE: How, with reasonable
7 diligence, couldn't you have come up with that?

8 MR. MICHAEL: No amount of diligence
9 could have foreseen staff's alternative proposal. It
10 is a brand new rider. It doesn't even address the
11 issues that the companies raised in their original
12 case. It's got a completely different and new
13 foundation, in distinction to what happened during
14 the original phase of this case when it was argued by
15 the lawyers, briefed, and no less than three
16 witnesses testified about it.

17 EXAMINER PRICE: Mr. Kutik.

18 MR. KUTIK: Your Honor, this motion is
19 merely a rewarmed, rehash of the arguments they made
20 in their applications for rehearing or the memoranda
21 contra to their applications for rehearing.

22 As a matter of fact, Mr. Sioshansi's
23 testimony was withdrawn by him on the stand,
24 transcript pages 4413 and 4414, he specifically
25 struck page 29, line 16, to page 33, line 8, which

1 includes the quote that counsel just read that I
2 didn't want him to read because it was stricken.

3 Mr. Bowring, although he did testify
4 about federal regulatory issues, did not, to my
5 recollection, raise the issue that was before FERC in
6 the complaint.

7 Mr. Campbell, I believe, talked about
8 captive customers. I moved to strike that, your
9 Honor. And I really don't recall -- we are having --
10 we are looking up to see what your ruling was on
11 that, but I remember asking to strike because issues
12 with respect of federal law did not belong and
13 shouldn't be in this proceeding and aren't decided by
14 this body and so we didn't feel it was proper to
15 raise those and we don't feel it's proper to
16 anticipate that.

17 As I think it appears, your questions
18 seem to indicate, Counsel, the company is not
19 required to be prescient with respect to everything,
20 every proposal that might happen.

21 We had a valid waiver. We agree with
22 your observation, your Honor, we couldn't find any
23 precedent of a -- of the FERC overturning a waiver on
24 these grounds. We felt we were on strong grounds and
25 we felt we didn't have to anticipate the successive

1 legal arguments that we didn't agree with and that
2 had no precedent.

3 And so you've already ruled on this
4 issue, I believe, your Honor, with respect to our
5 application for rehearing; and the rehearing, I think
6 the Commission has also ruled on it; and for that
7 reason the motion is not well taken and should be
8 denied.

9 MR. MICHAEL: If I could respond very
10 briefly, your Honor.

11 EXAMINER PRICE: Very briefly.

12 MR. MICHAEL: Mr. Kutik is wrong that the
13 issue was decided on the recent application for
14 rehearing. As a matter of fact, the Commission
15 specifically said it could be raised now.

16 No. 2, notwithstanding Mr. Kutik's
17 description of what may or may not have happened to
18 the testimony, the fact is that they had notice of
19 the issue throughout the course of the hearing and
20 did nothing about it and chose not to do anything
21 about it.

22 Third, and next-to-final point, your
23 Honor, this isn't a matter of federal law. This is a
24 matter of state law. The statute says no new
25 evidence and you can't offer any new evidence had you

1 been able to offer it exercising reasonable
2 diligence. They did not do so. They did not
3 exercise reasonable diligence in connection with the
4 Mikkelsen rehearing testimony.

5 And lastly, your Honor, we are not asking
6 them to repression. The statute requires that they
7 exercise reasonable diligence and they didn't;
8 therefore, the testimony should be stricken. Thank
9 you.

10 EXAMINER PRICE: The motion to strike
11 will be denied. Companies are not required to
12 anticipate unprecedented actions by the FERC. The
13 Bench has researched this as thoroughly as we thought
14 as possible. We were able to come up with no prior
15 instances where FERC had withdrawn the waiver over a
16 company's -- affiliate waiver over a company's
17 objections. Certainly something that is
18 unprecedented is unforeseeable with reasonable
19 diligence. Therefore, your motion will be denied.

20 MR. MICHAEL: Thank you, your Honor.

21 EXAMINER PRICE: With that, let's go off
22 the record.

23 (Discussion off the record.)

24 EXAMINER PRICE: Let's go back on the
25 record.

1 Mr. Kutik, you may call your next
2 witness.

3 MR. KUTIK: Your Honors, we re-call
4 Eileen Mikkelsen.

5 (Witness sworn.)

6 EXAMINER PRICE: Please be seated, and
7 state your name and business address for the record.

8 THE WITNESS: Good morning. My name is
9 Eileen M. Mikkelsen, and my business address is 76
10 South Main Street, Akron, Ohio 44308.

11 MR. KUTIK: Your Honor, at this time we
12 would like to have marked two exhibits that were
13 filed in this case. First, as Company's Exhibit 197,
14 a document entitled the Rehearing Testimony of Eileen
15 M. Mikkelsen on behalf of Ohio Edison Company, The
16 Cleveland Electric Illuminating Company, and Toledo
17 Edison Company, dated May 2, 2016.

18 EXAMINER PRICE: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. KUTIK: We would also like to have
21 marked for identification as Exhibit 198, a letter
22 that was filed in this matter on May 4, 2016, from
23 Carrie Dunn, and we distributed that letter to the
24 parties this morning.

25 EXAMINER PRICE: It will also be so

1 marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. SETTINERI: Your Honor, I may, just
4 for the Bench's awareness, that P3 does have a
5 pending motion to strike exhibit --

6 EXAMINER PRICE: Oh, I know. Oh, I
7 recall.

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

9 EXAMINER PRICE: You may.

10 - - -

11 EILEEN M. MIKKELSEN

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

14 DIRECT EXAMINATION

15 By Mr. Kutik:

16 Q. Ms. Mikkelsen, do you have before you
17 what has been marked for identification Company
18 Exhibit 197 and Company Exhibit 198?

19 A. I do.

20 Q. Can you identify Exhibit 197, please?

21 A. Company Exhibit 197 is a copy of my
22 prefiled rehearing testimony in this proceeding.

23 Q. Do you have any additions or corrections
24 to make to that testimony?

25 A. I do.

1 Q. What are those?

2 A. Starting on page 9, line 18, I would like
3 to strike the words "hope to docket" and insert in
4 their place "have docketed."

5 Moving further along on line 18, I would
6 like to strike the word "all," so the sentence reads
7 "We have docketed a letter that indicates signatory
8 Parties' agreement to this proposal."

9 Q. Do you have any other additions or
10 corrections?

11 A. I do. The next correction begins on page
12 15 at line 3, and I would like to strike the
13 testimony starting at page 15, line 3, continuing
14 through page 16, line 12.

15 Q. Do you have any other additions or
16 corrections?

17 MR. SETTINERI: Excuse me. Could you
18 repeat that one, please?

19 THE WITNESS: Certainly.

20 MR. SETTINERI: Thank you.

21 THE WITNESS: I would like to strike the
22 prefiled testimony beginning at page 15, line 3,
23 continuing through page 16, line 12.

24 MR. SETTINERI: Thank you.

25 Q. Do you have any other additions or

1 corrections?

2 A. I do. On page 18, line 3, I would like
3 to strike the phrase "and subsequently approved by
4 the Commission."

5 Q. Does that cover all the additions or
6 corrections you wish to make?

7 A. Yes.

8 Q. And let me go back to the addition -- or
9 deletion of the testimony on pages 15 and 16 that you
10 just mentioned. Why are you deleting that?

11 A. The provision was included in the
12 proposal so that in order to be helpful to the
13 Commission. Instead it created confusion and
14 misunderstanding so we decided to delete this
15 provision.

16 Q. Let me now refer you to Exhibit 198 for
17 identification. What is that?

18 A. Company Exhibit 198 is a letter that was
19 docketed in this matter on May 4 of 2016 which
20 describes the support provided by the signatory
21 parties to the companies' proposal.

22 Q. Is that the letter you refer to on page 9
23 of your rehearing testimony as amended?

24 A. Yes.

25 Q. If I asked you the questions that appear

1 in Company Exhibit 197 for identification, with the
2 amendments you've made, would your answers be the
3 same?

4 A. Yes.

5 MR. KUTIK: No further questions. Thank
6 you, your Honor.

7 EXAMINER PRICE: Mr. Fisk.

8 MR. FISK: Could I request 5, 10 minutes
9 to go through my outline now that we've struck a page
10 and a half of the testimony?

11 EXAMINER PRICE: Are you first?

12 MR. FISK: I was going to be, yes.

13 EXAMINER PRICE: Yes. Let's go off the
14 record for 5, 10 minutes.

15 (Recess taken.)

16 EXAMINER PRICE: Let's go back on the
17 record.

18 Mr. Fisk.

19 MR. FISK: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Fisk:

23 Q. Good morning, Ms. Mikkelsen.

24 A. Good morning, sir.

25 Q. How are you doing today?

1 A. Fine, thank you.

2 Q. Your rehearing testimony describes the
3 companies' proposed modification to the calculation
4 of costs and revenues that would flow through rider
5 RRS, correct?

6 A. Yes.

7 Q. Okay. And can we agree to refer to the
8 modified rider proposal described in your rehearing
9 testimony as "the proposal"?

10 A. Yes.

11 Q. Okay. And can we agree to refer to the
12 version of rider RRS that was approved by the
13 Commission on March 31, 2016, as simply "rider RRS"?

14 A. Yes.

15 Q. Okay. The proposal does not involve the
16 purchase or sale of any energy, correct?

17 A. Yes.

18 Q. And the proposal does not involve the
19 purchase or sale of any capacity, correct?

20 A. Yes.

21 Q. And the proposal does not place any
22 restriction on the ability of retail customers to
23 shop for their energy, correct?

24 A. Yes.

25 Q. And the proposal does not change the

1 price that a retail customer pays to its generation
2 supplier, correct?

3 A. Yes.

4 Q. Okay. And that is true whether the
5 customer is a shopping or nonshopping customer; is
6 that correct?

7 A. Yes.

8 Q. Okay. And the proposal does not involve
9 the supply of electricity to retail customers,
10 correct?

11 A. Yes.

12 Q. Okay. And under the proposal, both
13 shopping and nonshopping customers -- I'm sorry.
14 Strike that.

15 The proposal is applicable to both
16 shopping and nonshopping customers; is that correct?

17 A. Yes.

18 Q. And the charges and credits under the
19 proposal will not be based on the actual generation
20 output of any generation plant; is that correct?

21 A. Yes.

22 Q. Okay. And the charges and credits under
23 the proposal would not be based on the actual cleared
24 capacity of any generation plant, correct?

25 A. Yes.

1 Q. Okay. And the companies' proposal does
2 not ensure the continued operation of any Ohio based
3 generation, correct?

4 A. Yes.

5 Q. And the companies' proposal would not
6 ensure the continued operation of any generation
7 whether located in Ohio or some other state, correct?

8 A. Yes.

9 Q. Okay. And the companies' proposal does
10 not provide any transmission reliability benefits,
11 correct?

12 A. To that -- to the extent that rider RRS
13 under -- pardon me. To the extent that the proposal
14 is approved and it provides predictability and
15 certainty to our customers, that may provide more
16 certainty that customers would remain situated in our
17 service territory or perhaps grow their load in our
18 service territory.

19 And to the extent that that happens, I
20 think that that may help to ensure the generation
21 assets in the area continue to operate and, in turn,
22 would provide in that fashion at least some assurance
23 of additional reliability from a transmission
24 perspective.

25 Q. But your rehearing testimony does not

1 identify any particular transmission reliability
2 benefits of the proposal, correct?

3 A. Yes.

4 MR. FISK: If we could go off for a
5 second.

6 (Discussion off the record.)

7 EXAMINER PRICE: Let's go back on the
8 record.

9 MR. FISK: We are passing around a
10 document that has previously been marked and entered
11 as Sierra Club Exhibit 89. It is Ms. Mikkelsen's
12 workpaper from November 30, 2015.

13 Q. (By Mr. Fisk) Ms. Mikkelsen, do you have
14 a document that's your workpaper from November 30,
15 2015, in front of you?

16 A. Yes.

17 Q. Okay. And you've seen this document
18 before?

19 A. Yes.

20 Q. Okay. And this document was -- was
21 created with regards to rider RRS, correct?

22 A. This document was created with respect to
23 ESP IV including rider RRS.

24 Q. Okay. So the -- if you look at the third
25 square down it says "Retail Rate Stability Rider," do

1 you see that?

2 A. Yes.

3 Q. Okay. And that -- that square which has
4 lines 10, 11, 12, and 13, the data contained therein
5 is -- was originally created with regards to rider
6 RRS?

7 A. Yes.

8 Q. Okay. And with the exception of the fact
9 that the 2016 numbers are -- are different because
10 rider RRS hasn't started, are the rest of the numbers
11 also applicable to the proposal?

12 A. Yes.

13 Q. Okay. And so line 12, "Under (Over)
14 Recovery," that line is the projected charges or
15 credits to customers under the proposal; is that
16 correct?

17 A. Yes, recognizing that the 2016 number had
18 assumed a start date of June 1 which obviously isn't
19 going to be the case.

20 Q. Okay. But for the rest of the years it's
21 still accurate? It's still the companies'
22 projections?

23 A. Yes.

24 Q. And line 11, "Projected Costs," with the
25 caveat of the June 1, 2016, start date issue, the

1 rest of the numbers there will the projected costs
2 that would be passed through to customers under the
3 proposal; is that correct?

4 A. No. The companies' proposal is that the
5 projected costs would be netted against revenues and
6 the difference between the revenues and the costs is
7 what would be passed through to customers and rider
8 RRS under the proposal.

9 Q. Okay. Okay. But the projected costs
10 that would go into that calculation of credits and
11 charges under the proposal are the numbers listed on
12 line 11 of Sierra Club Exhibit 89; is that correct?

13 A. Yes.

14 Q. Okay. And the projected market revenue
15 that would go into the calculation of charges and
16 credits under the proposal are reflected in line 10
17 of Sierra Club Exhibit 89; is that correct?

18 A. Line 10 would represent the projected
19 market revenues. The actual market revenues that
20 would end up ultimately in rider RRS would -- may be
21 different than these depending upon actual market
22 prices.

23 Q. Okay.

24 EXAMINER PRICE: I just want to make one
25 point to clarify to make sure I am not totally

1 misunderstanding this. Except for the June 1 start
2 date, the values on line 11 under your proposal will
3 stay in place forever; is that correct?

4 THE WITNESS: Yes, sir.

5 EXAMINER PRICE: Those are now fixed
6 numbers.

7 THE WITNESS: Yes, sir.

8 EXAMINER PRICE: Thank you.

9 MR. FISK: Thank you, your Honor.

10 Q. (By Mr. Fisk) And the projected market
11 revenue numbers listed on line 10 of Sierra Club
12 Exhibit 89 are based on, in part, energy and capacity
13 price forecasts that were used in the companies'
14 August 2014 application, correct?

15 A. Yes.

16 Q. Okay. And in actual implementation of
17 the proposal, the annual energy revenue that would go
18 into the calculation of charges or credits under the
19 proposal would be forecast as described in footnote 1
20 on page 8 on your rehearing testimony; is that right?

21 THE WITNESS: I'm sorry. May I ask that
22 question be reread, please?

23 EXAMINER PRICE: You may.

24 (Record read.)

25 A. Footnote 1 describes how energy revenue

1 would be forecasted for the original rate that is
2 placed into effect. That rate would be trued up
3 based on actual day-ahead of LMP prices throughout
4 the year.

5 Q. Okay. So the forecast is -- is described
6 in that footnote 1 and then the true-up is then
7 described on page 7, lines 18 to 22, correct?

8 A. Yes.

9 Q. Okay. And both the forecasted annual
10 energy revenues and the quarterly true-up would be
11 based on energy prices at the AEP Dayton Hub; is that
12 correct?

13 A. Yes.

14 Q. And if you could go back to Sierra Club
15 Exhibit 89, the workpaper, the projected market
16 revenue listed in line 10 was based, in part, on
17 projected energy revenues from the sale of energy
18 from Sammis and Davis-Besse; is that right?

19 A. Yes.

20 Q. Okay. And the energy revenues from the
21 sale of energy from Sammis and Davis-Besse were based
22 on projected energy prices at the Sammis and
23 Davis-Besse nodes, correct?

24 A. Yes.

25 Q. Okay. And do you know whether those

1 nodal prices were based on a projected energy price
2 for the ATSI zone plus a nodal adjustment?

3 A. I don't know.

4 Q. Okay. Back to Sierra Club Exhibit 89,
5 line 12 projects that customers would incur charges
6 under the proposal through 2018, correct?

7 A. Yes.

8 Q. Okay. And the total charges for 2017 and
9 2018 are projected at \$259 million in nominal
10 dollars; is that correct?

11 A. Yes.

12 Q. Okay. And that is \$219 million in net
13 present value dollars; is that right?

14 A. Yes.

15 Q. Okay. And under the proposal those
16 charges would be paid to the companies by customers,
17 correct?

18 A. Yes.

19 Q. And so the companies are projecting that
20 they would receive, from customers, \$259 million in
21 cash in 2017 and 2018 under the proposal, correct?

22 A. Yes.

23 Q. Okay. And if the charges to customers
24 ended up being higher than projected in Exhibit -- in
25 Sierra Club Exhibit 89, the companies would receive

1 more cash, correct?

2 A. Yes.

3 Q. And if you could turn to your rehearing
4 testimony, page 12, lines 1 through 7, in that
5 question and answer you identify various initiatives
6 such as modernizing the distribution grid battery
7 resources and Ohio renewable resources that the cash
8 collected from customers by the companies under the
9 proposal could be invested in, correct?

10 A. Yes.

11 Q. Okay. And the companies are not willing
12 to commit to spending any cash collected under the
13 proposal only on the initiatives listed on lines 3 to
14 7 on page 12 of your rehearing testimony, correct?

15 A. It is the companies' intention to use the
16 dollars collected in its operations whether it be for
17 investments in advanced meter infrastructure,
18 distribution automation, Volt/VAR control, investment
19 in battery resources, or investment in renewable
20 resources, or other business purposes such as funding
21 the pension or, I guess, any other operations.

22 Q. Okay. But my question was are the
23 companies willing to commit to spending any cash
24 collected under the proposal only on the initiatives
25 listed --

1 MR. KUTIK: Objection.

2 Q. -- on page 12, lines 3 through 7 of your
3 rehearing testimony?

4 MR. KUTIK: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. KUTIK: Asked and answered.

7 MR. FISK: Different question.

8 Ms. Mikkelsen said the companies' intention, but the
9 intention is different whether they are willing.

10 MR. KUTIK: He asked the same question
11 twice in a row.

12 EXAMINER PRICE: He is trying to get an
13 actual answer to his question. Overruled.

14 A. The commitment that the company is making
15 is that its intention is to use the cash for its
16 operations as we've discussed.

17 MR. FISK: Your Honor, I would move to
18 strike that response and the previous response as
19 nonresponsive. My question is targeted as whether
20 the company is willing to commit to certain spending,
21 not what the companies' intentions may or may not be.

22 MR. KUTIK: She explained what her
23 commitment is.

24 EXAMINER PRICE: I believe she explained
25 what her commitment is. That is as far as you are

1 going to be able to get her to commit. Denied.

2 MR. FISK: Thank you. May we approach?

3 EXAMINER PRICE: You may.

4 MR. FISK: Yes. Passing around the
5 transcript of the deposition that was taken of
6 Ms. Mikkelsen on Wednesday, June 29, in this
7 proceeding.

8 Q. (By Mr. Fisk) Ms. Mikkelsen, do you
9 recall being deposed in this proceeding on Wednesday,
10 June 29?

11 A. Yes.

12 Q. And you were under oath during that
13 deposition; is that correct?

14 A. Yes.

15 Q. Okay. And do you now have a copy of the
16 transcript of that deposition in front of you?

17 A. Yes.

18 Q. Okay. And if you could turn to page 49
19 of that transcript. And specifically starting on
20 line 23. There's a question, it says "Okay. And are
21 the companies willing to commit to spending the cash
22 collected under the proposal only on such initiatives
23 that are listed on lines 3 through 7 of page 12 of
24 your testimony?"

25 Request from Mr. Kutik to have the

1 question read. And then there is an answer, starting
2 on line 6 of page 50. It says "If by 'commit' you
3 mean only spend on the items listed here and nothing
4 else, then no." Did I read that correctly?

5 MR. KUTIK: Objection.

6 EXAMINER PRICE: Grounds?

7 MR. KUTIK: Improper impeachment; not
8 inconsistent with her answer.

9 EXAMINER PRICE: You may respond.

10 MR. FISK: Yeah. I believe she varied
11 her answer at deposition. She -- I specifically
12 asked both today and at the deposition whether the
13 companies would commit to spending only on the
14 projects listed on lines 3 through 7 on page 12 of
15 her rehearing testimony. At the deposition she said
16 no, they would not commit to that. Today, she's
17 focused only on what the companies' intentions may or
18 may not be.

19 MR. KUTIK: Her deposition testimony
20 before this snippet of the transcript indicated
21 exactly what she said.

22 EXAMINER PRICE: I believe the witness is
23 answering two different ways but is using different
24 words but saying the same thing, and in her statement
25 today she said that they were willing to spend it

1 on -- intend to spend it on operations. The answer
2 to your question was these things -- she qualified
3 her answer and said "only spend on the items listed
4 here and nothing else, then no."

5 Obviously, in her mind, "operations" was
6 a more expansive answer than the items you had
7 previously listed. For example, I don't believe
8 pension payments was listed in the deposition
9 transcript. That was one of the things she raised as
10 what they would consider operations, so it's --

11 MR. KUTIK: So is my objection sustained,
12 your Honor?

13 EXAMINER PRICE: Your objection is
14 sustained.

15 MR. KUTIK: Thank you.

16 MR. FISK: If I may?

17 EXAMINER PRICE: You may.

18 MR. FISK: I believe the distinction
19 being made is the difference between intentions and
20 commitments. And simply saying that the companies
21 intend to do something is in no way binding on them
22 to do that as opposed to committing to doing
23 something.

24 EXAMINER PRICE: And I think that's
25 perfectly clear from the record.

1 MR. FISK: Thank you, your Honor.

2 Q. (By Mr. Fisk) Ms. Mikkelsen, the
3 companies are not willing to spending a portion of
4 any cash collected under the proposal on the
5 initiatives listed on lines 3 to 7 on page 12,
6 correct?

7 A. It is the companies' intention to spend
8 the dollars collected under rider RRS on this --
9 these things and the other things we've discussed
10 earlier.

11 Q. Okay. May I refer you to page 51 of your
12 deposition transcript. Starting at line 10.

13 "Question: And are the companies willing
14 to commit to spending a portion of the cash collected
15 under the proposal on the initiatives identified in
16 lines 3 through 7 on page 12 of your rehearing
17 testimony?"

18 "Answer: No."

19 Did I read that correctly?

20 MR. KUTIK: Same objection.

21 EXAMINER PRICE: Overruled this time.
22 She didn't qualify her answer as well in the second
23 response than she did in the first one.

24 MR. FISK: Thank you, your Honor.

25 Q. The companies have not developed or

1 reviewed any plans regarding how they would use any
2 cash collected under the proposal, correct?

3 A. Yes.

4 Q. And the companies have not identified
5 specific projects to fund with any cash collected
6 under the proposal, correct?

7 A. Yes.

8 Q. Okay. And outside of your rehearing
9 testimony at page 12, lines 1 through 7, the
10 companies have not developed or reviewed any
11 financial projections regarding the distribution
12 expenditure or other use of any cash collected under
13 the proposal, correct?

14 MR. KUTIK: May I have the question read,
15 please.

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. The companies have filed a grid
19 modernization business plan before the Commission
20 which includes estimates under a range of scenarios
21 of expenditures so.

22 MR. KUTIK: Have you completed your
23 answer?

24 THE WITNESS: Yes.

25 MR. KUTIK: Okay.

1 MR. FISK: May we approach?

2 EXAMINER PRICE: You may.

3 MR. FISK: And may we mark this Sierra
4 Club Exhibit 97? Have I got that right?

5 EXAMINER PRICE: It will be so marked.
6 97 is correct.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Mr. Fisk) Okay. Ms. Mikkelsen, you
9 have been handed a document that's been marked Sierra
10 Club -- marked as Sierra Club Exhibit 97. And this
11 is the response to Sierra Club Set 13-RPD-159; is
12 that correct?

13 A. Yes.

14 Q. Okay. And have you seen this document
15 before?

16 A. Yes.

17 Q. Okay. Were you responsible for providing
18 the response to this document?

19 A. It doesn't list a witness. This document
20 doesn't list a witness responsible for the provision
21 of the document.

22 Q. Okay. But were you involved in
23 responding to this document?

24 A. Yes.

25 Q. And the request is to "Produce any

1 financial projections that the companies have
2 developed or reviewed regarding distribution,
3 expenditure, or other use of any of the cash
4 associated with Modified Rider RRS charges"; is that
5 correct?

6 A. Yes.

7 Q. Okay. And after the objection, the only
8 substantive response provided is in reference to
9 page 12, lines 1 through 7 of your rehearing
10 testimony; is that correct?

11 A. Yes.

12 Q. So you did not identify or produce in
13 response to this request, this grid modernization
14 plan that you are referencing today; is that correct?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Well, it's arguing with the
18 witness, your Honor, and fencing over the companies'
19 objections to this document. It indicated that the
20 request is vague and ambiguous, among other things,
21 "in its use of 'financial projections.'" The
22 companies shouldn't discern what -- what's trying to
23 be discerned or requested, so the companies properly
24 referred Sierra Club back to the companies'
25 testimony.

1 MR. FISK: Your Honor, I mean, I think
2 it -- the phrase "financial projections" I think is
3 pretty clear in a case that involved financial
4 projections of diverse things throughout the last two
5 years and the simple reality is they did not identify
6 any responsive documents and simply referred back to
7 Ms. Mikkelsen's testimony and now she is suddenly
8 identifying additional things.

9 EXAMINER PRICE: But her testimony at
10 line 4 states capital expenditure necessary to
11 modernize the companies' distribution grid through
12 AMI, distribution automation, and Volt/VAR controls,
13 which I believe are a part of their SmartGrid
14 application.

15 MR. FISK: But there was no -- there was
16 no identification they were relying on any financial
17 projections included in that application.

18 MR. KUTIK: That's the point of my
19 objection. He is arguing with our response as
20 opposed to what the witness's response is which is
21 what we should be talking about and examining.

22 EXAMINER PRICE: I am going to sustain
23 the objection.

24 Q. (By Mr. Fisk) And the companies -- with
25 regards to this grid modernization filing that you

1 reference, the companies have not proposed in that
2 proceeding to fund any grid modernization efforts
3 with cash collected under the proposal, correct?

4 MR. KUTIK: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. KUTIK: Relevance. What's going to
7 happen in the grid modernization program and case is
8 in that case, not in this case.

9 EXAMINER PRICE: I think the question is
10 confusing. They made their filing some months ago.
11 After they made the grid modernization filing, they
12 filed this. So I think you have your time sequence
13 backwards. The grid modernization filing, they
14 didn't know -- when they made the grid modernization
15 filing they didn't know they would be making this
16 proposal. You see what I am saying?

17 MR. FISK: I see what you are saying, but
18 the docket is still open in that proceeding. They
19 could certainly -- if they were planning to use --

20 EXAMINER PRICE: Why not ask her that
21 question. Don't reference back to when they made the
22 filing. Ask the question now. Do you intend to use
23 the funds, at least in part, to fund the grid
24 modernization project.

25 MR. FISK: Okay. I can ask that

1 question.

2 EXAMINER PRICE: Go ahead.

3 Q. (By Mr. Fisk) Are the companies willing
4 to commit to using any cash collected under the
5 proposal to furnish any of the grid modernization
6 efforts identified in the companies' grid
7 modernization filing that you referenced --

8 MR. KUTIK: Objection, asked and asked.

9 Q. -- a couple of questions ago?

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

12 EXAMINER PRICE: Sustained.

13 MR. FISK: Your Honor, I have never
14 gotten an answer to that question.

15 EXAMINER PRICE: They are not willing to
16 commit to anything. The record is abundantly clear
17 that they are not willing to commit the specific cash
18 from this specific rider will be used for this
19 specific purpose.

20 MR. FISK: Okay.

21 EXAMINER PRICE: I'll ask the question.
22 Is the company unwilling to commit the specific cash
23 from this specific rider will be used for the -- to
24 pay for the gird modernization program?

25 THE WITNESS: Yes.

1 EXAMINER PRICE: You are unwilling to
2 commit.

3 THE WITNESS: That's what I am saying.

4 EXAMINER PRICE: Okay. Thank you.

5 MR. FISK: I am sorry. Was that a "yes"?

6 EXAMINER PRICE: Yes, they are unwilling
7 to make that commitment.

8 MR. FISK: Okay. Thank you.

9 EXAMINER PRICE: Now, I have got a
10 follow-up, but money is fungible, right? You will
11 have money coming in from this rider, money coming in
12 from other distribution operations, none of that
13 undermine your commitment, if the Commission approves
14 the SmartGrid application, to go forward with
15 whatever the Commission approves; is that correct?

16 THE WITNESS: That's correct.

17 MS. BOJKO: Your Honor, may I have your
18 question reread?

19 EXAMINER PRICE: You may.

20 (Record read.)

21 MR. FISK: Thank you, your Honor.

22 EXAMINER PRICE: Thank you.

23 Q. (By Mr. Fisk) The companies are not
24 proposing that the Commission will be able to in any
25 way review how cash collected from customers under

1 the proposal would be spent, correct?

2 A. Yes.

3 Q. And you cannot tell me what factors the
4 companies will look at to determine how to use the
5 cash collected under the proposal, correct?

6 A. Yes.

7 Q. And the companies are not willing to
8 commit to using any cash collected under the proposal
9 only within the companies, correct?

10 A. Yes.

11 Q. And the companies are not proposing to
12 segregate any revenue and cash received under the
13 proposal from the companies' revenue and cash,
14 correct?

15 THE WITNESS: May I ask to have that
16 question reread, please.

17 EXAMINER PRICE: You may.

18 (Record read.)

19 A. Yes.

20 Q. And a separate accounting number will not
21 be created for cash received under the proposal; is
22 that correct?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: I am not sure what

1 "accounting number" means.

2 EXAMINER PRICE: She can answer if she
3 knows. Overruled.

4 A. The revenue will be recorded in the
5 retail revenue accounts of the distribution
6 utilities. There will be recording of the RRS
7 revenues under a separate general ledger account in
8 order to provide for the tracking necessary to
9 implement the true-ups called for in the -- the
10 quarterly true-ups in the Commission's order.

11 Q. And the companies are not willing to
12 commit to putting any cash associated with the
13 proposal into a segregated account from which funds
14 could not be distributed to FirstEnergy Corp.,
15 correct?

16 A. Yes.

17 Q. Okay. And the companies are not willing
18 to commit to putting any cash associated with the
19 proposal into a segregated account from which funds
20 could not be distributed to any affiliate of
21 FirstEnergy Corp. besides one of the three companies;
22 is that correct?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: That assumes that the company

1 has the ability to give funds to other affiliates.

2 EXAMINER PRICE: Sustained. I don't
3 think they can just write a check to FES directly.

4 MR. FISK: Right. Fair enough.

5 Q. (By Mr. Fisk) And the companies can move
6 the monies received under the proposal to FirstEnergy
7 Corp. via dividends, correct?

8 A. The dollars received by the company, the
9 cash, is not, you know, specifically painted, if you
10 will, to say these are rider RRS dollars versus other
11 dollars, so I'm not sure in that context how to
12 respond to your question, sir.

13 Q. Okay. If you could refer to your
14 deposition transcript page 187. Starting on line 13.
15 This is a question that says "Move -- okay. And in
16 what ways can the electric distribution companies
17 move the monies they receive under rider -- monies
18 that they receive to FirstEnergy Corp.?"

19 "Answer: --

20 MR. KUTIK: I'm sorry, where are you
21 reading from?

22 MR. FISK: Line 13 on 187.

23 Q. "Answer: Via a dividend."

24 Did I read that correctly?

25 MR. KUTIK: Well, I'll object, your

1 Honor.

2 EXAMINER PRICE: Grounds?

3 MR. KUTIK: Improper -- improper
4 impeachment.

5 EXAMINER PRICE: I am hoping he is going
6 to ask another question because it's not the same
7 question you asked.

8 MR. FISK: Well, I asked whether monies
9 received under the rider could --

10 MR. KUTIK: It doesn't say "the rider."

11 EXAMINER PRICE: I think it says the
12 "the." Your last question, that wasn't your last
13 question to the witness.

14 MR. FISK: The companies can move the
15 monies received under the proposal to FirstEnergy
16 Corp. via dividends was my question.

17 EXAMINER PRICE: What was his last
18 question to the witness before the impeachment?

19 (Record read.)

20 EXAMINER PRICE: I'm sorry. I misheard
21 your question. Overruled.

22 MR. FISK: Thank you.

23 Q. (By Mr. Fisk) And the proposal does not,
24 in any way, limit the ability of the companies to pay
25 dividends to FirstEnergy Corp., correct?

1 A. Yes.

2 Q. And the companies are not willing to
3 commit that they will not use cash collected under
4 the proposal to provide dividends to FirstEnergy
5 Corp., correct?

6 A. Yes.

7 Q. And the companies are not willing to
8 commit that they will not factor any cash collected
9 under the proposal into the decision whether to
10 provide dividends to FirstEnergy Corp., correct?

11 A. Yes.

12 Q. Now, FirstEnergy Corp. has stated that it
13 does not intend to go invest any additional dollars
14 in FirstEnergy Solutions, correct?

15 A. Yes.

16 Q. You are not, however, aware of any
17 prohibition in the proposal on FirstEnergy Corp.'s
18 ability to move monies -- monies to FirstEnergy
19 Solutions, correct?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Relevance.

23 EXAMINER PRICE: I am going to give him a
24 little leeway. Overruled.

25 A. Correct.

1 Q. The collection of revenues under the
2 proposal would improve some of the credit metrics for
3 the companies that credit rating agencies look at in
4 rating a company, correct?

5 A. Yes.

6 Q. Okay. In particular, the increase in
7 revenues would, all else being equal, improve the FFO
8 to debt ratio, correct?

9 A. Yes.

10 Q. Okay. And conversely, a decline in
11 revenues would, all else being equal, worsen the
12 companies' FFO to debt ratio, correct?

13 A. Yes.

14 Q. And the increase in revenues would, all
15 else being equal, improve the CFO to debt ratio,
16 correct?

17 A. Yes.

18 Q. And conversely, a decline in revenues
19 would, all else being equal, worsen the companies'
20 CFO to debt ratio, correct?

21 A. Yes.

22 Q. And you do not know whether the
23 companies' collection of cash from its customers
24 under the proposal would have any impact on
25 FirstEnergy Corp.'s credit rating, correct?

1 A. I think to the extent that the companies'
2 credit metrics are improved and those results from
3 the companies' operation are consolidated into the
4 parent, results in use for credit metrics that, if
5 there is an improvement at the utility companies, it
6 would also manifest itself as an improvement at the
7 parent.

8 Q. Okay. Could I refer you to page 55 of
9 your deposition transcript. And line 17, "Question:
10 Okay. And would the collection of cash by the
11 companies from their customers under the proposal
12 have any -- have any impact on FirstEnergy Corp.'s
13 credit rating?"

14 "Answer: I don't know."

15 Did I read that correctly?

16 A. Yes.

17 Q. And it would require speculation to
18 determine whether the collection of cash by the
19 companies from customers under the proposal would
20 impact FirstEnergy Corp.'s credit rating, correct?

21 A. Yes.

22 Q. And you have not evaluated how the credit
23 rating agencies might act if the proposal were
24 approved, correct?

25 A. Yes.

1 Q. And if you could go back to Sierra Club
2 Exhibit 89, your workpaper. And looking on line 12
3 which is the "Under (Over) Recovery Line." Do you
4 see that?

5 A. Yes.

6 Q. Okay. The companies are projecting
7 credits to customers from 2019 through May 31, 2024,
8 of \$976 million in nominal dollars under the
9 proposal, correct?

10 A. Yes.

11 Q. And that is the equivalent of \$623
12 million net present value, correct?

13 A. Yes.

14 Q. And if such credits actually materialize,
15 they would reduce the cash the companies would
16 otherwise receive from customers, correct?

17 A. Yes.

18 Q. Okay. So based on the figures shown in
19 Sierra Club Exhibit 89, the companies are projecting
20 that the proposal would reduce the amount of cash
21 received by the companies from January 1, 2019,
22 through May 31, 2024, by \$976 million in nominal
23 dollars, correct?

24 A. Line 12 of Sierra Club Exhibit 89 shows
25 that over the total period of rider RRS, it's

1 expected to be a net credit to customers of \$561
2 million.

3 Q. Okay. My question was focused on
4 January 1, 2019, through May 31, 2024. You testified
5 a minute ago that the projection is that there would
6 be \$976 million in credits provided to customers
7 during that time frame, correct?

8 A. Yes.

9 Q. Okay. And that means that during that
10 time frame of January 1, 2019, through May 31, 2024,
11 the companies would receive \$976 million less cash as
12 a result of the proposal, correct?

13 MR. KUTIK: Well, I'll object as asked
14 and answered.

15 EXAMINER PRICE: Overruled.

16 A. While it may be true that is the credit
17 projected from 2019 to 2024, the companies looked at
18 the proposal in total over the entire term of the ESP
19 and in concert with the other elements of the ESP.

20 MR. FISK: Your Honor, I would move to
21 strike that answer as nonresponsive to my question
22 which was focused on whether it would be a loss of
23 cash of 976 million during a specific time frame.

24 EXAMINER PRICE: I am going to sustain
25 the objection. The evidence that -- the testimony

1 you just gave is something proper for redirect, not
2 in response to his question.

3 MR. FISK: Thank you, your Honor.

4 EXAMINER PRICE: Grant the motion to
5 strike. I am not sure if I sustained or granted it.
6 It should have been granted either way.

7 MR. FISK: Thank you, your Honor.

8 EXAMINER PRICE: Please answer the
9 question again.

10 THE WITNESS: Yes.

11 EXAMINER PRICE: I have a follow-up.
12 Even accepting you may have looked at this in the
13 totality of the term of the ESP, your projections
14 indicate a half a billion dollars plus net credit to
15 customers; is that correct?

16 THE WITNESS: Yes.

17 EXAMINER PRICE: So that will be half a
18 billion dollars plus that will not be available to
19 the company. How will the company be able to make
20 the investments in SmartGrid, in Volt/VAR, in
21 distribution automation at the same time the company
22 is providing a half a billion dollars in net credits
23 to the customers?

24 THE WITNESS: The companies looked at the
25 proposal in the context of the entire ESP. So

1 recognizing that certainly with respect to the
2 proposal there would be dollars that came into the
3 company early that could be used, as we've discussed,
4 for things like funding the SmartGrid, once those
5 investments are made, the ESP IV calls for a
6 quarterly update and a forward-looking rate with
7 respect to the investments in the SmartGrid. So
8 there will be dollars coming back in associated with
9 the revenue requirements arising from that SmartGrid
10 investment.

11 The ESP IV also includes dollars coming
12 in associated with the distribution -- rider DCR as
13 well as shared savings and other elements of the
14 proposal.

15 So when the company evaluated the
16 proposal in the totality of the ESP IV, it concluded
17 that it would be able to fund the credits that
18 occurred in the out years without harm to the
19 investments that it was likely to be directed to make
20 under the SmartGrid proposal.

21 EXAMINER PRICE: And in the event the
22 companies' projections are wrong and the company is
23 cash short at that point in making the SmartGrid
24 projection, is the company willing to commit that
25 they'll exclude from any emergency rate relief, under

1 4905.16, consideration of the credits to be provided
2 to customers under rider RRS?

3 THE WITNESS: No.

4 EXAMINER PRICE: Thank you.

5 MS. WILLIS: May I have that question and
6 answer reread.

7 EXAMINER PRICE: You may.

8 MS. WILLIS: Thank you.

9 EXAMINER PRICE: I think I misstated the
10 statute, but notwithstanding that.

11 MS. WILLIS: I would like it read back,
12 please.

13 (Record read.)

14 EXAMINER PRICE: And assuming I had
15 correctly cited the statute as 4909.16, would your
16 answer still be "no"?

17 THE WITNESS: Yes.

18 EXAMINER PRICE: Thank you.

19 Thank you.

20 MR. FISK: Thank you, your Honor.

21 Q. (By Mr. Fisk) Following up on Attorney
22 Examiner Price's question, your response to the
23 question, I want to make sure I have this correct.
24 So your -- were you saying, Ms. Mikkelsen, that the
25 companies are projecting that the return that they

1 get from investments in SmartGrid and DCR would
2 provide the revenues that would enable -- that would
3 make up for the credits that you are projecting under
4 the proposal?

5 A. In part, yes.

6 Q. And will you -- are the companies'
7 projecting that they will receive \$561 million in
8 return upon their investments in SmartGrid and DCR?

9 A. No.

10 Q. Okay. How much are they projecting that
11 they would receive?

12 MR. KUTIK: Your Honor, may I ask the
13 witness whether that answer is confidential?

14 EXAMINER PRICE: You may ask the witness
15 that question.

16 MR. KUTIK: If she knows.

17 THE WITNESS: I don't think so. I'm not
18 sure I understand, frankly, the question that's
19 pending.

20 MR. KUTIK: Yes. Would the answer be
21 confidential?

22 THE WITNESS: I haven't performed the
23 calculation.

24 Q. (By Mr. Fisk) Okay. Fair enough. And I
25 believe you said, in part, the return from the

1 SmartGrid and DCR investments would help offset the
2 credits under the proposal. What other -- what other
3 steps would be used to offset the credits from the
4 proposal?

5 A. I am going to start with I don't believe
6 I ever testified that "the return," which I think is
7 what's in your question. I think I talked about the
8 revenue requirements and the cash arising from rider
9 AMI, rider DCR, and other elements of the proposal.

10 Q. So the revenue -- oh, I'm sorry. Are you
11 finished?

12 A. Yes.

13 Q. Okay. The revenue requirements, does
14 that include something besides the return that the
15 companies would get on their SmartGrid and DCR
16 investments?

17 A. Yes.

18 Q. Okay. What else is included in that?

19 A. Typically a revenue requirement would
20 include a return of the investment, a return on the
21 investment, property taxes, associated income taxes.
22 It would or could include O&M expenditures associated
23 with the project.

24 Q. And -- okay. So besides the revenue
25 requirements for the SmartGrid and DCR investments,

1 what other sources of cash are the companies
2 projecting would be used to offset the projected
3 credits under rider -- under the proposal?

4 A. Cash from operations.

5 Q. Okay.

6 A. Cash from other elements of ESP IV.

7 Q. Which elements?

8 A. Shared savings.

9 Q. Any others?

10 A. Lost distribution revenue.

11 Q. Any others?

12 A. The companies -- to the extent that the
13 companies needed additional cash to fund the credits
14 under rider RRS beyond the cash generation mechanisms
15 that we've discussed, the parent has a long history
16 of providing equity to the utility companies, when
17 it's necessary, in order to help those companies
18 maintain their investment grade status, so I would
19 view that as an additional opportunity.

20 MS. WILLIS: May I have that answer
21 reread, please.

22 EXAMINER PRICE: You may.

23 (Record read.)

24 Q. Any other sources of cash that the
25 companies are projecting they would use to offset the

1 credits that are projected under the proposal?

2 A. Potentially borrowings.

3 Q. Anything else?

4 A. Nothing else comes to mind at this time.

5 Q. And has the companies evaluated any
6 cost-cutting efforts to help offset the credits that
7 are projected under the proposal?

8 MR. KUTIK: Objection.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: Relevance.

11 EXAMINER PRICE: I'll allow it.

12 MR. FISK: Thank you.

13 A. I think any cost-cutting activities that
14 would occur would have been covered under my response
15 where I stated cash generated from operations. I
16 would add that the companies, as part of a more
17 global corporate effort, have been and I expect will
18 continue to participate in a -- what we call a "CFIP"
19 program or kind of a cash-flow improvement program
20 designed to identify opportunities to reduce costs
21 throughout the organization.

22 Q. And have you done any -- strike that.

23 Have the companies done any analysis of
24 how much of the projected credits under the proposal
25 would be offset by the various cash generation

1 mechanisms versus equity from FirstEnergy Corp.
2 versus other options?

3 A. No.

4 Q. And the cash generation mechanisms that
5 you referenced, those would be paid for by customers,
6 correct?

7 EXAMINER PRICE: May I have the question
8 back again.

9 (Record read.)

10 MR. KUTIK: Objection.

11 EXAMINER PRICE: Grounds?

12 MR. KUTIK: We have talked about a lot of
13 different things, your Honor.

14 EXAMINER PRICE: I agree. Sustained.

15 Can you restate the question a little
16 more narrowly? She has also talked about
17 cost-cutting and that's obviously a cost-cutting
18 property in the testimony. Borrowing equity
19 infusions aren't. So if you could just answer -- ask
20 the question a little more narrowly.

21 MR. FISK: Sure. Certainly. Would be
22 happy to.

23 Q. You referred earlier, Ms. Mikkelsen, to
24 using revenue requirements from SmartGrid and DCR
25 investments to help offset the projected credits

1 under the proposal, correct?

2 A. I referred to cash that would come into
3 the companies pursuant to rider DCR and rider AMI
4 that could be used to fund the credits, yes.

5 Q. Okay. And that cash would come from
6 customers, correct?

7 A. The cash would come from customers to pay
8 the company for revenue requirements approved by the
9 Commission for recovery, yes.

10 Q. And you also referred to cash from
11 elements of ESP IV such as shared savings and lost
12 distribution revenues, correct?

13 A. Yes.

14 Q. Okay. And would any of that cash come
15 from customers?

16 A. Yes.

17 Q. Okay. And then that cash would then be
18 used to help offset the projected credits under the
19 proposal, correct?

20 A. That cash could be used --

21 Q. Okay.

22 A. -- in that manner.

23 Q. Okay. You haven't evaluated whether the
24 projected lowering of cash received from customers by
25 \$976 million from 2019 through May 31, 2024, would

1 impact the credit rating of FirstEnergy Corp.,
2 correct?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. KUTIK: We talked about the lowering
6 of the cash with respect to rider RRS. The company
7 also has, as the witness has already indicated, other
8 mechanisms of cash increases with respect to ESP, so
9 the question assumes facts that are not true and are
10 not in the record.

11 EXAMINER PRICE: Sustained.

12 Q. (By Mr. Fisk) Ms. Mikkelsen, going back
13 to Sierra Club Exhibit 89, line 12, "Under (Over)
14 Recovery" line, I believe you testified before that
15 there is a projection of \$976 million in credits to
16 customers from 2019 through May 31, 2024, correct?

17 MR. KUTIK: May I have the question read,
18 please.

19 EXAMINER PRICE: You may.

20 (Record read.)

21 A. Yes.

22 Q. Okay. And that -- those credits would
23 reduce the amount of cash received by the companies
24 over that time frame, correct?

25 A. Yes.

1 Q. Okay. And have you evaluated whether
2 that reduction in the amount of cash received by the
3 companies over the time frame of January 1, 2019
4 through May 31, 2024, would impact the credit rating
5 of FirstEnergy Corp.?

6 MR. KUTIK: Objection.

7 EXAMINER PRICE: Grounds?

8 MR. KUTIK: Same grounds, your Honor.
9 This exhibit is with respect to ESP versus MRO which
10 doesn't include many of the things the witness
11 previously testified to. She's also testified in
12 terms of how the company looked at this issue looking
13 at all of the cash received with respect to ESP IV
14 and other materials. So the way the question is put
15 to the witness that this would be the only effect of
16 ESP IV is misleading and assumed facts not in the
17 record.

18 EXAMINER PRICE: Sustained. Why don't
19 you ask her a broader question along the lines of
20 what Mr. Kutik is referring to. Have -- let me try
21 again.

22 Ms. Mikkelsen, have you evaluated whether
23 all of the impacts of ESP IV, including net credits
24 to the customers of \$561 million, will adversely
25 affect the companies' credit rating?

1 THE WITNESS: The cash into the companies
2 in the early years, I believe, would have a positive
3 impact on the companies' credit rating. That if you
4 carry that out throughout the term, looking at all of
5 the elements of the ESP, I think that the companies
6 would still remain above -- or investment grade.

7 EXAMINER PRICE: I'm done.

8 MR. FISK: Oh, okay. Thank you.

9 Q. (By Mr. Fisk) And the same question with
10 respect to FirstEnergy Corp.

11 EXAMINER PRICE: My same question?

12 MR. FISK: Yes.

13 EXAMINER PRICE: Okay.

14 MR. KUTIK: Thank you, your Honor.

15 A. I don't know.

16 Q. And have you -- have you reviewed any
17 written analysis supporting your testimony regarding
18 the impact of ESP IV with the proposal on the credit
19 rating of the companies?

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Well, testimony, what
23 testimony? Are we talking about the testimony she
24 just gave?

25 EXAMINER PRICE: The clarification he was

1 referring to; the testimony she just gave.

2 A. The testimony I just gave was based on my
3 view of the cash coming into the company in the early
4 years, with the credits projected, offset by
5 additional cash coming into the companies in the out
6 years. It was more of a mental exercise relative to
7 the answer I provided here.

8 EXAMINER PRICE: So the answer, is no,
9 you have no written analysis underlying your opinion.

10 THE WITNESS: To support the response I
11 just gave you?

12 EXAMINER PRICE: Yes.

13 THE WITNESS: Correct.

14 EXAMINER PRICE: Thank you.

15 Q. (By Mr. Fisk) Are you aware of the
16 staff's proposal in this proceeding of a distribution
17 modernization rider?

18 MR. KUTIK: Objection.

19 EXAMINER PRICE: I'm going to allow this
20 one question.

21 MR. KUTIK: We'll stipulate she is aware
22 of it, your Honor.

23 MR. FISK: Then I get another question,
24 right?

25 MR. KUTIK: No, that's --

1 EXAMINER PRICE: No. Ask your next
2 question. What's your next question? Go ahead.

3 Q. (By Mr. Fisk) If the Commission were to
4 approve staff's proposed distribution modernization
5 rider instead of the proposal, would the companies
6 commit to spending the revenues collected under that
7 rider only on distribution modernization?

8 MR. KUTIK: Objection.

9 EXAMINER PRICE: Sustained. She is not
10 here to testify -- she may be, but she is not here
11 today to testify to the staff's proposal. It may be
12 her, it may be somebody else, it may be nobody.

13 MR. FISK: One second. Can we go off the
14 record for a minute?

15 EXAMINER PRICE: You may.

16 Let's go off the record.

17 (Discussion off the record.)

18 EXAMINER PRICE: Go back on the record.

19 MS. BOJKO: Your Honor, I have a point of
20 clarification if we may?

21 EXAMINER PRICE: Do you want to do this
22 on the record or off?

23 MS. BOJKO: On the record is fine.

24 EXAMINER PRICE: Okay. Cool.

25 MS. BOJKO: Point of clarification on

1 your ruling regarding the permissibility of asking
2 this witness questions regarding the staff's
3 alternative proposal. Questions related to the
4 staff's purported alternative proposal should be
5 permitted.

6 EXAMINER PRICE: "Purported"? It's
7 definitely an alternative proposal. I don't think it
8 purports to be anything.

9 MS. BOJKO: I'm not -- I don't concede
10 it's an alternative proposal. I think it's a new
11 proposal. But --

12 EXAMINER PRICE: Why don't we call it
13 "staff's proposal."

14 MS. BOJKO: But, however, per the
15 Attorney Examiner's June 3 entry, where the entry did
16 conclude that alternatives to the proposal would be
17 able to be discussed and issues would be able to be
18 had during this phase of the hearing, I think it is
19 appropriate to be able to ask Ms. Mikkelsen those
20 questions at this time.

21 Also consistent with the ruling from your
22 Honor in the second phase of this proceeding, at
23 Volume 37, at page 7828, over the objection of
24 Mr. Kutik or FirstEnergy's counsel, Mr. Hays was
25 permitted to ask questions regarding an alternative

1 proposal raised by Lael Campbell at the time.

2 Your Honor stated that because the
3 witness was going to testify in the upcoming days
4 regarding the alternative proposal, that it was
5 appropriate to be able to question the FirstEnergy
6 witness on that proposal while this particular
7 FirstEnergy witness is on the stand.

8 EXAMINER PRICE: And that's what I get
9 for doing Mr. Hays a favor and giving him a little
10 leeway, isn't it? So what's your question?

11 MR. HAYS: Right, your Honor.

12 EXAMINER PRICE: I am not sure what you
13 are asking.

14 MS. BOJKO: Well, your Honor, you seem to
15 have cut off questions with regard to --

16 EXAMINER PRICE: I let him ask one.

17 MS. BOJKO: -- questions -- and that's my
18 concern, because I think Mr. Fisk should be allowed
19 to ask those questions and I think, similarly, other
20 intervenors, parties, such as myself, should be able
21 to ask those questions, as well, while Ms. Mikkelsen
22 is on the stand.

23 EXAMINER PRICE: Mr. Kutik, response?

24 MR. KUTIK: Your Honor, to the extent the
25 companies would have any reaction to the staff's

1 proposal, that reaction, apart from any rebuttal
2 testimony that the company may serve at that point,
3 if we do respond, the parties will have an
4 opportunity to understand the companies' position and
5 be able to cross-examine a witness about that.

6 MS. BOJKO: Your Honor, may I briefly
7 respond to that?

8 EXAMINER PRICE: Yes.

9 MS. BOJKO: The problem we have in this
10 case is that Ms. Mikkelsen has sponsored certain
11 discovery requests, and so if Ms. Mikkelsen is not
12 the chosen rebuttal witness, then we are somewhat
13 restricted in asking Ms. Mikkelsen questions about
14 certain items that she's produced in discovery and
15 certain things that have happened with regard to the
16 staff's alternative proposal.

17 EXAMINER PRICE: And that's why I asked
18 him what his question was and then ruled because
19 you're asking a broad question and then using a
20 narrow thing. If she has sponsored a discovery
21 request related to the staff, she sponsored it, you
22 can introduce it through her. That doesn't mean you
23 are going to get to ask her opinion about the staff
24 response. It is just if she sponsored a discovery
25 response and you want to authenticate it through her,

1 that makes perfect sense, you can do that.

2 You are probably not going to get to ask
3 her very many follow-up questions. Mr. Kutik is
4 exactly right. There's nothing else, other than
5 efficiency, there is no reason to waste our time
6 asking this witness questions when the company may or
7 may not put on a witness that's going to be able to
8 testify as to the companies' position on the staff
9 proposal.

10 You will have a chance to depose that
11 witness before that witness goes on. You can ask
12 them questions in discovery. You will be able to
13 follow-up, asking questions in deposition. You will
14 be able to ask the questions again in the hearing.

15 MS. WILLIS: Your Honor --

16 MR. KUTIK: And just, if I may, sorry.
17 On the issue of discovery, your Honor, I don't think
18 there is a need to waste a lot of time on that. If
19 you want to show us discovery, I am pretty confident
20 we would be able to stipulate to the authenticity of
21 her discovery responses.

22 EXAMINER PRICE: I wasn't worried about
23 it.

24 MR. KUTIK: This hearing is long enough.

25 EXAMINER PRICE: Ms. Grady.

1 MS. WILLIS: The point I wanted to make,
2 what if there is no staff or what if there is no
3 rebuttal -- surrebuttal witness produced, so this is
4 our opportunity --

5 EXAMINER PRICE: Rebuttal witness.

6 MS. WILLIS: Surrebuttal --

7 EXAMINER PRICE: Surrebuttal would be
8 yours. Rebuttal to the staff.

9 MS. WILLIS: If there is no rebuttal
10 witness to the staff testimony, then this is our
11 opportunity.

12 EXAMINER PRICE: To what? To ask her a
13 question?

14 MS. WILLIS: What --

15 EXAMINER PRICE: If they don't put on a
16 witness, they are not taking a position, so --

17 MS. WILLIS: Well, I'm not -- wouldn't
18 agree with that. They could certainly brief a
19 position. All of a sudden we get a --

20 MR. KUTIK: But it's not going to be
21 based on any evidence or whatever evidence is in the
22 record without rebuttal testimony.

23 EXAMINER PRICE: They will have to stand
24 on whatever the staff says if they change their mind
25 on brief. I am not reconsidering my ruling. With

1 respect to discovery, if the witness has sponsored
2 discovery request, just like we always do, either the
3 company will stipulate to it or you can authenticate
4 it through the witness.

5 MS. BOJKO: Thank you, your Honor.

6 MR. KUTIK: Are we prepared to proceed,
7 your Honor?

8 EXAMINER PRICE: I believe, Mr. Fisk, are
9 you done.

10 MR. FISK: No. I still have a few
11 questions, your Honor.

12 EXAMINER PRICE: Oh, okay. Please
13 proceed, Mr. Fisk.

14 MR. FISK: Thank you. And may we
15 approach?

16 EXAMINER PRICE: You may.

17 MR. FISK: We ask to be marked Exhibit
18 Sierra Club 99.

19 EXAMINER PRICE: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. FISK: Which is the response to Staff
22 Data Request 35.

23 MS. WILLIS: Did you guys miss 98?

24 MR. FISK: 98?

25 EXAMINER PRICE: Yes. It will be marked

1 as 98.

2 MR. FISK: 98, thank you, your Honor.

3 Q. (By Mr. Fisk) Ms. Mikkelsen, do you have
4 in front of you the document that's been marked as
5 Sierra Club Exhibit 98 which is the companies'
6 response to Staff Data Request 35?

7 A. Yes.

8 Q. And you are identified as the witness
9 responsible for this response, correct?

10 A. Yes.

11 Q. Okay. And while the document at the top
12 has a confidentiality notice, this is one of the
13 documents that I believe the companies are waiving
14 confidentiality on, correct?

15 MR. KUTIK: That's correct.

16 Q. And the request here says "Please provide
17 detail on the consequences of FirstEnergy Corp.
18 dropping below an investment grade rating. What
19 effects will this have on The Illuminating Company,
20 Ohio Edison, and Toledo Edison?" Do you see that?

21 A. Yes.

22 Q. Okay. And then after a series of
23 objections, you have a -- you provide a
24 non-exhaustive list of the adverse impacts of a
25 downgrade to a non-investment grade rating. Do you

1 see that?

2 A. Yes.

3 Q. Okay. And there is a series of six
4 bullet points.

5 A. Six primary bullet points.

6 Q. Six primary, yes. And the first bullet
7 point refers to "Constrained, limited, and
8 speculative access to the capital markets." Do you
9 see that?

10 A. Yes.

11 Q. And you consider that to be an adverse
12 impact of a downgrade -- strike that.

13 You consider that to be an adverse impact
14 to the companies of a downgrade of FirstEnergy Corp.
15 to non-investment grade; is that right?

16 A. I think we need to step back to answer
17 the question. From an S&P perspective, to the extent
18 that the parent is downgraded below investment grade,
19 all of the legal entities within the company are
20 similarly downgraded. So automatically under an S&P
21 downgrade, the companies would be downgraded to below
22 investment grade and then, yes, this would certainly
23 be the situation.

24 With respect to Moody's, they rate each
25 company -- each legal entity, pardon me,

1 individually. So to the extent that the parent
2 company was downgraded, the companies may still
3 remain investment grade but there would be sort of a
4 credit-negative shadow overcast on the companies
5 which could create the circumstance contained in
6 bullet one.

7 Q. Okay. But you are not able to quantify
8 the magnitude of the adverse impacts of a downgrade
9 of the -- of FirstEnergy Corp. that is identified in
10 your first bullet point there, correct?

11 A. I think the quantification of that impact
12 would be dependent upon a number of factors which
13 aren't -- aren't known at this time. For example,
14 what was -- what was the credit rating of the
15 company. It may be below investment grade but at
16 what level below investment grade.

17 What is the market conditions at that
18 time? Is it a stable capital market? Is it a
19 volatile capital market? What are the -- what are
20 the circumstances under which the companies would be
21 going out to the capital market? All of those
22 factors, and I'm certain others, would be necessary
23 to fully understand before you could, I think, begin
24 to attempt to quantify the impact as you've asked.

25 Q. Okay. And the second bullet point in

1 your response refers to increased borrowing costs; is
2 that correct?

3 A. Yes.

4 Q. Okay. And you would -- you would have to
5 speculate to determine by how much the companies'
6 borrowing costs would increase if FirstEnergy Corp.'s
7 credit rating dropped below an investment grade
8 rating, correct?

9 A. The reference to borrowing costs here
10 really deals with borrowing costs associated with
11 credit facilities or revolvers, and I don't know
12 specifically what that increased borrowing cost would
13 be should the parent be downgraded. Again, I think
14 it would be dependent upon a number of factors.

15 Q. Okay. And then on that second bullet
16 point you also reference, back on Sierra Club Exhibit
17 98, you reference higher interest rates; is that
18 correct?

19 A. Yes.

20 Q. Okay. And you are not aware of the
21 companies' attempting to quantify the degree to which
22 their interest rates would increase if FirstEnergy
23 Corp.'s credit rating dropped below an investment
24 grade rating?

25 MR. KUTIK: May I have the question read,

1 please?

2 EXAMINER PRICE: You may.

3 (Record read.)

4 A. Once FirstEnergy Corp., and certainly
5 under S&P, the companies' credit ratings dropped
6 below investment grade, the companies then are
7 dealing with high-yield investors or speculative
8 investors who really would require a higher return or
9 higher interest rate. I don't have the specifics on
10 what that would be without having more information
11 around, again, market conditions, the provisions as
12 to why the companies might be accessing the markets,
13 things of that nature.

14 Q. Okay. So you have not attempted to
15 quantify the degree to which the interest rates would
16 increase if in that situation where FirstEnergy
17 Corp.'s credit rating drops below an investment grade
18 rating, correct?

19 MR. KUTIK: Objection. Asked and
20 answered.

21 EXAMINER PRICE: We will give him a
22 little bit of leeway. Overruled.

23 A. That analysis would have to be conducted
24 in light of the facts and circumstances that existed
25 at the time the downgrade occurred.

1 Q. Okay. So you have not done that
2 analysis?

3 A. Correct.

4 Q. Okay. And to your knowledge, the
5 companies have not done that analysis?

6 A. Yes.

7 Q. And to your knowledge, the companies have
8 not attempted to quantify the degree to which
9 borrowing costs would increase if FirstEnergy Corp.'s
10 credit rating dropped below an investment grade
11 rating, correct?

12 A. For all the reasons we discussed earlier,
13 correct.

14 Q. Okay.

15 MR. FISK: Give me one more minute.

16 May we approach?

17 EXAMINER PRICE: You may.

18 MR. FISK: Now we would like to mark
19 Sierra Club Exhibit 99.

20 EXAMINER PRICE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. FISK: I was just hoping to get to
23 100.

24 EXAMINER PRICE: We have a long way to
25 go.

1 MR. KUTIK: Well, you will get to 100. I
2 assume you plan to mark Mr. Comings' testimony.

3 MR. FISK: That's true. You're right.

4 Q. (By Mr. Fisk) Okay. Ms. Mikkelsen, you
5 have been handed an exhibit that's been marked Sierra
6 Club Exhibit 99. It is the response to Staff Data
7 Request 34; is that correct?

8 A. Yes.

9 Q. And you are identified as the witness
10 responsible for this response; is that correct?

11 A. Yes.

12 MR. FISK: And I -- just to clarify, I
13 guess. Mr. Kutik, is the confidentiality waived for
14 this entire response?

15 MR. KUTIK: As I indicated, with respect
16 to the document itself, we are waiving
17 confidentiality. We are not waiving our objections
18 with respect to the requests that are in here and
19 some of these requests do call for proprietary,
20 highly-sensitive and otherwise nonpublic information.
21 We made those objections and those objections now are
22 a matter of record. By doing this we are not waiving
23 those objections.

24 MR. FISK: Okay.

25 Q. (By Mr. Fisk) Okay. And, Ms. Mikkelsen,

1 if you could refer to subpart 2 of the staff's
2 request. It says "please provide detailed projected
3 financial statements for years 2016 to 2018." Do you
4 see that?

5 A. Yes.

6 Q. And then there is a listing of various
7 things that the staff has requested to be included in
8 those financial statements, correct?

9 A. Yes.

10 Q. Okay. And the companies have not
11 provided staff with any financial statements for the
12 years 2016 to 2018, correct?

13 MR. KUTIK: Well, I'll object, your
14 Honor. We obviously have objections that are
15 unstated in the question, so the question assumes
16 that there is no reason not to.

17 MR. FISK: The question was simply asking
18 has anything been provided.

19 EXAMINER PRICE: In light of the
20 objections, have you provided the information
21 requested by the staff?

22 THE WITNESS: No.

23 Q. (By Mr. Fisk) And in light of the
24 objections, did the companies -- the companies have
25 not provided staff with any information in response

1 to Staff Data Request 34, subpart 2, correct?

2 A. Yes.

3 Q. And the companies have not provided staff
4 with any financial statements in response to the Data
5 Request 34, correct?

6 A. Yes.

7 Q. Okay. And to your knowledge, has the
8 staff been provided, by any entity, any of the
9 information requested in Data Request 34, subpart 2?

10 MR. KUTIK: Your Honor, I would object
11 and be allowed to instruct the witness not to answer
12 the question, or to answer the question but exclude
13 any conversations she's aware of that may entail
14 confidential settlement discussions.

15 EXAMINER PRICE: Well, we'll sustain the
16 objection.

17 You can answer the question to the extent
18 it does not include settlement discussions.

19 THE WITNESS: May I ask to have the
20 question reread, please.

21 EXAMINER PRICE: You may.

22 (Record read.)

23 A. No.

24 MR. FISK: May we go off?

25 EXAMINER PRICE: Yes.

1 (Discussion off the record.)

2 EXAMINER PRICE: Back on the record.

3 MR. FISK: Okay. Subject to the
4 potential ability to ask questions regarding our
5 motion to compel, if that is granted, Sierra Club has
6 no further questions for the public session.

7 MR. KUTIK: May we go off the record?

8 EXAMINER PRICE: Yes.

9 (Discussion off the record.)

10 EXAMINER PRICE: At this time, we will
11 take our lunch break and we will reconvene at
12 2 o'clock.

13 (Thereupon, at 12:53 p.m., a lunch recess
14 was taken.)

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Monday Afternoon Session,
July 11, 2016.

- - -

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

Before we continue our questioning of
this witness, we have looked at the document
regarding the subject of the discovery dispute
between FirstEnergy and Sierra Club.

At this time, we will grant the motion to
compel subject to the following protective order:

The sections of the document which have
been redacted by FirstEnergy will be protected from
disclosure -- completely protected from disclosure,
and FirstEnergy will then disclose the remainder of
the document to the parties. There is one section
which I believe FirstEnergy has redacted -- believes
should not be redacted and Mr. Kutik will explain
that to the parties; is that correct?

MR. KUTIK: Well, actually, your Honor,
we've -- let me back up a step.

First, what we've done is attempted to
redact material on the document that contains
material, nonpublic information.

EXAMINER PRICE: Right.

1 MR. KUTIK: The version that we showed
2 the Bench had redacted the labels of certain rows
3 that had been redacted. Those labels, those words,
4 were not material, nonpublic information, so we will
5 provide to the parties kind of a revised redaction.

6 EXAMINER PRICE: A revised redaction,
7 okay.

8 MR. KUTIK: Subject to your order and
9 subject to confidentiality.

10 EXAMINER PRICE: So we will grant the
11 motion to compel for the document, subject to the
12 protective order, that the redacted portions not be
13 disclosed as they are material, nonpublic
14 information.

15 MR. KUTIK: And the rest of the document
16 is also treated confidential.

17 EXAMINER PRICE: And the rest -- well,
18 it's labeled confidential. The rest of the document
19 should be treated as confidential and any questioning
20 will take place in the confidential session. We will
21 come back to you, Mr. Fisk, at the end, when we go
22 into the confidential session.

23 MR. FISK: Okay.

24 EXAMINER PRICE: When will you be able to
25 get the parties the document?

1 MR. KUTIK: Now.

2 EXAMINER PRICE: Thank you.

3 MS. WILLIS: Your Honor, I am assuming,
4 along with Mr. Fisk, we would be given the
5 opportunity later to -- or opportunity to review that
6 before we cross-examine Ms. Mikkelsen?

7 EXAMINER PRICE: Well, we are all going
8 to take our turn on the public record, so if you have
9 any questions for her at the end when we come back
10 around, you can do that. I mean, the way things are
11 going today, I suspect the confidential portion of
12 our transcript will, in fact, be tomorrow.

13 MS. WILLIS: Thank you.

14 EXAMINER PRICE: So you can study it
15 overnight.

16 Okay. With that, Mr. Settineri, you may
17 proceed.

18 MR. SETTINERI: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Settineri:

22 Q. Good afternoon, Ms. Mikkelsen.

23 A. Good afternoon, sir.

24 Q. If you could turn to page 1 of your
25 testimony for me, please. I am going to direct your

1 attention to lines 18 to 19. Where it states that
2 "The proposed modifications benefit customers while
3 eliminating any" risk associated -- "associated risk
4 tying Rider RRS to the results of a purchase power
5 agreement proposal." Do you see that sentence?

6 A. Yes.

7 Q. Okay. Now, a PPA was never provided in
8 this proceeding into the record, correct?

9 A. Correct.

10 Q. But a PPA has been executed between FES
11 and the companies, correct?

12 A. The PPA has been suspended. It's no
13 longer executed.

14 Q. And that's what I wanted to ask you.
15 Just to be clear for the record then, has the PPA
16 been terminated?

17 A. The PPA has been suspended.

18 Q. What do you mean by "suspended"?

19 A. The parties have agreed mutually not to
20 conduct business pursuant to the purchase power
21 agreement at this time.

22 Q. Okay. And was that put in writing?

23 A. Yes.

24 Q. And you said "at this time." I assume
25 then that leaves open the ability for the PPA to be

1 reactivated, correct?

2 A. Yes.

3 Q. Now, if the Commission approves the, I
4 will call it the "new rider RRS proposal" as
5 proposed, are you aware whether the companies intend
6 to terminate the PPA with FES?

7 A. If the companies -- pardon me. If the
8 Commission approves the proposal with respect to
9 rider RRS, the companies do not plan to implement the
10 purchase power agreement going forward.

11 Q. And when you say "don't plan to
12 implement," are you aware of whether that PPA would
13 be term -- officially terminated?

14 A. I don't know.

15 Q. Okay. And do you know if it was
16 terminated in the future, would there be termination
17 fees that would have to be paid by the companies to
18 FES?

19 A. I don't believe there are any termination
20 fees.

21 Q. Okay. Thank you. Now, under the new
22 rider RRS proposal, FES would not be required to
23 deliver all the output and the capacity from the
24 Sammis units, Davis-Besse unit, and the OVEC
25 entitlement to the companies, correct?

1 A. Yes.

2 Q. And during the term of the new rider RRS,
3 assuming it's approved, FES would be able to sell the
4 output and capacity from the Sammis units, the
5 Davis-Besse unit, and the OVEC entitlement into the
6 PJM markets or through bilateral contracts, correct?

7 A. Let me start by saying the companies are
8 not proposing a new rider RRS. Rather, what the
9 companies are proposing is modifications to the
10 calculation of the already-approved rider RRS. So
11 with that as an adjustment to the first part of your
12 question, may I ask you to restate your question,
13 sir?

14 Q. Sure. Let's be clear. I guess when I
15 say the "new rider RRS proposal," you understand it's
16 the modified proposal you presented in your
17 testimony?

18 A. I do. I did not hear you say "proposal"
19 in your question, sir.

20 Q. No problem. Thank you for the
21 clarification.

22 MR. KUTIK: I suggest that following
23 Mr. Fisk's suggestion that we, going forward, just
24 call it "the proposal."

25 EXAMINER PRICE: That makes the most

1 sense. We will call the staff proposal "the staff
2 proposal."

3 MR. KUTIK: Thank you.

4 Q. (By Mr. Settineri) And during the term of
5 the proposal, FES would be able to sell the output
6 and capacity from the Sammis units, the Davis-Besse
7 units, and the OVEC entitlement into the PJM markets
8 or through bilateral contracts, correct?

9 A. Yes.

10 Q. Okay. And FES would keep any profits it
11 made from those market activities, correct?

12 A. Yes.

13 Q. And likewise, FES would be liable for any
14 losses as a result of those market activities,
15 correct?

16 MR. KUTIK: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. KUTIK: Relevance.

19 EXAMINER PRICE: I will give him a little
20 bit of leeway.

21 MR. SETTINERI: Thank you.

22 A. Yes.

23 Q. So let's turn to Sierra Club Exhibit 89,
24 please. Do you have that in front of you?

25 A. I do.

1 Q. Thank you. So the projections, let's
2 just start at line 12, the under and overrecovery.
3 The projections on this sheet could apply -- would
4 apply to FES's operations of the Davis-Besse, the
5 Sammis, and the OVEC entitlement, correct?

6 MR. KUTIK: Objection.

7 EXAMINER PRICE: Can I have the question
8 back, please.

9 (Record read.)

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: Relevance, your Honor.
12 What's happening with FES at this point, given the
13 proposal, is irrelevant.

14 EXAMINER PRICE: Mr. Settineri, response?

15 MR. SETTINERI: Well, your Honor, it is
16 relevant because what FES is projected to receive is
17 equal to what the proposal is projected so, they
18 match up exactly and that's all I am trying to
19 establish. What customers are paying, FES is also
20 making off the markets as well. It's not quite
21 right.

22 MR. KUTIK: It's not quite right.

23 MR. SETTINERI: The point is -- the
24 relevancy is to show that there are two revenue
25 streams here, that what customers are paying, FES is

1 incurring losses, when FES is making money in the
2 markets, customers, at the same time, are receiving
3 credits under this projection. That's what I am
4 trying to establish and that's the relevancy.

5 EXAMINER PRICE: I understand what you
6 are trying to establish. I am not sure I understand
7 the relevancy to whether the Commission should adopt
8 this.

9 MR. SETTINERI: Going back to the
10 sentence, the very first sentence, that the proposed
11 modification benefits the customers, it's relevant to
12 inquire as to what other entities are being benefited
13 by this proposal.

14 EXAMINER PRICE: How is FES being
15 benefited by this proposal?

16 MR. SETTINERI: Well, we have established
17 earlier there are no prohibitions on dividends going
18 up to the corporation, as well as there's no
19 prohibitions on the corporation putting equity
20 infusions down to FES. Likewise, in later years, FES
21 going up to FE Corp., and then FE Corp. bringing
22 infusions down in the companies.

23 EXAMINER PRICE: No prohibition on them
24 giving the money to Exelon either, but I don't
25 understand what relevance that has to whether the

1 Commission should adopt this.

2 MR. SETTINERI: It goes to the purpose of
3 the proposal. The Commission would have a record as
4 to what that purpose could be or other purposes,
5 that's all.

6 EXAMINER PRICE: Mr. Kutik.

7 MR. KUTIK: The company has stated what
8 the purpose is, your Honor.

9 EXAMINER PRICE: I am going to sustain
10 the objection.

11 Q. (By Mr. Settineri) Ms. Mikkelsen, the
12 proposal is not intended to recover any costs
13 incurred by the companies in providing electric
14 distribution service to their customers, correct?

15 A. Yes.

16 Q. And under the new rider -- excuse me.
17 Under the new proposal, the companies could use the
18 monies received under the rider to pay for the
19 commitments the companies have agreed to in the
20 stipulation that was approved by the Commission in
21 this proceeding, correct?

22 A. Yes.

23 Q. Now, the companies aren't guaranteeing in
24 the proposal that customers will receive an overall
25 credit under the proposal, correct?

1 A. Yes.

2 Q. And just to be clear for the record, the
3 companies' projections on Sierra Club Exhibit 89,
4 line 10 and line 11, are based on a forecast from
5 August 2014, correct?

6 MR. KUTIK: I'll object, your Honor.

7 EXAMINER PRICE: Grounds?

8 MR. KUTIK: Well, first, it's well
9 established what the basis of those numbers may be
10 and is. That's No. 1.

11 No. 2, the basis of those numbers has
12 nothing to do with the proposal and the change from
13 rider RRS as approved.

14 EXAMINER PRICE: Sustained.

15 Q. (By Mr. Settineri) Now, the new proposal,
16 Ms. Mikkelsen, doesn't provide for a refund of any
17 charges in the event the rider RRS, under this
18 proposal, if it is subsequently overturned by the
19 Supreme Court of Ohio, correct?

20 A. Yes.

21 Q. And you agree that the companies project
22 an aggregate charge, through 2018, under the proposal
23 for rider RRS?

24 A. Yes.

25 Q. Okay. So the -- in the event the rider

1 is overturned by the Supreme Court of Ohio before the
2 end of 2018 and if the Court does not order a refund,
3 it is possible that the companies could keep the
4 money collected under rider RRS, correct?

5 MR. KUTIK: Objection.

6 EXAMINER PRICE: Grounds?

7 MR. KUTIK: Calls for a legal conclusion.
8 We can brief that, your Honor.

9 EXAMINER PRICE: Mr. Settineri.

10 MR. SETTINERI: I don't think it calls
11 for a legal conclusion, your Honor. I'm asking if it
12 is a possibility that the companies can keep the
13 money collected if the Court doesn't order a refund.
14 I don't think there is any legal conclusion there and
15 she's also well versed in regulatory matters before
16 this Commission. I think she can answer it in her
17 opinion as a nonlawyer.

18 MR. KUTIK: It calls for the effect of
19 KECO and regulatory -- and retroactive ratemaking and
20 those concepts, your Honor.

21 EXAMINER PRICE: He is not asking her to
22 opine on KECO. He's just saying if the Court doesn't
23 order a refund what, will the effect be.

24 Overruled.

25 You can answer if you know.

1 THE WITNESS: Thank you.

2 A. If the Court doesn't order a refund, then
3 the companies would retain the dollars collected.

4 Q. Okay. And in that circumstance, the
5 customers would not get a refund of the money they
6 paid under rider RRS, correct?

7 A. Yes.

8 Q. Let me ask you a question. Let's jump to
9 page 16 in your testimony. Line 13 and 14 there is a
10 question. The question is "Do the companies have the
11 ability to terminate modified rider RRS before
12 Stipulated ESP IV ends"?

13 Your answer, at 15 to 17, is "The
14 companies will continue credit to provide credits to,
15 or collect revenues from, customers as calculated
16 under modified Rider RRS as described in this
17 testimony during the period that Stipulated ESP IV
18 remains in effect." Do you see that?

19 A. Yes.

20 Q. Okay. Will the -- will rider RRS, under
21 the proposal, continue in the event that the
22 stipulated ESP IV is modified in the future?

23 A. I don't know.

24 Q. Then going to the phrase on line 17,
25 "remains in effect." What do you mean by that

1 phrase?

2 A. That modified rider RRS will continue
3 throughout the time period that the stipulated ESP IV
4 is in operation.

5 Q. Okay. And when you refer to "stipulated
6 ESP IV," what exactly are you referring to?

7 A. The entirety of the ESP IV including the
8 companies' applications as modified by the various
9 stipulations and the Commission's order to the extent
10 it applies on a going-forward basis with respect to
11 modified rider RRS.

12 Q. So just to be clear then, so it's the ESP
13 IV that's in effect today, plus the proposal, and
14 minus the rider RRS under the old proposal; would
15 that be correct?

16 A. It's difficult for me to say, until we
17 have an order in the case, what it would mean, but as
18 of now it means the provisions that were approved by
19 the Commission and then any additional actions by the
20 Commission that might modify what's been approved to
21 date.

22 Q. Thank you for the clarification.

23 A. You're welcome, sir.

24 Q. And just a quick question here, nothing
25 in the proposal restricts a customer's ability to

1 stay on the Standard Service Offer, correct?

2 A. Yes.

3 Q. Okay. If you could turn to page 10 of
4 your testimony, lines 14 and 15, please. There's a
5 sentence there, you say "As a result, the modified
6 Rider RRS would still have the effect of stabilizing
7 or providing certainty regarding retail electric
8 service." Do you see that sentence?

9 A. Yes.

10 Q. Okay. And at page 20, lines 3 to 4, you
11 also note a bullet point that "Protection of
12 consumers against rate volatility and price
13 fluctuations by promoting rate stability for all
14 ratepayers in this state." Do you see that?

15 A. I see that reference in my testimony,
16 yes.

17 Q. Now, when you -- when you describe "rate
18 stability" in your testimony, you're referring to
19 benefits that flow to the customers as a result of
20 the retail rate stability rider, so that when market
21 prices are low, customers will see a charge
22 associated with rider RRS, and as market prices
23 increase over the term of the ESP that charge will
24 transition to a credit, thereby stabilizing retail
25 rates for the companies' customers, correct?

1 That's a long question if you would like
2 to hear it reread.

3 A. Sure. Thank you.

4 Q. You're welcome.

5 (Record read.)

6 A. Yes, as it relates to the testimony, you
7 know, on page 10, starting at roughly lines 12
8 through 16. Specifically the reference in line 15 of
9 "stabilizing or providing certainty." There are
10 other elements of the ESP which we believe provide
11 stabilities and certainty for our customers but as it
12 relates to rider RRS.

13 And then I would add, with respect to
14 your reference on page 20, specifically lines 3 and
15 4, just to be clear, what we are listing there is
16 really reciting things that the Commission relied
17 upon in its order as qualitative benefits.

18 Q. Now, although anything is possible, you
19 don't think that the rider RRS will switch from a
20 credit in one quarter to a charge in the
21 immediately-following quarter, correct?

22 A. Yes.

23 Q. So if we turn to Sierra Club Exhibit 89,
24 we see charges in the initial years, line 12,
25 correct, that would take us through 2018?

1 A. Yes.

2 Q. Okay. Then we have credits in the out
3 years under the projections, correct?

4 A. Yes.

5 Q. And under the proposal, that's how rate
6 stability is being created, correct?

7 MR. KUTIK: Objection.

8 EXAMINER PRICE: Grounds?

9 MR. KUTIK: This has all been discussed,
10 briefed, cited.

11 EXAMINER PRICE: I'm sure it's
12 foundational. Overruled.

13 A. The retail rate stability provided
14 underneath the proposal or pursuant to the proposal
15 is such that when market prices are low, customers
16 would see a charge which is what you see in the early
17 years here. And as market prices increase, then that
18 charge transitions to a credit to the customers
19 during periods of high prices. And the combination
20 of those really works to stabilize the retail
21 ratepayer's charges throughout the term of the ESP.

22 EXAMINER PRICE: And, in fact, isn't it
23 true that under the proposal, specific risks
24 attributable to the plants under the old proposal,
25 Davis-Besse and Sammis, such as whether or not they

1 are actually operating or whether they are operating
2 at full capacity are eliminated.

3 THE WITNESS: The proposal eliminates a
4 number of risks, founded or unfounded in the
5 companies' opinion, with respect to the original
6 proposal as it relates to whether there are forced
7 outages beyond those that were projected or whether
8 there were capital expenditures required, whether it
9 be for additional environmental work, emergent
10 nuclear work, things of that nature, all of that is
11 eliminated in the company's proposal.

12 EXAMINER PRICE: Or whether the capacity
13 clears.

14 THE WITNESS: Whether the capacity
15 clears, whether the energy clears, correct.

16 Q. (By Mr. Settineri) And one risk remaining
17 though, Ms. Mikkelsen, is that the energy prices
18 going forward and the capacity prices going forward
19 will not be sufficient enough to offset the costs
20 that are now fixed in the proposal, correct?

21 A. That is the very nature of the hedge is
22 that we have now removed all the variables from the
23 hedge proposal, and it is really a more reliable
24 hedge now insomuch as it focuses only on actual
25 changes in energy prices and capacity prices.

1 But the purpose of the hedge is to,
2 again, protect the customers during periods of higher
3 prices, with the understanding that if market prices
4 are low, there will be a charge to the customers.

5 Q. And so going back to Sierra Club
6 Exhibit 89, you had mentioned the fact in the initial
7 years you have the charges, you have the credits in
8 the out year, and that the retail rate stability is
9 provided through the charges and the credits.

10 There -- would you agree with me, then, there would
11 be no rate stability under the proposal if rider RRS
12 was a charge for the entire term of the rider,
13 correct?

14 MR. KUTIK: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. KUTIK: Same as my other, your Honor.
17 This is an issue that they have generally with rider
18 RRS, not with respect to the proposal. The proposal
19 doesn't change anything that's required, so it's
20 outside the scope of the hearing.

21 MR. SETTINERI: She just testified on it,
22 your Honor. There was no objection during her
23 answers and it is in her testimony.

24 MR. KUTIK: I can't object to her answer,
25 your Honor.

1 EXAMINER PRICE: We'll give Mr. Settineri
2 a little bit of leeway. Let's try not to ask
3 questions that we -- we all know how the mechanism
4 worked the last round.

5 MR. SETTINERI: Karen --

6 EXAMINER PRICE: You can answer the
7 question.

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

10 (Record read.)

11 A. No.

12 Q. And do you believe an ongoing rider
13 charge for eight years is a helpful economic
14 development tool in tracking new businesses to the
15 companies' service territories?

16 MR. KUTIK: Again, your Honor, I object.
17 This is --

18 MR. SETTINERI: I will --

19 MR. KUTIK: This is a debate about rider
20 RRS; it's not a question that's raised by the
21 companies' proposal.

22 EXAMINER PRICE: Sustained.

23 Q. (By Mr. Settineri) Going back to the
24 proposal itself. You agree we have two variables now
25 in the proposal, correct?

1 A. I agree that the company's proposal fixes
2 a number of factors that, before, were subject to
3 change and now only changes as it relates to
4 day-ahead LMP prices in the energy market and actual
5 capacity prices.

6 Q. And those are the only two variables in
7 the equation, correct?

8 A. Yes.

9 Q. And those variables are on the revenue
10 side of the equation, correct?

11 A. Yes.

12 Q. Okay. And the cost side of the equation
13 is now fixed by month, by quarter, for the eight
14 years, correct?

15 A. Yes.

16 Q. Okay. If you turn to page 6, line 13 of
17 your testimony, please. I'll paraphrase briefly, but
18 between line 12 and 13 you note the modified rider
19 RRS provides customers the benefit of a hedge. Do
20 you see that?

21 A. Yes.

22 Q. Do you agree that a hedge is used to
23 mitigate risk by replacing that risk with certainty?

24 MR. KUTIK: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Same grounds as before, your
2 Honor.

3 EXAMINER PRICE: I'll allow it.

4 MR. SETTINERI: Your Honor, I'll just say
5 for the record she's used the word "hedge"
6 throughout.

7 EXAMINER PRICE: I allowed the question.

8 MR. SETTINERI: I know.

9 EXAMINER PRICE: You can answer if you
10 know.

11 THE WITNESS: May I ask you to reread the
12 question, please.

13 (Record read.)

14 A. No.

15 Q. Let me ask you this: One way, for
16 instance, to hedge natural gas purchases is to
17 purchase a percent of estimated future volumes at a
18 fixed price, correct?

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

21 EXAMINER PRICE: You may.

22 (Record read.)

23 MR. KUTIK: Well, I'll object, your
24 Honor.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Relevance.

2 EXAMINER PRICE: Mr. Settineri,
3 relevance?

4 MR. SETTINERI: Your Honor, it's going
5 back to the description that this proposal presents a
6 hedge. Her answer, just previously, about mitigation
7 and risk, and I am providing an example of what a
8 hedge is.

9 MR. KUTIK: And she's explained how she
10 thinks it's a hedge.

11 MR. SETTINERI: She has not, and I didn't
12 ask her.

13 MR. KUTIK: In her testimony. Now and
14 before.

15 EXAMINER PRICE: I don't understand the
16 relevancy of your question. Just because you can
17 come up with a scenario where a hedge is based on a
18 fixed price doesn't mean there are not other
19 scenarios where a hedge is based on a variable price.

20 I might hedge my risk of large capital
21 stocks in my retirement account by having a portion
22 of my retirement account being small cap stocks,
23 right? Those are variable.

24 MR. SETTINERI: Yeah. I think what -- I
25 don't disagree with that. What I am trying to do is

1 go down the certainty route in terms of being able to
2 provide certainty and that's why this is relevant.

3 This hedge is supposed to provide certainty.

4 EXAMINER PRICE: Okay. I'll give you a
5 little leeway, but let's get to the point.

6 Q. (By Mr. Settineri) Let me just try this,
7 Ms. Mikkelsen, again, you stated earlier there is no
8 guarantee that customers will receive an overall
9 credit at the end of the eight-year term, correct?

10 A. The projections of the company show --
11 expect that the customers will receive a credit over
12 the term. There is no guarantee as part of the
13 proposal.

14 Q. And there is no guarantee that customers
15 will receive a credit in any given year, correct?

16 A. Correct.

17 MR. KUTIK: Again, your Honor. I object.
18 This is beyond the scope of the hearing.

19 EXAMINER PRICE: I am going to sustain
20 the objection. We seem to be just covering ground
21 that we covered before in great detail.

22 Q. (By Mr. Settineri) You testified earlier
23 about Standard & Poor's using a family approach to
24 credit ratings, correct?

25 A. Yes.

1 Q. And so under that family approach, if the
2 parent corporation's credit rating is downgraded,
3 that could apply -- that would apply to the
4 companies' credit rating, correct, understanding
5 S&P's approach?

6 A. I heard "could" and I heard "would" in
7 your question. So, to be clear in the answer, the
8 answer is it would apply to the other legal entities
9 in the corporation.

10 Q. And a credit downgrade could trigger
11 collateral requirements in existing bilateral
12 contracts that the companies are parties to, correct?

13 A. Yes.

14 Q. And that would apply to all subsidiaries
15 of FirstEnergy Corp., correct?

16 MR. KUTIK: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. KUTIK: Relevance.

19 EXAMINER PRICE: Sustained.

20 MR. SETTINERI: Your Honor -- at this
21 time I would like to mark an exhibit P3/EPISA 14, and
22 while we are at it -- and, your Honor, I would also
23 like to mark P3 Exhibit 15.

24 EXAMINER PRICE: Can you describe P3/EPISA
25 14?

1 MR. SETTINERI: I am sorry?

2 EXAMINER PRICE: Can you describe what
3 P3/EP SA 14 is?

4 MR. SETTINERI: FirstEnergy FactBook,
5 February 16, 2016. P3/EP SA Exhibit 15 is an excerpt,
6 page 73.

7 EXAMINER PRICE: It will be so marked.

8 (EXHIBITS MARKED FOR IDENTIFICATION.)

9 Q. (By Mr. Settineri) Ms. Mikkelsen, are you
10 aware FirstEnergy publishes and maintains a FactBook
11 on its website?

12 A. Yes.

13 Q. And are you familiar with that FactBook?

14 A. I'm familiar with parts of the FactBook.

15 Q. Okay. And can you identify for me what's
16 been marked as P3/EP SA Exhibit 14?

17 A. The document that was handed to me is
18 entitled "FirstEnergy FactBook, Published February
19 16, 2016."

20 Q. And if you could turn to page 73 of that
21 document, and when you are there, if you could
22 compare that page to what's been marked as P3/EP SA
23 Exhibit 15.

24 A. I've compared the documents.

25 Q. And are they the same?

1 A. They appear to be, yes.

2 Q. Okay. Turning to P3/EPSC Exhibit 15, you
3 mentioned previously that the companies could
4 experience a collateral requirement if an investment
5 grade rating is downgraded, correct?

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

8 EXAMINER PRICE: You may.

9 (Record read.)

10 A. No.

11 Q. Okay. Well, let me just go back then. I
12 believe we previously established that a credit
13 downgrade could also trigger collateral requirements
14 in existing bilateral contracts or other subsidiaries
15 of FirstEnergy Corp.; is that correct?

16 MR. KUTIK: Objection. I believe you
17 sustained the objection to that, your Honor.

18 Q. And Mr. Kutik is correct. It should have
19 been that a credit downgrade could trigger collateral
20 requirements in existing bilateral contracts that the
21 companies are parties to, correct?

22 A. Sir, may I ask you to be more specific
23 with respect to "credit rating downgrade" in your
24 question?

25 Q. Well, I am going to -- it's the same

1 question I asked previously that you testified to
2 which was a credit downgrade could trigger collateral
3 requirements in existing bilateral contracts that the
4 companies are parties to; and if I recall, you said
5 "yes" to that question.

6 A. If there is a credit rating downgrade to
7 non-investment grade credit rating, then that could
8 trigger collateral requirements.

9 Q. Okay. So --

10 A. There may be credit rating downgrades
11 above investment grade that would not necessarily
12 trigger collateral provisions.

13 Q. Thank you for that clarification.

14 A. You're welcome, sir.

15 Q. If we turn to P3/EPISA 15 then, do you see
16 the line in the table at the bottom slide, it's page
17 143 on the slide, it says "Total Exposure from
18 Contractual Obligations."

19 MR. KUTIK: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: Lack of foundation.

22 EXAMINER PRICE: Sustained. You never
23 established she has ever seen this document before.
24 You asked her if she was familiar with it. She said
25 yes. You never asked her if she has seen this

1 document.

2 MR. KUTIK: What she said was she is
3 familiar with parts of the book.

4 Q. (By Mr. Settineri) Ms. Mikkelsen, are you
5 involved with the preparation of the FirstEnergy
6 FactBook?

7 A. Only as it relates to the regulatory
8 information contained in the FactBook; that's the
9 information I'm familiar with, sir.

10 Q. And does this -- what's been marked as
11 P3/EPISA 14, is that a FactBook that you participated
12 in the preparation of?

13 MR. KUTIK: I'm sorry. Was the question
14 about this particular -- this particular page or the
15 FactBook itself?

16 EXAMINER PRICE: Do you want to restate
17 the question or read it back?

18 MR. SETTINERI: Read it back. It's fine.
19 (Record read.)

20 MR. KUTIK: So I can't tell what the
21 question is asking, your Honor, with respect to the
22 FactBook itself or with respect to the page.

23 EXAMINER PRICE: I believe he is asking
24 about the FactBook itself.

25 A. I would have reviewed the information

1 contained in the regulatory updates slides contained
2 in the FactBook represented in P3/EPISA 14.

3 Q. Okay.

4 MR. SETTINERI: Well, your Honor --

5 Q. Let me ask this question: Have you --
6 did you review the -- have you reviewed -- strike
7 that.

8 In your duties do you generally review,
9 in its entirety, the FirstEnergy FactBook?

10 A. No.

11 Q. Okay. Have you ever reviewed page --
12 what's been marked as page -- have you ever seen
13 what's been marked as P3 Exhibit 73 -- 15?

14 MR. KUTIK: So we are asking has she seen
15 Exhibit 15?

16 EXAMINER PRICE: Yes.

17 A. I don't recall whether or not I've seen
18 this. I don't recall seeing it. I may have seen it
19 in flipping through, but I don't think so.

20 Q. Turning back then to P3 Exhibit 15, the
21 line "Total Exposure from Contractual Obligations."
22 Do you see the column titled "Utilities" as well in
23 that table? Can you tell --

24 MR. KUTIK: I'll object, your Honor.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Foundation.

2 EXAMINER PRICE: Foundation. Sustained.

3 MR. SETTINERI: Your Honor, if I may, it
4 is -- she hasn't disputed it's a FirstEnergy
5 document. She's testified about downgrades and
6 collateral requirements. And this is a company
7 document that I think is important to have in the
8 record. And the fact that she doesn't recall whether
9 she looked at this, but she was involved in the
10 preparation should not preclude her -- us from being
11 able to cross her as a company witness on these
12 collateral requirements. She's the only company
13 witness.

14 EXAMINER PRICE: If she is not familiar
15 with the company -- if she is not familiar with the
16 page, I don't understand how you can get any relevant
17 testimony from her. She would just be guessing. She
18 indicated that she had reviewed the regulatory update
19 slides. This is not one of the regulatory update
20 slides. I don't doubt this is an authentic company
21 document, but you still haven't laid a foundation
22 that she had used it or seen it or it was part of her
23 testimony.

24 Q. (By Mr. Settineri) All right. You can
25 put that to the side momentarily, Ms. Mikkelsen.

1 A. Thank you.

2 Q. Turning to what's been marked as Sierra
3 Club Exhibit 98. Do you have that in front of you?

4 A. Yes, sir.

5 Q. Okay. The last bullet point on that page
6 notes "Overall higher cost of doing business; much
7 more challenging to be competitive with peers." Do
8 you see that?

9 A. Yes.

10 Q. All right. And that bullet point refers
11 to the distribution business, correct?

12 A. The question, sir, refers to the
13 consequences of FirstEnergy dropping below investment
14 grade and the effects on the companies, so I would
15 say all four of the entities.

16 EXAMINER PRICE: Can you restate your
17 answer? I believe that under our definitions,
18 "FirstEnergy" refers to the companies. "FirstEnergy
19 Corp." would refer to the holding company.

20 THE WITNESS: Thank you, sir. The
21 question asked that we provide detail on the
22 consequences of FirstEnergy Corp. dropping below an
23 investment grade rating. And then it goes on to ask
24 and "What effects this will have on The Illuminating
25 Company, Ohio Edison, and Toledo Edison?" So I

1 believe these bullets address the consequences on all
2 four of those entities.

3 Q. So if you could turn to page 94. Now, I
4 don't know if you have been handed your July 8
5 deposition. Do you have a copy of that?

6 MR. KUTIK: I don't believe she does.

7 EXAMINER PRICE: She does not, nor does
8 the Bench.

9 Q. (By Mr. Settineri) Ms. Mikkelsen, again,
10 if you could turn to page 94 of your deposition
11 transcript from July 8.

12 A. I'm sorry. Page 94?

13 Q. Yes. It would be page 94. I have handed
14 you the condensed version, so it would be page 94 of
15 the deposition itself. Do you see that?

16 A. I do.

17 Q. Okay. I believe, going to look at line
18 11 through line 17. "Question: Now, you refer in
19 your response in the bullet -- last bullet -- or one
20 of the -- I guess it is the last bullet, the 'Overall
21 higher cost of doing business' and 'much more
22 challenging to be competitive with peers.' Can you
23 tell me what business you are referring to there?"

24 The answer was: "The distribution
25 business." Did I read that correctly?

1 A. Yes.

2 Q. Okay. And that last bullet point does
3 not refer to the generation business, correct?

4 A. Correct.

5 Q. And the "peers" that are being referred
6 to in that bullet point are other distribution
7 utilities, correct?

8 A. Maybe it makes sense to parse this out
9 into two sep -- the response was provided as a
10 non-exhaustive list of the adverse effects of the
11 downgrade on the parent, and then, as a separate
12 matter, on the companies. So if we are looking at it
13 in the context of the companies or the distribution
14 utilities, then, yes, the "peers" in that instance
15 are distribution utilities.

16 Q. And to the extent a company is not
17 investment grade and it increases the company's
18 overall cost of doing business, it is more
19 challenging to be competitive with that company's
20 peers than to not have that higher cost of doing
21 business, correct?

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

24 EXAMINER PRICE: You may.

25 (Record read.)

1 A. I have the same problem, can you --

2 Q. That is the first time I have ever had to
3 reread it.

4 Okay. To the extent a company is not
5 investment grade and it increases the company's
6 overall cost of doing business, it is more
7 challenging to be competitive with that company's
8 peers who may not have that higher cost of doing
9 business, correct?

10 A. Yes.

11 Q. And that's what you are trying to convey
12 in that last bullet point on that page, correct, and
13 when I say "page," DR-35, which would be Sierra Club
14 Exhibit 98.

15 A. Yes.

16 Q. Okay. And that point can apply just --
17 that point can just as equally apply to FirstEnergy
18 Solutions Corp., correct?

19 MR. KUTIK: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. KUTIK: Relevance.

22 EXAMINER PRICE: The staff did ask about
23 FirstEnergy Corp., so Mr. Settineri --

24 MR. KUTIK: I think the question -- may I
25 have the question read, please.

1 MR. SETTINERI: I will be glad to say it
2 was directed at FirstEnergy Solutions. But, again,
3 this proposal -- her testimony says "intended to
4 benefit the customer." We're allowed -- we should be
5 allowed, it is relevant to show who else benefits
6 from this proposal.

7 MR. KUTIK: Objection, your Honor. Same
8 grounds as before.

9 EXAMINER PRICE: Sustained.

10 Q. Ms. Mikkelsen, just to be clear,
11 FirstEnergy Corp. uses a consolidated balance sheet
12 that includes all of its subsidiaries, correct?

13 A. Yes.

14 Q. And the -- why don't you turn to page 6
15 of your testimony, please. And at line 12 you
16 reference actual capacity prices, correct? Do you
17 see that phrase "actual capacity prices," page 6,
18 line 12?

19 A. Yes.

20 Q. The actual capacity price for June 2019
21 to May 2020 is \$100 per megawatt-day, correct?

22 A. That was the base residual auction
23 clearing price for the capacity performance product.

24 Q. Would you agree with me that FES's total
25 exposure from contractual obligations in the event of

1 a downgrade below investment grade rating is
2 significantly higher than that of the companies?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. KUTIK: Relevance.

6 EXAMINER PRICE: Sustained.

7 Q. (By Mr. Settineri) Under your -- the --
8 under the proposal on the cost side of the equation,
9 that's again based on projected costs that are in the
10 record, correct?

11 A. Yes.

12 Q. Okay. That cost side includes the return
13 on equity that was in the record on the cost side
14 previously, correct?

15 A. Yes.

16 Q. Now, I believe earlier you testified
17 that -- and I'll paraphrase that the companies
18 intend -- intention is to use the monies collected
19 under the rider RRS at the operating company level.
20 But let me ask you this, the companies haven't
21 developed a timeline for cash flow expenditure of
22 those monies, correct?

23 A. Yes.

24 MR. SETTINERI: One moment, your Honor.

25 Let me --

1 Q. Ms. Mikkelsen, if I may, you're familiar
2 with the balancing factors that the Commission noted
3 in its February 25, 2015, Opinion and Order in
4 Case No. 13-2385-EL-SSO?

5 MR. KUTIK: Objection.

6 EXAMINER PRICE: Grounds?

7 MR. KUTIK: Relevance, beyond the scope.
8 This isn't a PPA rider, your Honor.

9 MR. SETTINERI: If the companies
10 are willing to stipulate that those balancing factors
11 don't apply to this proceeding, I'm fine with that.

12 EXAMINER PRICE: I'm not. Overruled.

13 MR. SETTINERI: Okay.

14 Q. All right. Ms. Mikkelsen, are you
15 familiar with those balancing factors -- the
16 balancing factors from the AEP decision?

17 A. I would ask you to provide me a copy of
18 the decision that you are looking at and then
19 specifically if you could point me to what you are
20 calling the "balancing factors" that would be helpful
21 to me, sir.

22 Q. More than fair. If you could give me a
23 moment.

24 MR. SETTINERI: May I approach, your
25 Honor?

1 EXAMINER PRICE: You may.

2 MR. SETTINERI: Thank you.

3 Q. Ms. Mikkelsen, if I gave you an excerpt
4 from that decision listing the balancing factors,
5 would that help refresh your memory? Might it help
6 refresh your memory?

7 A. Perhaps.

8 Q. Ms. Mikkelsen, what I have handed you is
9 pages 25 and 26 from that Opinion and Order.

10 A. I have the document you handed me.

11 Q. All right. And if you could look at the
12 second paragraph. All right. Do you see that --

13 MR. SETTINERI: In fact, your Honor, at
14 this time, just for the record, if you would like,
15 why don't I go ahead and mark this as P3 Exhibit 16.
16 Or you prefer not to?

17 EXAMINER PRICE: No, that's fine. We'll
18 go ahead and mark it, but we are not going to admit
19 it.

20 MR. SETTINERI: No.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. SETTINERI: Would anyone else like a
23 copy?

24 Q. (By Mr. Settineri) All right.
25 Ms. Mikkelsen, I have handed you had what's been

1 marked as P3/EPISA 16. Do you recognize this as a
2 page from the Commission's decision in
3 13-2385-EL-SSO?

4 MR. KUTIK: Well, to be fair, it's
5 actually two pages.

6 MR. SETTINERI: You are correct; it was
7 two pages.

8 A. It appears -- it appears to be, yes.

9 Q. So let's look at the balancing factors.
10 You are aware that the Commission addressed certain
11 balancing factors in its decision both in the AEP
12 case and in this proceeding previously, correct?

13 A. I'm not familiar with the term that you
14 are using, "balancing factors," because, as I recall
15 and as the document says, it's factors that the
16 Commission will balance but not be bound by, so I'm
17 not familiar with that characterization as "balancing
18 factors."

19 Q. Fair enough. So let's start first, in
20 deciding whether to approve the companies' request
21 for cost recovery: Financial need of the generating
22 plant. Would you see that as being one factor that
23 the Commission could balance, but not be bound by?

24 MR. KUTIK: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. KUTIK: Well, now he is asking her to
2 opine on a legal matter, what the Commission could or
3 couldn't do with an issue that's already been decided
4 in this case.

5 EXAMINER PRICE: I am going to sustain
6 that objection. Let me try.

7 MR. SETTINERI: Thanks.

8 EXAMINER PRICE: Ms. Mikkelsen, the
9 proposal does not do anything to address any
10 purported financial needs of any generating
11 facilities owned by FES or any other facility in the
12 state, does it, generating facility in the state?

13 THE WITNESS: It does not.

14 MR. SETTINERI: One minute, your Honor.

15 All right. Your Honor, no further
16 questions at this time subject to the confidential
17 session. Thank you.

18 EXAMINER PRICE: Thank you. Let's go off
19 the record.

20 (Discussion off the record.)

21 EXAMINER PRICE: Okay. Back on the
22 record.

23 Mr. Whitt.

24 - - -

25

CROSS-EXAMINATION

By Mr. Whitt:

Q. Good afternoon, Ms. Mikkelsen. My name is Mark Whitt and I represent Direct Energy in this case. Ma'am, you're employed by FirstEnergy Service Company; is that right?

A. I am employed by FirstEnergy Service Corporation.

Q. Is it FirstEnergy Service Corporation or FirstEnergy Service Company? I will refer you to page 1, line 1 -- line 2 of your testimony.

A. You are right, sir. It's FirstEnergy Service Company.

Q. Thank you.

And FirstEnergy Service Company is a separate corporation from the applicants in this proceeding, correct?

MR. KUTIK: Your Honor, I object.

EXAMINER PRICE: I believe he is just laying a couple of foundation questions. Overruled for now.

A. It is a separate company from the Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company.

Q. "It" being FirstEnergy Service Company, a

1 separate corporation from the three applicants in
2 this case, correct?

3 A. Yes.

4 Q. And each applicant in this case, you
5 understand to be a public utility under Ohio law,
6 correct?

7 A. Yes.

8 Q. And would you understand the applicants
9 to also be electric distribution utilities under Ohio
10 law?

11 A. Yes.

12 Q. Okay. Now, FirstEnergy Corp. owns all of
13 the common stock of your employer, FirstEnergy
14 Service Company, correct?

15 MR. KUTIK: Objection. Really, your
16 Honor?

17 MR. WHITT: Really. That's what I asked.

18 EXAMINER PRICE: Where are you going with
19 this, Mr. Whitt?

20 MR. WHITT: Well, your Honor, I am
21 showing where the money goes. There have been
22 assertions that this is a proposal where funds are
23 going to be collected from captive retail customers
24 and devoted to projects benefited solely for those
25 customers, when, in fact, by the companies' own

1 publicly-filed documents in the FERC Form 1,
2 indicates control of the electric distribution
3 utilities by unregulated parent companies and
4 interrelated transactions.

5 MR. KUTIK: No one is disputing that
6 FirstEnergy Corp. is the wholly-owning parent of the
7 utilities. That's not a disputed fact in this case.
8 It has been well established in this record.

9 MR. WHITT: Then what's the objection?

10 MR. KUTIK: The objection is asked and
11 answered. Wasting time.

12 EXAMINER PRICE: I think the objection is
13 we have already addressed this -- and I understand
14 you are at a disadvantage because you were not here
15 for the previous 41 days of hearing, but I think
16 Mr. Kutik's objection is that we have already
17 addressed this in the preceding section.

18 Q. (By Mr. Whitt) Well, let me make this one
19 point. Is it not correct that all of the executive
20 officers and directors of the -- of FirstEnergy Corp.
21 are also directors and officers of FirstEnergy
22 Solutions, FirstEnergy Services, as well as the
23 utilities? Overlapping officers and directors,
24 correct?

25 A. There are overlapping officers, yes.

1 Q. Okay. Now, whatever net income is earned
2 by the subsidiaries of FirstEnergy Corp., whether
3 regulated or unregulated, those net earnings are paid
4 to FirstEnergy Corp. in the form of a dividend,
5 correct?

6 A. No.

7 Q. That's not correct?

8 A. They may or may not be.

9 Q. Okay. FirstEnergy uses dividends
10 received from its subsidiaries whether regulated or
11 unregulated, to pay dividends to its own
12 shareholders, correct?

13 MR. KUTIK: I am sorry, your Honor, in
14 this context, does "FirstEnergy" mean the corporation
15 or does "FirstEnergy" mean the utilities?

16 MR. WHITT: That's what I'm trying to
17 figure out.

18 EXAMINER PRICE: Again, Mr. Whitt, for
19 purposes of this hearing, we are calling the
20 utilities OE, TE, and CEI, "FirstEnergy." If you are
21 referring to "FirstEnergy Corp.," we are calling it
22 "FirstEnergy Corp." just so the record is clear.
23 This has been our way of handling this so far.

24 MR. WHITT: Okay. May I propose even a
25 further shorthand? If I say "EDUs," would you

1 understand that acronym to mean electric distribution
2 utilities meaning Ohio Edison, Toledo Edison, and the
3 Illuminating Company? Can we do it that way?

4 EXAMINER PRICE: Yeah. She understands
5 that.

6 Q. (By Mr. Whitt) FirstEnergy Corp., the
7 parent, receives dividends from its regulated and
8 unregulated subsidiaries, correct?

9 A. FirstEnergy Corp. could receive dividends
10 from all of its subsidiaries.

11 Q. Well, in fact, that's how FirstEnergy
12 Corp. makes money, is it not? From the operations of
13 its subsidiary; that's its sole business, correct?

14 MR. KUTIK: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. KUTIK: What does "makes money" mean?

17 Q. Do you know what "makes money" means?
18 Did you learn that in MBA school?

19 EXAMINER PRICE: She can answer if she
20 knows. Don't be argumentative.

21 THE WITNESS: Thank you for that. I
22 appreciate it, sir.

23 A. If your question is do the results of the
24 operations of the subsidiary companies consolidate up
25 to the parent, the answer is yes.

1 Q. And by "consolidated," you mean that the
2 results, whether it's a profit or a loss of the
3 subsidiaries, are all added together and reported on
4 a consolidated basis, correct?

5 A. Yes.

6 Q. So if regulated operations, and let's say
7 operations of the EDUs are profitable, but
8 unregulated operations are operating at a loss, then
9 the unregulated operations would negatively affect
10 the net income of FirstEnergy Corp., correct?

11 MR. KUTIK: Your Honor, I'll object at
12 this point.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: This is nothing to do with
15 the companies' proposal.

16 EXAMINER PRICE: Again, I think he is
17 just trying to lay some foundation questions, and I
18 think we are going to move on quickly to the
19 proposal, so I am going to overrule your objection at
20 this time.

21 A. To the extent that one of the
22 subsidiaries has a net loss in a period, that net
23 loss would be consolidated into the consolidated
24 results of the parents -- parent along with all of
25 the other results from the other legal entities that

1 are part of the corporate structure.

2 Q. Thank you.

3 And the applicants are not suggesting, I
4 assume, that this Commission can instruct FirstEnergy
5 Corp. on how that legal entity may spend its
6 dividends; would that be accurate?

7 THE WITNESS: May I ask to have the
8 question reread, please, sir?

9 EXAMINER PRICE: You may.

10 (Record read.)

11 MR. KUTIK: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. KUTIK: Relevance, beyond the scope.

14 MR. WHITT: It's relevant because all of
15 the monies of the subsidiary can go to the parent
16 company in the form of a dividend. The parent
17 company can then direct -- can use that money to pay
18 dividends to its own shareholders or it can reinvest
19 in any of its lines of business.

20 EXAMINER PRICE: Overruled.

21 THE WITNESS: I apologize. May I ask to
22 have the question reread, please.

23 EXAMINER PRICE: You may.

24 MR. WHITT: Let me just slightly reword
25 it and just ask the witness if she would agree with

1 the last statement that I made. Let me do it again.

2 EXAMINER PRICE: Why don't you restate
3 your question, yeah.

4 Q. There is going to be a little ask and
5 answering here just to get us off the point. Both
6 regulated and unregulated subsidiaries of FirstEnergy
7 Corp. may pay a dividend to the parent company, again
8 being FirstEnergy Corp., correct?

9 A. Yes.

10 Q. And FirstEnergy Corp. can use the money
11 it receives from its regulated and unregulated
12 holdings to pay a dividend to FirstEnergy Corp.'s
13 shareholders, correct?

14 A. Yes.

15 Q. Or it may use that money to invest in its
16 subsidiaries, whether regulated or unregulated,
17 correct?

18 A. Theoretically, yes, but the parent
19 company has stated it is not going to make any more
20 investments in the competitive subsidiary going
21 forward.

22 Q. But that's ultimately up to the parent
23 company to decide; would you agree with that?

24 A. Yes.

25 Q. Okay. And if we were to look at public

1 filings with the SEC or elsewhere, those filings
2 would give us an indication of the -- of FirstEnergy
3 Corp.'s dividend payout ratio, correct?

4 A. I believe you could derive that from
5 publicly-filed documents, yes.

6 Q. And the dividend payout ratio would tell
7 us how much net income FirstEnergy Corp. pays to its
8 shareholders, correct?

9 A. The payout ratio is the ratio of the
10 dividend to the net income of the corporation.

11 Q. Thank you.

12 Let's go to the RRS proposal, and would
13 it be fair to describe what the company is proposing
14 now as a mechanism that retains the approved RRS
15 structure and formula, but changes the inputs and
16 variables that go into the RRS calculation?

17 A. I think it is fair to characterize the
18 companies' proposal as trying to maintain the
19 benefits of the Commission-approved rider RRS by
20 proposing a few modifications to the calculation of
21 rider RRS.

22 Q. Okay. And I think we are saying the same
23 thing. I believe you had testified earlier, I am not
24 trying to mischaracterize in any way, but I think you
25 had clarified that the company is not proposing to

1 change RR -- RSS --

2 MR. KUTIK: RRS.

3 Q. -- RRS, whatever it is, the rider, you
4 are not changing the rider but just how credits or
5 charges are calculated under the rider. Maybe that
6 was the easier way to explain it.

7 A. I think as I said earlier, the company is
8 not proposing a change to the Commission-approved
9 rider RRS. They are proposing a few modifications.
10 A few modifications to the calculation of the charges
11 and credits that would be included in rider RRS.

12 Q. Okay. And on page 5 of your testimony,
13 you generally describe those modifications and you
14 indicate that actual costs will be replaced with what
15 you describe as "costs which are evidence of record."

16 A. The actual quote would be "with the costs
17 which are already evidence of record."

18 Q. Okay. And the evidence of record that
19 you are referring to on page 5 was heard by the
20 Commission in the context of a PPA involving the
21 applicants in this proceeding and FirstEnergy
22 Solutions, correct?

23 A. The companies never had a PPA before the
24 Commission. What the companies had before the
25 Commission was a proposal for a retail rate stability

1 rider and the costs which are already evidence of
2 record were costs that were produced in support of
3 that retail rate stability rider.

4 Q. But those costs were derived, in part, at
5 least from a -- or envision a PPA as I described it
6 in my earlier question, correct?

7 A. The costs that were presented in the case
8 were estimates of the actual costs -- forecasts of
9 the costs that would be incurred to operate certain
10 plants, Davis-Besse, Sammis, and OVEC over the term
11 of the ESP.

12 Q. Okay. And I think we've already
13 established that what's on the table now is that the
14 applicants have suspended the PPA, or proposing what
15 they are proposing now, that doesn't involve a PPA at
16 all, correct?

17 A. There is no PPA associated with the
18 proposal the company has before the Commission today.

19 Q. Okay. So, in effect, customers -- the
20 company is proposing that -- I am going to say the
21 applicants are proposing to assess a charge or issue
22 a credit based on financial modeling of a transaction
23 that is not going to happen, correct?

24 A. No. I think the companies' proposal is
25 that the costs that were being presented in the case

1 and relied upon in reaching determinations in the
2 case are representative proxies for fuel-diverse
3 baseload generation in the region, and I think the
4 basis for that is a number of things, which we
5 discussed earlier in the proceeding.

6 When those costs were presented to the
7 EDU teams at the company, the EDU teams did extensive
8 due diligence on those costs, compared the cost of
9 those plants to other fossil plants and nuclear
10 plants in the industry, and concluded those costs
11 were representative of costs from a nuclear plant as
12 well as a fossil plant.

13 So what the companies' proposal now is,
14 rather than peg those costs to any specific plant,
15 rather treat those costs as proxy costs for a
16 fuel-diverse baseload generation portfolio and
17 include those costs accordingly in the hedge
18 proposal.

19 Q. But the company had a -- the terms and
20 conditions of the proposed PPA and projected pricing
21 was in evidence in the earlier proceeding, was it
22 not?

23 MR. KUTIK: May I have the question read,
24 please.

25 EXAMINER PRICE: You may.

1 (Record read.)

2 A. If your question to me is, sir, was there
3 a term sheet, that was an exhibit in the case, the
4 answer is yes.

5 Q. In the companies' projections under the
6 proposal, well, then and now, the companies or the
7 applicants anticipate a charge to customers under the
8 rider in at least the first few years, correct?

9 A. The companies' projections are the
10 customers will be benefited by a credit of \$561
11 million over --

12 Q. Excuse me.

13 MR. KUTIK: May she finish her answer?

14 MR. WHITT: Well, she wasn't answering my
15 question.

16 EXAMINER PRICE: Wait a second. Let her
17 finish her answer, then you can object -- or move to
18 strike.

19 A. -- over the entire term of the ESP with
20 charges in the early years that are more than offset
21 by credits in the latter years.

22 Q. Let's just talk about the first three
23 years of the proposal, the company would anticipate
24 charges to customers, correct?

25 A. Yes.

1 Q. And in latter years of the proposal, the
2 company anticipates it would issue credits, correct?

3 A. Yes.

4 Q. And that is basically how a loan works,
5 is it not? Give me money today and I'll give you
6 some back later?

7 A. The companies' proposal is for a hedge
8 for the customers to the extent that when market
9 prices are low, the customers see a charge. As
10 market prices increase, customers will see a credit.
11 I am not familiar, sir, with a loan that would have
12 terms similar to that.

13 Q. Because loans get paid back and the hedge
14 won't necessarily be paid back, will it?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 Q. You are not --

18 EXAMINER PRICE: He has an objection
19 pending. Grounds?

20 MR. KUTIK: Argumentative.

21 EXAMINER PRICE: Sustained.

22 MR. WHITT: I'll move on.

23 Q. I want to hopefully close the loop on the
24 grid modernization discussion earlier and just ask
25 you a question this way and it's this, that the

1 applicants could decide not to spend anything on any
2 grid modernization projects and that decision would
3 not violate the stipulation as approved by the
4 Commission. I understand you are not a lawyer, but
5 is that your understanding as a key participant in
6 this proceeding?

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

9 EXAMINER PRICE: You may.

10 (Record read.)

11 MR. KUTIK: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. KUTIK: Beyond the scope, your Honor.
14 The commitments that the company has made with
15 respect to the grid modernization will be part of the
16 third supplemental stipulation. They are unaffected
17 by the companies' proposal now.

18 MR. WHITT: Your Honor, I am trying to
19 understand if, in fact, there is a commitment and
20 whether there may or may not be a disconnect in the
21 definition of that term among the parties on what a
22 "commitment" means versus an "intention" or "desire."

23 EXAMINER PRICE: If there is a
24 commitment, that's a legal question, not something
25 for this witness to answer.

1 MR. WHITT: Does that mean I lose?

2 EXAMINER PRICE: Yes.

3 MR. KUTIK: I was going to ask the same
4 thing.

5 Q. (By Mr. Whitt) On the credit rating
6 agency issue and Moody's in particular, it's my
7 understanding Moody's does separate credit ratings on
8 the subsidiaries of FirstEnergy Corp.; is that
9 correct?

10 A. Yes.

11 Q. And I assume you are generally aware of
12 who and what Moody's is?

13 A. Yes.

14 Q. And do you -- do you subscribe to -- or
15 the company to any Moody's services in terms of
16 ratings guidance or any of the various products that
17 they offer?

18 MR. KUTIK: Well, I object. Which
19 question are we asking with respect to her or the
20 companies?

21 EXAMINER PRICE: I believe he is asking
22 about the companies, not Ms. Mikkelsen personally.

23 MR. WHITT: Yeah.

24 A. Yes.

25 Q. Do you specifically in your -- the

1 capacity of which you work with FirstEnergy Services
2 company, periodically review the information from
3 Moody's?

4 A. Yes.

5 Q. And is it your understanding that
6 financial markets rely on information and guidance
7 issued by Moody's?

8 THE WITNESS: May I ask to have that
9 question reread, please, sir?

10 EXAMINER PRICE: You may.

11 (Record read.)

12 A. Sir, may I ask you to be more specific
13 with respect to "financial markets"?

14 Q. Let me -- that was a poor term.

15 Do investors rely on information and
16 research published by Moody's?

17 MR. KUTIK: I'll object to the extent it
18 calls for speculation.

19 EXAMINER PRICE: We will give him a
20 little bit of leeway.

21 A. Moody's is a credit rating agency who
22 issues credit ratings for the various legal entities
23 that are part of the corporate family. What
24 investors rely upon, whether they choose to rely upon
25 Moody's or not, I don't know what individual

1 investors rely upon in making investment decisions.

2 Q. What about FirstEnergy Corp. as an
3 investor of the EDUs, if Moody's were to announce a
4 downgrade of FirstEnergy Corp., I assume that's
5 something that FirstEnergy Corp. would take notice
6 of; would that be a fair assumption on my part?

7 A. Yes.

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

9 EXAMINER PRICE: You may.

10 Q. Ma'am, I am going to hand you what I have
11 marked for identification as Direct Exhibit 1.

12 A. Thank you.

13 EXAMINER PRICE: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Does the document I handed you appear to
16 be information consistent with what you understand
17 Moody's to issue?

18 A. It certainly is a report generated by
19 Moody's.

20 Q. Thank you.

21 And the headline of the report indicates
22 "Rating Action: Moody's revises outlook on
23 FirstEnergy Corp. and merchant subsidiaries to
24 negative following FERC order." Did I read that
25 correctly?

1 MR. KUTIK: Objection.

2 EXAMINER PRICE: Grounds?

3 MR. KUTIK: Foundation.

4 MR. WHITT: She just said it's a
5 Moody's -- it is certainly a Moody's press release is
6 what she said.

7 THE WITNESS: I did not.

8 MR. WHITT: With respect to any hearsay
9 objection, the document comes in under 803(17),
10 Market Reports, which includes reports relied on by
11 professionals in a particular field, and she has
12 established a foundation for that exception. It's
13 authentic, it's not hearsay and, therefore, it's
14 admissible.

15 EXAMINER PRICE: I don't think you've
16 laid a foundation that she has seen this before
17 though.

18 MR. WHITT: I just asked her whether I --
19 what I read was correct.

20 EXAMINER PRICE: I understand that. I am
21 saying I don't think you have established a
22 foundation that she has actually seen this. I agree
23 it's admissible, but you can't ask her questions
24 unless she has some familiarity with it.

25 MR. WHITT: The only question pending,

1 just so we're clear, your Honor, is whether I read
2 the title correctly.

3 EXAMINER PRICE: I understand.

4 MR. KUTIK: So my objection is sustained,
5 your Honor?

6 EXAMINER PRICE: Yes.

7 Ms. Mikkelsen, have you seen this before?

8 THE WITNESS: Yes, sir.

9 EXAMINER PRICE: There we go. Now you
10 can ask your questions.

11 MS. BOJKO: Your Honor, I'm sorry to
12 interrupt. Is this dated April 28, 2016, what's been
13 marked as Direct Energy Exhibit 1?

14 EXAMINER PRICE: Yes.

15 MR. WHITT: Yes.

16 MS. BOJKO: Thank you.

17 EXAMINER PRICE: Now, you can answer his
18 question.

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

21 Q. I think you've indicated you have seen a
22 copy of Direct Exhibit 1 before, correct?

23 A. Yes.

24 Q. Any reason to believe that the document I
25 have handed you is not the same as the press release

1 you recall looking at earlier?

2 A. Yeah. I don't recall referring to a
3 press release, sir.

4 Q. Or whatever this document is.

5 MR. KUTIK: Well, I am not sure what the
6 question is, your Honor.

7 EXAMINER PRICE: I'm not sure what the
8 question is. Just restate your question, Mr. Whitt.

9 Q. Let's cut to the chase, I suppose. If we
10 read the first paragraph of Direct Exhibit 1, the
11 paragraph nowhere refers to a credit downgrade of the
12 applicants in this proceeding, correct?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. KUTIK: Relevance.

16 EXAMINER PRICE: Overruled.

17 A. The paragraph you referenced does not
18 refer to the credit rating for the companies.

19 Q. The "companies" meaning the applicants in
20 this case, correct?

21 A. Yes.

22 Q. Okay. And as Vice President of Rates and
23 Regulatory, I assume you are familiar with FERC Form
24 1s?

25 A. Yes.

1 Q. Are you -- you know I have some here,
2 don't you? Are you involved in the preparation of
3 the Applicant's Form 1s?

4 A. No.

5 Q. FERC Form 1s? Not at all?

6 A. No.

7 Q. Could you recognize a FERC Form 1 if you
8 saw one?

9 A. Yes.

10 Q. Okay. So let me show you three of them.
11 And I am going to have to substitute or -- not
12 substitute -- hand out some additional copies which I
13 am happy to do. Let me take care of counsel.

14 MR. KUTIK: How are you going to mark
15 these?

16 MR. WHITT: 2, 3 and 4. We will, for the
17 record, identify Direct Exhibit 2 as the FERC Form 1
18 of Ohio Edison Company for the period ending fourth
19 quarter of 2015. Direct Exhibit 3 would be the FERC
20 Form 1 for Toledo Edison Company ending fourth
21 quarter of 2015. Direct Exhibit 4 would be FERC
22 Form 1 for The Cleveland Electric Illuminating
23 Company ending fourth quarter of 2015.

24 EXAMINER PRICE: They will all be so
25 marked.

1 (EXHIBITS MARKED FOR IDENTIFICATION.)

2 Q. Do the documents I have handed you marked
3 as --

4 EXAMINER PRICE: Have you given any to
5 the court reporter?

6 MR. WHITT: I haven't.

7 EXAMINER PRICE: Okay.

8 MR. WHITT: I will take care of that
9 momentarily.

10 Q. The documents marked Direct Exhibits 2, 3
11 and 4, take as much time as you need to review those,
12 but can you identify those documents as FERC Form 1s?

13 MR. KUTIK: Your Honor, can we go off the
14 record?

15 EXAMINER PRICE: Yes.

16 (Discussion off the record.)

17 EXAMINER PRICE: Let's go back on the
18 record.

19 MR. WHITT: I have -- well, did I have a
20 question pending?

21 EXAMINER PRICE: I thought it was
22 foundational, that she could authenticate it, but if
23 he is willing to come back and check them and
24 stipulate to them --

25 MR. WHITT: Yeah. And I think our

1 off-the-record discussion indicated that the company
2 would check and get back to us on authenticity. And,
3 with that, I have no further questions. I would move
4 for the admission of Direct Exhibit 1.

5 EXAMINER PRICE: We will defer ruling on
6 Direct Exhibit 1 until the conclusion of all the
7 parties' cross, as it is our practice.

8 Ms. Grady.

9 MS. WILLIS: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Willis:

13 Q. Good afternoon, Ms. Mikkelsen.

14 A. Good afternoon, Ms. Willis.

15 EXAMINER PRICE: Willis.

16 MS. WILLIS: Thank you.

17 EXAMINER PRICE: I did so well in the
18 previous portion of this hearing.

19 MS. WILLIS: It's difficult.

20 Q. Now, page 15, this morning, when you were
21 first put on the stand, you withdrew page 15
22 beginning on line 3, through 16, line 12; is that
23 correct that, that's withdrawn?

24 A. Yes.

25 Q. Can you tell me then, under the proposal,

1 will the Commission be able to modify rider RRS
2 during the term of the stipulated ESP IV?

3 A. The provision in the proposal that would
4 have allowed the Commission under certain
5 circumstances to adjust the rider has been removed.

6 Q. So there will be no -- under the
7 testimony you are submitting today, you've modified
8 the proposal such that the Commission will not be
9 able to modify rider RRS during the term of the
10 stipulated ESP IV, correct?

11 A. Yes.

12 Q. Now, under the companies' proposals, if
13 Davis-Besse and Sammis are retired, all else equal,
14 rider RRS would continue under the proposal, correct?

15 A. Yes.

16 Q. And all else equal, assuming that
17 Davis-Besse and Sammis retire, the Commission would
18 not have the opportunity to revisit rider RRS.

19 A. Correct.

20 Q. Now, the FirstEnergy Ohio utilities do
21 not have to enter into any financial arrangements in
22 order to provide the hedge to customers under the
23 proposal; is that correct?

24 A. Yes.

25 Q. And the hedge provided under the proposal

1 does not rely upon any actions taken by any other
2 corporate entity in the FirstEnergy Corp., correct?

3 A. Yes.

4 Q. Now, under the proposal, there is no
5 restriction on how the revenues from rider RRS -- RRS
6 are to be used; is that correct?

7 A. As we discussed earlier, it is the
8 companies' intention to use the rider RRS revenues in
9 the conduct of its operations.

10 Q. Do you have before you your deposition
11 transcript from July -- June 29? Do you have that
12 before you?

13 A. I'm not sure just yet. Thank you.

14 Q. Take your time.

15 A. I don't seem to have it. Oh, I
16 apologize. Yes, I do have it, ma'am.

17 Q. Could you please turn to page 132 and I
18 am going to direct your attention to lines 19 through
19 24, and I am going to read the question and answer,
20 and my question is "Did I read it correctly?" So
21 when you get to that point, please let me know.

22 MR. KUTIK: What page? I'm sorry.

23 MS. WILLIS: I'm sorry, that's 132.

24 A. I'm there.

25 Q. "Question: Under the proposal there is

1 no restriction on how the revenues from rider RRS can
2 be used; is that correct?"

3 And then "Mr. Kutik: Objection, asked
4 and answered."

5 And the response on 24 was "Yes."

6 Did I read that correctly?

7 A. Yes.

8 Q. Thank you.

9 Now on page 5 of your testimony, your
10 rehearing testimony, if you would look at line 23 and
11 carrying over to page 6, line 1, you state that
12 "...the modified Rider RRS holds constant the
13 cost-side of the hedging mechanism using costs in the
14 record already determined by the Companies -- and,
15 more importantly, by the Commission -- to be
16 reasonable." Do you see that?

17 A. I apologize. May I have that reference
18 again?

19 Q. Yes. That's page 5 of your testimony,
20 starting on line 23 and carrying over to page 6,
21 line 1.

22 A. I see that reference.

23 Q. And there you are referencing the fact
24 that the PUCO relied, in part, on the companies'
25 forecast to determine if there was a net benefit to

1 customers associated with rider RRS, correct?

2 A. Yes.

3 Q. And you are also referring to the
4 Commission using, in the ESP versus MRO test, the
5 forecasts of the company, correct?

6 A. Yes.

7 Q. Would you agree that under rider RRS that
8 has been approved that the costs included in the
9 rider calculation were to be the actual costs
10 incurred at the plants?

11 A. Yes.

12 Q. And you would agree with me that the PUCO
13 did not determine that it was reasonable to use the
14 generation output and cleared capacity projections to
15 set rates for customers under the approved rider RRS,
16 correct?

17 A. Correct.

18 Q. Now, on page 6, I wanted to direct your
19 attention to line 16. And there you state that "The
20 proposal will preserve the benefits of the Stipulated
21 ESP IV for customers as previously determined by the
22 Commission." Do you see that?

23 A. Yes.

24 Q. You would agree with me, Ms. Mikkelsen,
25 that the proposal, on its own, does not support

1 resource diversity apart from the other provisions of
2 the ESP IV, correct?

3 A. Yes.

4 Q. And you would agree with me that the
5 proposal, on its own, does not provide support for
6 the generation assets of Davis-Besse, Sammis, and the
7 OVEC entitlement?

8 A. Yes.

9 MS. WILLIS: Your Honor, may I approach
10 the witness?

11 EXAMINER PRICE: You may.

12 MS. WILLIS: May I have a moment?

13 EXAMINER PRICE: You may.

14 MR. KUTIK: I hate when that happens.

15 EXAMINER PRICE: I am just blaming Larry.

16 MR. SAUER: That's easy to do.

17 MS. WILLIS: Your Honor, at this time, I
18 would like marked as OCC Exhibits No. 36 through 41,
19 six exhibits. I stapled them together as a package
20 so that each party would be entitled to the entire
21 package and I didn't have to make six trips up there.

22 EXAMINER PRICE: They will be -- each
23 individual discovery is -- gets its own number?

24 MS. WILLIS: Yes.

25 EXAMINER PRICE: All one page?

1 MS. WILLIS: Yes. I just stapled it so
2 we have them together.

3 EXAMINER PRICE: Okay. They will be so
4 marked.

5 (EXHIBITS MARKED FOR IDENTIFICATION.)

6 Q. Ms. Mikkelsen, I would ask you to take a
7 look at those documents, if you will, and after you
8 have had a chance to look at those documents, if you
9 could let me know.

10 A. I'm sorry. May I have the numbers we are
11 marking them again, please?

12 Q. We are starting with OCC Exhibit 36, and
13 there are six documents so they would be 36 through
14 41.

15 MR. KUTIK: Your Honor, just if the Bench
16 would indulge, could we have them individually
17 identified?

18 EXAMINER PRICE: We are going to.

19 MR. KUTIK: Thank you.

20 MS. WILLIS: I was going to go through
21 them. I wanted her to look at the entire package.

22 Q. Okay. Let's start with the first one.
23 Exhibit 36 is a single-page document marked as the
24 companies' response to OCC Set 22 Interrogatory 51;
25 is that correct?

1 A. Yes.

2 Q. And do you recognize this exhibit?

3 A. Yes.

4 Q. And can you tell me what it is?

5 A. It is the companies' response to OCC Set
6 22 Interrogatory 51.

7 Q. And you are the witness responsible for
8 this response, correct?

9 A. Yes.

10 Q. And the response was prepared by you or
11 under your supervision or direction?

12 A. Yes.

13 Q. And you're familiar with the information
14 contained in that response?

15 A. Yes.

16 Q. And does it appear to be a true and
17 accurate copy of your response to OCC's discovery?

18 A. Yes.

19 Q. Going to Exhibit No. 37, would you agree
20 that is a single-page document marked as the
21 company's response to OCC Set 22 Interrogatory 52?

22 A. Yes.

23 Q. And you are the witness responsible for
24 that response?

25 A. Yes.

1 Q. And it was prepared by you or under your
2 supervision or direction?

3 A. Yes.

4 Q. And you're familiar with the information
5 contained there?

6 A. Yes.

7 Q. And that is a true and accurate copy of
8 your response?

9 A. Yes.

10 Q. Going on to OCC Exhibit No. 38, that is a
11 single-page document marked as the companies'
12 response to OCC Set 22 Interrogatory 53, correct?

13 A. Yes.

14 Q. And you are the witness responsible for
15 that response?

16 A. Yes.

17 Q. Prepared by you or under your
18 supervision?

19 A. Yes.

20 Q. You are familiar with the information
21 contained there?

22 A. Yes.

23 Q. And it is a true and accurate copy of
24 your response.

25 A. Yes.

1 Q. Going on to OCC Exhibit No. 39, would you
2 agree that is a single-page document marked as the
3 companies' response to OCC's Set 22 Interrogatory 54?

4 A. Yes.

5 Q. And you are the witness responsible for
6 that response, correct?

7 A. Yes.

8 Q. Prepared by you or under your
9 supervision, correct?

10 A. Yes.

11 Q. You're familiar with that information
12 contained there?

13 A. Yes.

14 Q. And it is a true and accurate copy of
15 your response, correct?

16 A. Yes.

17 Q. Next exhibit being OCC -- marked for
18 identification as OCC Exhibit No. 40. Would you
19 agree with me that's a single-page document marked as
20 the companies' response to OCC Set 22 Interrogatory
21 55?

22 A. Yes.

23 Q. And that is -- you are the witness
24 responsible for that response?

25 A. Yes.

1 Q. Prepared by you or under your
2 supervision, correct?

3 A. Yes.

4 Q. And you're familiar with the information
5 contained there?

6 A. Yes.

7 Q. And that's a true and accurate copy of
8 your response?

9 A. Yes.

10 Q. And finally, OCC Exhibit No. 41, would
11 you agree with me that is a single-page document
12 marked as the companies' response to OCC's Set 22
13 Interrogatory 56?

14 A. Yes.

15 Q. And you are the witness responsible for
16 that response?

17 A. Yes.

18 Q. And it was prepared by you or under your
19 supervision?

20 A. Yes.

21 Q. And you're familiar with the information
22 contained in those responses?

23 A. Yes.

24 Q. And it appears to be a true and accurate
25 copy of your response?

1 A. Yes.

2 Q. Thank you.

3 Now, with respect to there's been some
4 testimony today with respect to the credit ratings,
5 and I want to focus on the individual credit ratings
6 of the Ohio utilities, and I want to focus more
7 narrowly on the S&P family approach -- I'm sorry, I
8 want to focus on the Moody's approach or the Moody's
9 perspective on the FirstEnergy utilities.

10 You're familiar with the Moody's approach
11 to rating the FirstEnergy utility subsidiary or the
12 FirstEnergy utilities; is that correct?

13 A. I am familiar that Moody's rates the
14 FirstEnergy utilities, yes.

15 Q. And can you identify for me the -- of the
16 three Ohio utilities -- let me strike that.

17 From the Moody's perspective of the three
18 Ohio utilities, two are one notch above investment
19 grade and one is three notches above investment
20 grade; is that correct?

21 A. Yes.

22 Q. And the two utilities that are one notch
23 above investment grade would be Toledo Edison and
24 CEI, correct?

25 A. Yes.

1 Q. And Ohio Edison is three notches above
2 investment grade, correct?

3 A. I'm sorry, we need to back up. It's
4 "non-investment grade," so maybe we need to unwind
5 all those questions. I apologize for that.

6 EXAMINER PRICE: In order for clarity of
7 the record, why don't you ask the questions again.

8 MS. WILLIS: Okay.

9 A. I apologize.

10 Q. From the Moody's perspective, two of the
11 Ohio utilities are one notch above -- above
12 investment grade; is that correct?

13 MR. KUTIK: May I have the question read,
14 please?

15 EXAMINER PRICE: You may.

16 (Record read.)

17 A. I think what I would say is two of the
18 utilities are one notch above non-investment grade,
19 so they are the lowest level possible of investment
20 grade.

21 Q. Can you pull -- turn to your deposition,
22 page 62?

23 MR. KUTIK: This is which deposition?

24 MS. WILLIS: This would be the July 8,
25 2016, deposition.

1 MR. KUTIK: What page?

2 MS. WILLIS: 62.

3 Q. And specifically I am going to focus your
4 attention on lines 23 and 24 and it's going to
5 carry-over into page 63. And when you are there,
6 could you let me know?

7 A. Page 63 and 64, ma'am?

8 Q. 62 and 63.

9 A. Thank you. I'm there.

10 Q. And I am going to read the questions and
11 answers, and I want you -- I will ask you if I read
12 those correctly.

13 "Question: Outside of the S&P family
14 approach, do you know how the individual credit
15 ratings of the Ohio utilities compare to the other
16 subsidiaries in FirstEnergy Corp.?"

17 "Answer: If -- from a Moody's
18 perspective, the -- of the three Ohio utilities, two
19 are one notch above investment grade, and one is
20 three notches above investment grade."

21 "Question: Can you identify for me what
22 -- which ones are -- are one notch above investment
23 grade?"

24 "Answer: Yes."

25 "Could you -- would you identify, please,

1 identify those please."

2 "Answer: Toledo Edison and The Cleveland
3 Electric Illuminating Company."

4 MR. KUTIK: Objection. Improper
5 impeachment. There is nothing inconsistent between
6 her answers today and her answers in the deposition.

7 EXAMINER PRICE: Sustained.

8 MS. WILLIS: Your Honor, I thought she
9 was putting non-investment grade -- she was putting a
10 phrase before "investment grade." She is saying
11 "non-investment grade."

12 EXAMINER PRICE: I believe that the point
13 the witness is trying to make, there is a line
14 between investment grade and non-investment grade,
15 and I think she was actually trying to help you
16 indicate they are a notch above that line between
17 investment grade and non-investment grade.

18 THE WITNESS: That's correct.

19 EXAMINER PRICE: That's what you get for
20 trying to help. You have been impeached.

21 MS. GRADY: You've never -- no. I will
22 strike that.

23 MR. KUTIK: Now, now.

24 Q. (By Ms. Willis) Now, am I correct,
25 Ms. Mikkelsen, you have not quantified the difference

1 between investment grade borrowing costs and below
2 investment grade borrowing costs for the Ohio
3 utilities?

4 A. That's correct.

5 Q. And you are not aware of a rule of thumb
6 that would apply to the difference -- in cost between
7 borrowing on an investment grade rating versus
8 borrowing on a below investment grade rating?

9 A. I am not aware of any such rule of thumb.

10 Q. Have the companies, to your knowledge,
11 Ms. Mikkelsen, done an analysis that is aimed at
12 determining how much money is needed in order for
13 FE -- in order for FE Corp. to maintain its
14 investment grade rating?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Relevance. Not relevant to
18 the company's proposal.

19 EXAMINER PRICE: Sustained.

20 Q. (By Ms. Willis) Have the companies done
21 an analysis in determining how much money is needed
22 in order for the FirstEnergy utilities to maintain
23 their investment grade rating?

24 MR. KUTIK: Same objection.

25 EXAMINER PRICE: Sustained.

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

3 THE WITNESS: Thank you, Ms. Willis.

4 EXAMINER PRICE: Let's go off the record
5 for a minute.

6 (Discussion off the record.)

7 (Recess taken.)

8 EXAMINER PRICE: Back on the record.

9 Ms. Bojko, cross-examination.

10 MS. BOJKO: Yes, thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Bojko:

14 Q. Good afternoon, Ms. Mikkelsen.

15 A. Good afternoon.

16 Q. Could we begin at page 4 of your
17 rehearing testimony, please.

18 MR. KUTIK: I'm sorry, I couldn't hear.

19 MS. BOJKO: Page 4 of the rehearing
20 testimony.

21 MR. KUTIK: Thank you.

22 MS. BOJKO: Can you hear me now? No?
23 There.

24 Q. Page 4 of your rehearing testimony. Are
25 you there?

1 A. Yes, ma'am.

2 Q. You explained that the modified rider RRS
3 proposal was necessary due to the issuance of the
4 April 27, 2016, FERC order regarding the affiliate
5 PPA due to regulatory delay; is that correct?

6 A. In part. It is also, in part, due to the
7 Commission's order modifying the treatment of
8 capacity performance penalties as well as the
9 treatment of forced outages at the plants.

10 Q. On page 4 of your testimony, line 14, you
11 state "Because any subsequent proceeding at FERC to
12 review the PPA would require a much more lengthy time
13 period to come to conclusion, the Companies have
14 modified how Rider RRS charges and credits will be
15 calculated so that Rider RRS will continue to provide
16 all the rate stabilization benefits recognized in the
17 Order, but without reliance on the PPA or any other
18 contractual arrangement or other involvement of FES."
19 Is that what it states?

20 A. Yes, ma'am. I was referring to the
21 paragraph immediately before that that talked about
22 the FERC order as well as the other two issues, but
23 yes.

24 Q. And during the -- you stated earlier
25 today that the PPA had been suspended. During the

1 suspension is it your understanding that any
2 FirstEnergy subsidiaries or FirstEnergy Corp. do not
3 plan to file the PPA with FERC for a review?

4 A. The companies have moved forward with
5 this proposal, and to the extent that the Commission
6 approves this proposal by the companies, the
7 companies wouldn't anticipate FES moving forward with
8 the FERC required review.

9 Q. And could you turn to page 5 of your
10 testimony, please, beginning with the response to the
11 question on 7. You already, today, discussed the
12 costs which are already evidence of record. The
13 generation output which is already evidence of record
14 that you reference on page 5 is the projected output
15 from the Davis-Besse, Sammis, and FE share of the
16 OVEC plants; is that correct?

17 A. Yes.

18 Q. And those plants are currently owned by
19 FES; is that correct?

20 A. Yes.

21 Q. And the projected annual generation
22 output that you referenced, that can be found in JJJ
23 confidential workpapers, which was -- which were
24 companies' Exhibits 24 and 25 in the prior
25 proceeding; is that correct?

1 MR. KUTIK: Can I have the question read,
2 please?

3 EXAMINER PRICE: You may.

4 (Record read.)

5 A. They certainly were included in the JJL
6 confidential workpapers. I apologize. I don't
7 recall the specific exhibit numbers.

8 Q. And the capacity projected to clear,
9 which is already evidence of record and which was
10 discussed earlier with regard to Sierra Club 89, is
11 the capacity from Davis-Besse, Sammis, and FE's share
12 of the OVEC plants that is projected to clear; is
13 that correct?

14 A. Yes.

15 Q. And the capacity projected to clear is
16 included in the calculation of projected market
17 revenue on line 10 of Sierra Club Exhibit 89 which is
18 your workpaper; is that correct?

19 A. I would just want to make clear for my
20 prior answer with respect to the capacity that was
21 projected to clear, what we would be relying upon in
22 this case was for the first three years of the term
23 of the ESP it would be the capacity that cleared and
24 was reflected in the companies' reply brief in
25 Exhibit -- Figure 5 in the companies' reply brief.

1 And then for the balance of the period, it would be
2 the information that was included in the projections
3 in the case.

4 Q. And that's a modification to your
5 testimony on page 5, lines 13 and 14?

6 A. No, because the additional capacity that
7 cleared is part of the capacity performance
8 transition auctions was included -- is and was
9 evidence in the record of the case. I'm just trying
10 to make clear that what we would be relying upon is
11 that information as well as the companies'
12 projections.

13 Q. Thank you.

14 And I think I still had another question
15 which was that capacity projected or actual capacity
16 that you just referenced is embedded in the
17 calculation of the projected market revenue on
18 line 10 of the Mikkelsen workpaper, Sierra Club
19 Exhibit 89, correct?

20 A. The capacity projected to clear is used
21 in the calculation to determine what the capacity
22 revenue projected would be over the term, yes.

23 Q. And also included in the calculation of
24 projected market revenue on line 10 on the Mikkelsen
25 workpaper, Sierra Club Exhibit 89, is the projected

1 revenues received for the sale of ancillary services
2 and environmental attributes associated with
3 David-Besse, Sammis, and FE's share of the OVEC
4 plants, correct?

5 MR. KUTIK: "Davis-Besse."

6 Q. Davis-Besse, sorry.

7 A. Yes.

8 Q. And this will be -- that calculation of
9 the projected market revenue with regard to the sale
10 of ancillary services and environmental attributes
11 will be a fixed projected component of the market
12 revenue in the modified rider RRS proposal, correct?

13 A. Fixed insomuch as it will not change from
14 the annual projections that were included in the
15 record in the case.

16 Q. And that's true regardless of what
17 happens in the actual energy markets, correct?

18 A. I'm not sure I understand the question
19 because I thought we were talking about ancillary
20 services and environmental attributes.

21 Q. Right. But with regard to the actual
22 revenue that would have been received from the sale
23 of the ancillary services and environmental
24 attributes regardless of what would happen if they
25 were actually going to be sold, it will be a fixed

1 projected component of the market revenue
2 calculation.

3 A. That's correct, ma'am.

4 EXAMINER PRICE: Can we go off the record
5 for a minute?

6 (Discussion off the record.)

7 Q. Ms. Mikkelsen, under the proposal even if
8 the Sammis plant does not run for 12 months during
9 the proposal's eight-year term because it is
10 uneconomic to do so, the projected costs and output
11 that was tied to Sammis in the last proposal and
12 embedded in the projected market revenue and
13 projected costs will remain constant, correct?

14 MR. KUTIK: May I have the question read,
15 please.

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. The actual output of Sammis or any other
19 generating plant has no bearing on the companies'
20 proposal.

21 Q. And because it has no bearing, there will
22 be no reduction in the costs used to calculate the
23 modified rider RRS to recognize that the expenses to
24 separate Sammis, such as fuel costs, may be lower
25 because it is not operating, correct?

1 A. Correct. And there will be no
2 adjustments to the revenue levels which would be
3 based on the assumption that the plants were
4 operating and generating at that same time.

5 Q. And, similarly, there will be no decrease
6 or increase in the projected generation output or
7 projected cleared capacity in the proposal based on
8 actual activity in the energy and capacity markets,
9 correct?

10 A. Yes.

11 Q. You talked a lot about the rider --
12 excuse me. Strike that.

13 You talked a lot about the proposal today
14 and that proposal will create a rider RRS that will
15 be an additional charge or credit to a customer's
16 generation charges, correct?

17 A. I think the rider RRS has already been
18 approved, so that rider exists today. The proposal
19 before the Commission is to propose modifications to
20 the calculation of the charges or credits that would
21 be included in rider RRS going forward and the rider
22 RRS charges going forward could -- would be
23 considered a financial limitation on the consequences
24 of customers' shopping.

25 Q. The proposal, the modified rider RRS,

1 will not affect the long-term generation prices that
2 a customer may have with a supplier given that it's a
3 separate additional charge or credit; is that
4 correct?

5 A. Yes.

6 Q. And I believe you testified earlier today
7 that you believe rider -- the proposal -- excuse
8 me -- the proposal will allow customers to grow their
9 load and invest; is that correct?

10 A. What I testified to earlier is that rider
11 RRS will provide retail rate stability,
12 predictability, for our customers, which is important
13 to customers and should help them from an
14 economic-development, job-retention perspective.

15 Q. So your answer is the same even if
16 customers are assessed a charge which has the impact
17 of increasing their overall electric bills; is that
18 correct?

19 A. Yes.

20 MR. KUTIK: May I have the question read.

21 EXAMINER PRICE: You may.

22 MR. KUTIK: The witness has already
23 answered. We can go on.

24 Q. (By Ms. Bojko) Isn't it true that the
25 proposal does not prohibit the companies from seeking

1 recovery from customers of additional revenues in
2 order to offset the reduction in the amount of cash
3 received by the companies as a result of the rider
4 RRS credits?

5 EXAMINER PRICE: Can I have that question
6 read?

7 (Record read.)

8 MR. KUTIK: I'll object, your Honor.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: It assumes facts, your Honor.
11 The companies's ESP calls for a base rate freeze, so
12 this assumes that we can just come in for a rate
13 increase when we have already agreed to a base rate
14 freeze.

15 You asked the question with respect to
16 emergency rate relief, so to the extent anything
17 else, other than what the company has committed to,
18 is relevant, that question has been asked and
19 answered.

20 EXAMINER PRICE: Ms. Bojko, are you
21 envisioning anything besides a base rate case or
22 emergency rate case?

23 MS. BOJKO: Yes, your Honor. And if the
24 question -- if the witness would like to respond in
25 that fashion, then I could have followed up with some

1 additional questions, but that's exactly what I was
2 trying to get at. I am trying not to repeat all the
3 other foundational questions that would have led up
4 to this question in order to expedite this process
5 and not get "asked and answered" objections.

6 But there was a discussion in the
7 testimony today about revenues needing to compensate
8 the companies when there is a reduction due to these
9 credits, and I was merely following up on that to see
10 if there's a prohibition in the proposal.

11 MR. KUTIK: Well, again, your Honor, it
12 may not be in the proposal, but it is in the ESP IV.

13 EXAMINER PRICE: I am not understanding
14 your question. Can you restate your question,
15 please?

16 MS. BOJKO: Sure.

17 Q. (By Ms. Bojko) I am wondering if the
18 proposal prohibits the companies from seeking
19 recovery from customers of additional revenues in
20 order to offset or make the companies whole when
21 there is a reduction in the amount of cash received
22 from customers as a result of the future projected
23 credits.

24 MR. KUTIK: And I also would object that
25 the question assumes there will be an overall

1 reduction. The companies have already indicated that
2 there is plenty of other cash resources as a result
3 of the ESP IV.

4 EXAMINER PRICE: I'm going to overrule
5 that part of the objection.

6 You can answer if you understand the
7 question.

8 A. As a provision of the ESP IV in its
9 totality, the companies have committed to a base
10 distribution rate freeze over the term of the ESP.
11 Nothing in the proposal modifies that prior
12 commitment from ESP IV to have a base distribution
13 rate freeze over the term of ESP IV.

14 Q. And nothing in the proposal changes the
15 Commission's approval of exceptions to the
16 distribution rate freeze in ESP IV; is that correct?

17 A. I'm not sure I understand the question,
18 ma'am.

19 Q. Well, let's back up. The Commission's
20 order approving the stipulation and the third
21 supplemental stipulation was -- were exceptions to
22 the distribution rate freeze; is that correct?

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

25 EXAMINER PRICE: You may.

1 (Record read.)

2 A. I'm not entirely sure what you mean with
3 respect to the Commission's order was an exception to
4 the distribution rate freeze, but if you are
5 referring to the provision in the third supplemental
6 stipulation which says the companies, with staff
7 approval, may seek a base distribution rate freeze,
8 then nothing in the proposal changes that provision.

9 Q. So under the exceptions to the rate
10 freeze, the companies could seek recovery from
11 customers of additional revenues in order to offset
12 the reduction in the amount of cash received by the
13 companies as a result of the modified rider RRS
14 credits, correct?

15 THE WITNESS: May I have that question
16 read back, please?

17 EXAMINER PRICE: You may.

18 (Record read.)

19 A. No. I don't think that's correct.

20 Q. Isn't it true that the proposal does not
21 prohibit the companies from filing a self-complaint
22 under the Commission's rules?

23 A. The proposal does not contain a provision
24 with respect to self-complaints.

25 MS. BOJKO: Your Honor, at this time,

1 could we have marked as OCC -- OMAEG Exhibit 30.
2 It's a packet of data responses. The first one is
3 Sierra Club Set 13 Interrogatory 237, and then it's a
4 corresponding response to Sierra Club Set 14
5 Interrogatory 253.

6 EXAMINER PRICE: It will be so marked.
7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. BOJKO: May we approach?

9 EXAMINER PRICE: Are you marking this as
10 one exhibit?

11 MS. BOJKO: I did, because the one
12 references the other data request.

13 EXAMINER PRICE: That's fine.

14 Q. (By Ms. Bojko) Ms. Mikkelsen, do you have
15 before you what has been marked as OMAEG Exhibit 30?

16 A. Yes.

17 Q. Are these two data responses Sierra
18 Club -- are these two data responses, submitted by
19 you on behalf of the companies, to Sierra Club Set 13
20 Interrogatory 237 and Set 14 Interrogatory 253?

21 A. Yes.

22 Q. And were these discovery responses
23 prepared by you or on -- under your direction?

24 A. Yes.

25 Q. Do these -- do these purport to be

1 accurate discovery responses from the company?

2 Accurate copies, excuse me.

3 A. Yes.

4 Q. And Sierra Club Set 13 Interrogatory 237
5 explains that the companies intend to reduce a
6 customer's overall electric bill with regard to rider
7 RRS credits; is that correct?

8 A. The question asks to the extent that
9 modified rider RRS would result in a credit, how
10 would the companies pay for such credits. And what
11 the company responded, subject to a number of
12 objections, is the credits would not take the form of
13 cash payments to customers; rather, the credits would
14 reduce the customers' overall electric bills.

15 Q. Thank you.

16 And then if you turn to the next data
17 response to Sierra Club Set 14 Interrogatory 253, the
18 question references the response in Sierra Club
19 Interrogatory 237 with regard to the statement that
20 "Rider RRS credits would lower the amount of cash
21 received by the Companies"; is that correct?

22 A. That is what the question says, yes.

23 Q. And then in Question a., it asks for the
24 companies to "State whether such lowering of the
25 amount of cash received by the Companies as a result

1 of Rider RRS credits could factor into whether the
2 companies are entitled to receive a rate increase in
3 a future proceeding." Do you see that?

4 A. I see the question, yes.

5 Q. And then in Question b., it asks
6 "...whether the companies could seek to recover from
7 its customers additional revenues in order to offset
8 the lowering of the amount of cash received by the
9 Companies as a result of Rider RRS credits." Do you
10 see that?

11 A. Yes.

12 Q. And the companies' response to section
13 b., after objections, is that it's "not the
14 Companies' intention to seek recovery from customers
15 of additional revenues...."; is that correct?

16 A. After the objections, the response is
17 "...it is not the Companies' intention to seek
18 recovery from customers of additional revenues in
19 order to offset the lowering of the amount of cash
20 received by the Companies as a result of Rider RRS
21 credits."

22 Q. And there is no prohibition, however, on
23 the companies seeking recovery for customers; isn't
24 that correct?

25 A. Well, the companies have committed to a

1 base distribution rate freeze as a provision of ESP
2 IV that's been approved by the Commission. And as we
3 discussed earlier with respect to the emergency,
4 there is nothing in the proposal that would address a
5 filing for emergency relief by the companies.

6 Q. Well, there's also, in addition to the
7 emergency provision, there is another exception to
8 the distribution rate freeze contained in the third
9 supplemental stipulation, correct?

10 A. The exception to the base distribution
11 rate freeze in the third supplemental stipulation
12 requires, as a condition for the exception, that the
13 staff approve the exception prior to the filing.

14 Q. So --

15 A. Not within the company's sole purview.

16 Q. So you are agreeing with me that there
17 are two exceptions to the distribution rate freeze
18 contained in the third supplemental stipulation; is
19 that correct?

20 MR. KUTIK: Objection. Mischaracterizes
21 her testimony.

22 EXAMINER PRICE: Overruled. You can
23 answer if you understand the question.

24 A. I'm not sure I understand what the "two"
25 are. The company is committed to a base distribution

1 rate freeze over the term of the ESP. There is an
2 exception provision in the third supplemental
3 stipulation that requires staff approval prior to
4 filing. That's the only exception I'm aware of in
5 that third supplemental stipulation.

6 Q. But there's also an exception in the case
7 of an emergency which you just referenced to
8 Mr. Price, correct?

9 A. I guess I'm not sure I would characterize
10 that so much as an "exception" or that the companies
11 have and continue to have the statutory ability to
12 seek emergency rate relief. I would add to that and,
13 in fact, in all the instances any disposition
14 associated with any requests like that is ultimately
15 a decision by the Commission, not by the companies.

16 Q. But the companies are -- except for the
17 distribution rate case that you have just stated, the
18 companies are not committing here today to not seek
19 recovery from customers; isn't that correct?
20 Regardless whether the Commission approves it or not.

21 A. It is not the companies' intention to
22 seek recovery from customers of additional revenues
23 in order to offset the lowering of the amount of cash
24 received by the companies as a result of the rider
25 RRS credit. I believe that to be very consistent

1 with the companies' commitment to freeze base
2 distribution rates over the term of the ESP.

3 Q. And it -- under the companies' proposal,
4 there are no revenues coming from another subsidiary
5 to fund the credits or the revenue shortfall that may
6 exist as a result of rider RRS; is that correct?

7 A. I am not aware of a mechanism that exists
8 to transfer revenues from one company to another.

9 Q. And there are no revenues coming from the
10 actual sale of energy or capacity in the wholesale
11 markets to fund this credit or revenue shortfall that
12 may be created by the modified rider RRS; is that
13 correct?

14 A. Yes.

15 Q. And it is the possible future reduction
16 in a customer's bill that you are calling the
17 "stability mechanism," correct?

18 A. No. Rider RRS, in its totality, serves
19 as a retail rate stability mechanism for the
20 customers.

21 Q. Including the charges; is that correct?

22 A. Yes.

23 Q. And to provide the stability mechanism or
24 hedge that you've referenced, the companies will
25 incur costs; is that correct?

1 A. The companies will incur costs associated
2 with preparing the rider, participating in the audit
3 directed by the Commission, things of that nature.
4 The service that the company is providing to the
5 customers is the service of this financial hedge
6 through rider RRS.

7 Q. And there's nothing in the proposal that
8 prohibits the companies from seeking cost recovery of
9 those costs to administer rider RRS from customers,
10 correct?

11 A. Correct.

12 Q. So as I understand it, as you've
13 explained the hedge, customers pay the rider in the
14 first three years as projected, and they maybe pay
15 costs associated with administering the rider, and
16 then they hope to get their money back through a
17 reduction in the bill later; is that correct?

18 A. I would not characterize it that way.
19 What I would characterize is the customers, under the
20 proposal, would have the benefit of the retail rate
21 stability rider over the eight-year term of the ESP,
22 such that when market prices are low, customers would
23 see a charge, and as market prices increase, that
24 charge would transition to a credit, providing an --
25 a service of overall stabilizing the customers' rates

1 over the term of the ESP.

2 Q. But as I understand the proposed modified
3 rider RRS, it's not tied to the energy and capacity
4 markets; is that correct?

5 A. No.

6 Q. The costs or the projected revenues are
7 not tied to the capacity and energy markets except
8 for the BRA pricing and the energy pricing; is that
9 correct?

10 A. The energy -- pardon me. The revenue
11 values included in the rider RRS calculation rely
12 upon day-ahead energy prices at the AEP Dayton Hub
13 and capacity clearing prices in the ATSI zone over
14 the eight-year term of the ESP.

15 Q. But -- but customers, through the
16 proposal, will not see the actual revenues from the
17 sale of generation output into the energy or capacity
18 markets; is that correct?

19 A. I'm not sure what you mean by "customers
20 won't see," but if your question is does the proposal
21 rely upon the sale of energy or capacity in the
22 market, the answer is no.

23 MS. BOJKO: Your Honor, at this time, I
24 would like to mark as OMAEG 32 --

25 EXAMINER PRICE: 31.

1 MS. BOJKO: Sorry. 31, discovery
2 responses to Sierra Club Set 13 Interrogatories 245
3 and 246.

4 EXAMINER PRICE: It will be so marked.

5 MS. BOJKO: May we approach, please? May
6 we approach?

7 EXAMINER PRICE: You may.

8 MS. BOJKO: Your Honor, I would like to
9 mark the first interrogatory, Sierra Club Set 13
10 Interrogatory 245 as OMAEG Exhibit 31, and the second
11 discovery response to Sierra Club Set 13
12 Interrogatory 246 as OMAEG Exhibit 32.

13 EXAMINER PRICE: Okay. Mark the exhibits
14 that way.

15 (EXHIBITS MARKED FOR IDENTIFICATION.)

16 Q. (By Ms. Bojko) Ms. Mikkelsen, do you have
17 in front of you what's been -- do you have in front
18 of you what's been marked as OMAEG Exhibit 31?

19 A. Yes.

20 Q. Does this appear to be a company data
21 response to Sierra Club Set 13 Interrogatory 245?

22 A. Yes.

23 Q. And are you the witness responsible for
24 this data response?

25 A. Yes.

1 Q. Is it prepared by you or under your
2 direction?

3 A. Yes.

4 Q. Response to 245 confirms that rider RRS
5 does not address Mr. Moul's concerns about the
6 financial viability with Sammis and Davis-Besse
7 plants; is that correct?

8 A. No. It confirms that the modified rider
9 RRS proposal does not address Mr. Moul's concerns.

10 Q. Thank you for that clarification.

11 MS. BOJKO: Your Honor, given the change
12 in the witness's testimony, I am going to withdraw
13 OMAEG Exhibit 32.

14 EXAMINER PRICE: Thank you.

15 MS. BOJKO: My apologies.

16 EXAMINER PRICE: No problem.

17 Q. (By Ms. Bojko) Ms. Mikkelsen, will the
18 companies file a new rider RRS tariff to reflect the
19 modified rider RRS proposal?

20 A. The companies would file an updated
21 tariff to reflect the values that should be populated
22 pursuant to approval of the proposal.

23 Q. So the companies will not seek to approve
24 a new rider RRS tariff; is that correct?

25 MR. KUTIK: Objection.

1 EXAMINER PRICE: Grounds?

2 MR. KUTIK: She already said the company
3 is going to update it, so is that a new one or not a
4 new one?

5 EXAMINER PRICE: Ms. Bojko.

6 MS. BOJKO: Your Honor, this is an
7 important question of whether the tariff that's
8 already been approved by the Commission would be
9 removed and replaced and approval sought, or whether
10 the tariff will remain the same and the values will
11 be updated which is what I understood Ms. Mikkelsen
12 to just say.

13 MR. KUTIK: Well, she testified about
14 what she is going to do, so. My objection is what's
15 "new tariff" mean?

16 EXAMINER PRICE: If you can -- it sounds
17 like you're asking questions she just answered. If
18 you could ask a different question. It sounded to me
19 like you simply asked the same question again.

20 MS. BOJKO: Thank you.

21 Q. (By Ms. Bojko) Ms. Mikkelsen, it is my
22 understanding you will update the rider RRS
23 tariffs -- tariff that's already been approved by the
24 Commission to input a value into the rider RRS tariff
25 rate; is that correct?

1 A. Yes.

2 Q. You will not modify and seek approval of
3 any additional changes to the approved rider RRS
4 tariff; is that correct?

5 A. Correct, with the caveat what we
6 ultimately do depends on what we're directed to do or
7 ordered to do by the Commission at the completion of
8 the proceeding.

9 Q. As things currently stand, you believe
10 that the rider RRS tariff that's currently approved
11 by the Commission is consistent with the modified
12 rider RRS proposal.

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. KUTIK: Well, she has already
16 testified, your Honor, they are going to put a number
17 in it, so that's different, so that may or may not be
18 consistent.

19 MS. BOJKO: I'll rephrase, your Honor.

20 EXAMINER PRICE: Thank you.

21 Q. (By Ms. Bojko) As things presently stand
22 today, except for inserting a rider RRS rate value
23 into the tariff, the companies do not intend to seek
24 approval of any modifications to the remaining terms
25 and conditions of the rider RRS tariff currently

1 approved by the Commission.

2 A. That's correct, but the caveat, again, I
3 would put on that is in the original order the
4 companies were directed to work with staff to
5 implement mitigation strategies, so to the ex -- you
6 know, I am only saying if that provision still
7 remains and there is a mitigation strategy that's
8 implemented, it may be added to the tariff.

9 But, beyond that, no, we are not planning
10 to seek approval of a new rider RRS tariff; merely to
11 update the values based on the Commission's order in
12 this proceeding.

13 Q. Do you have in front of you,
14 Ms. Mikkelsen, the staff data requests that have been
15 discussed today, PUCO DR-34 and 35, that were marked
16 by Sierra Club?

17 EXAMINER PRICE: Sierra Club 98.

18 MS. BOJKO: 98 and 99.

19 A. Yes.

20 MR. KUTIK: May I have a moment, your
21 Honor?

22 EXAMINER PRICE: Yes.

23 MR. KUTIK: Thank you, your Honor.

24 Q. Ms. Mikkelsen, were these the only two
25 data requests you received from staff after rehearing

1 was granted in this case?

2 A. Yes.

3 Q. And you are the responsible witness in
4 these two data requests; is that correct?

5 A. Yes.

6 Q. And in those discovery responses you
7 provided information on behalf of the companies; is
8 that correct?

9 A. Yes.

10 Q. And in those data responses you also
11 provided information on behalf of FirstEnergy Corp.;
12 is that correct?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. KUTIK: Well, I am not sure what "on
16 behalf" means, your Honor.

17 EXAMINER PRICE: Neither am I. Can you
18 please define what you mean?

19 MS. BOJKO: The witness knew what I meant
20 when I said "on behalf of the companies." I can
21 rephrase.

22 EXAMINER PRICE: Thank you.

23 Q. (By Ms. Bojko) Ms. Mikkelsen, you
24 provided information related to FirstEnergy Corp. in
25 response to Staff Data Requests 34 and 35, correct?

1 A. Yes.

2 Q. And could these data response -- requests
3 and responses concern the companies' proposed
4 modified RRS?

5 A. I don't know what staff's intentions were
6 with respect to asking the questions.

7 Q. Let's look at PUCO Data Response 34 which
8 has been marked as Sierra Club Exhibit 99. Do you
9 have that?

10 A. Yes.

11 Q. It's my understanding that in response to
12 the first Data Request under 34, Subpart 1, after
13 objections, the companies, as well as FirstEnergy
14 Corp., provided a non-exhaustive list of the
15 benefits --

16 MR. KUTIK: Objection.

17 Q. -- received for maintaining an investment
18 grade rating; is that correct?

19 MR. KUTIK: Objection.

20 EXAMINER PRICE: Objection. Grounds?

21 MR. KUTIK: Your Honor, these responses
22 are on behalf of the company.

23 EXAMINER PRICE: Sustained.

24 MS. BOJKO: I'm sorry, your Honor, I
25 thought we just established she provided information

1 on behalf of FirstEnergy Corp. as well.

2 EXAMINER PRICE: No. She never said
3 that. That's not what you asked when you restated
4 it. You said she provided information related to
5 FirstEnergy Corp. She never used the words, agreed
6 to the words "on behalf."

7 MS. BOJKO: Thank you.

8 Q. Ms. Mikkelsen, did you, in providing
9 these data responses, did you provide information
10 from FirstEnergy Corp.?

11 A. We -- I provided responses on behalf of
12 Ohio Edison, The Cleveland Electric Illuminating
13 Company and The Toledo Edison Company. Those
14 responses, on behalf of the companies, included
15 reference to FirstEnergy Corp. and the benefits
16 associated with maintaining an investment credit
17 rating -- an investment grade rating, but those
18 responses were provided on behalf of the companies.

19 Q. And those responses include information
20 about FirstEnergy Corp. which you are sponsoring as
21 part of your response on behalf of the companies; is
22 that correct?

23 A. The response to Data Request 34 includes
24 a non-exhaustive list -- exhaustive list of the
25 benefits that FirstEnergy Corp. and the Ohio

1 utilities receive for maintaining an investment grade
2 rating and that response was provided on behalf of
3 the companies.

4 Q. Which you are sponsoring as part of your
5 testimony; is that correct?

6 MR. KUTIK: Objection.

7 EXAMINER PRICE: Grounds?

8 MR. KUTIK: Your Honor, this is not part
9 of her testimony. She was shown this. She was asked
10 if she is the witness responsible for the answer, but
11 it's not her testimony in terms of testimony she's
12 filed in this case.

13 EXAMINER PRICE: Sustained.

14 Q. (By Ms. Bojko) You are sponsoring the
15 information on behalf of the FirstEnergy Corp.; is
16 that correct?

17 MR. KUTIK: Objection.

18 EXAMINER PRICE: Sustained.

19 Q. Do you have in front of you your
20 deposition transcript from July 8?

21 EXAMINER PRICE: Your question was -- I
22 sustained his objection. You can't impeach her on a
23 question I sustained the objection to.

24 MS. BOJKO: I was impeaching her on the
25 question -- her answer a time ago.

1 EXAMINER PRICE: Before?

2 MS. BOJKO: Yes.

3 EXAMINER PRICE: Okay.

4 MS. BOJKO: I was trying to do it without
5 having to go to the transcript.

6 EXAMINER PRICE: Which date?

7 MS. BOJKO: July 8.

8 EXAMINER PRICE: July 8.

9 Q. (By Ms. Bojko) Page 124, line 17.

10 "Question: Just to be clear, Ms. Mikkelsen, you are
11 not testifying through these discovery responses as
12 to the information related to FirstEnergy Corp."

13 Answer -- there is an objection.

14 "Answer: I am providing the responses on
15 behalf of the distribution utilities in Ohio; and,
16 again, in an effort to be responsive to staff, those
17 responses include information about FirstEnergy Corp.
18 which I am sponsoring as part of my response on
19 behalf of the companies." Did I read that correctly?

20 MR. KUTIK: Objection. Improper --
21 improper impeachment. That's exactly what she just
22 said.

23 MS. BOJKO: I think it was slightly
24 different, your Honor.

25 EXAMINER PRICE: Well, we will review the

1 previous question with respect to the impeachment and
2 the record will prove up what the record proves up.

3 MS. BOJKO: Thank you.

4 Q. (By Ms. Bojko) Ms. Mikkelsen, is another
5 benefit to FirstEnergy Corp. that's not listed, the
6 avoidance of a decrease in FirstEnergy Corp.'s stock
7 price?

8 MR. KUTIK: Objection.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: Relevance, beyond the scope.
11 Not relevant to the company's proposal.

12 EXAMINER PRICE: Ms. Bojko.

13 MS. BOJKO: Your Honor, in the question
14 she said this is a non-exhaustive list of the
15 benefits that FirstEnergy Corp. receives, and I am
16 trying to ask if there is another benefit that she
17 did not list in this list.

18 EXAMINER PRICE: Well, I understand that,
19 but that's not part of her testimony here today.

20 She's testifying as to the company's proposal.

21 Sierra Club has asked her to authenticate a copy of a
22 data request from the staff. I don't think that
23 opens up the door for her to pursue what else might
24 be in the non-exhaustive list. It's clear the list
25 is not exhaustive and it could include just about

1 anything.

2 MS. BOJKO: Your Honor, this directly
3 goes to the proposal. It goes to the claimed
4 benefits of the proposal by the company. The company
5 has stated that the proposal is for the benefit of
6 customers. She speaks to those benefits and we have
7 a right to explore what other benefits may exist as a
8 result of the proposal that do not benefit customers
9 and significantly benefit other entities.

10 MR. KUTIK: This is the same type of
11 question you sustained my objection to with respect
12 to Mr. Settineri.

13 MR. SETTINERI: I had very good arguments
14 though.

15 MS. BOJKO: I believe --

16 MR. KUTIK: As well stated as those were,
17 your Honor, the fact of the matter is what -- what
18 other entities may be benefited by the companies'
19 proposal is not part of the company's proposal.

20 MS. BOJKO: Your Honor, if I may reply.
21 We have a right to challenge the claimed benefits set
22 forth in the proposal and who those benefits flow to.
23 And just because Mr. Settineri asked a different
24 question or didn't state the rationale as I am
25 stating it now, the reason for my questions goes

1 directly to the challenge of the proposal and the
2 challenge of the claimed benefits that come from the
3 proposal stated in her testimony.

4 MR. KUTIK: There was no claim by the
5 company, your Honor, in response to it or in support
6 of the proposal that benefited anything other than
7 customers, the company, and the Ohio economy.

8 MS. BOJKO: That's the point, your Honor.
9 It certainly does benefit. And just because it is a
10 proposal that might be a smoke screen for certain
11 aspects, there are other things that are going on and
12 the Commission needs to look at the other benefits
13 that are flowing through the proposal to see that
14 they don't only apply to customers, as Mr. Kutik just
15 stated they only apply to customers and the economy,
16 and we have a right to challenge that statement that
17 he just made.

18 EXAMINER PRICE: You have a right to
19 challenge whether or not the customers benefit. You
20 don't have the right to make highly-speculative
21 theories beyond what the companies' testimony
22 actually is. If you would like to sponsor a witness,
23 which I know you have the opportunity to do, he can
24 make his highly-speculative theories, but I don't
25 think this is the witness for those challenges.

1 Mr. Kutik's objection is sustained.

2 Q. (By Ms. Bojko) Well, let's go to page 11
3 of your testimony, Ms. Mikkelsen, please. I'm sorry.
4 Before we do that, I want to stay on Staff Data
5 Request. I didn't ask you about 35. Let's stay on
6 Staff Data Request 35. In your response to Staff
7 Data Request 35, you are also providing a
8 non-exhaustive list of adverse effects on both the
9 Ohio utilities as well as FirstEnergy Corp.; is that
10 correct?

11 A. The response to Data Request 34 includes
12 a non-exhaustive list of the adverse impacts of a
13 downgrade to non-investment grade.

14 MR. KUTIK: Did you mean 35?

15 A. Pardon me. 35, yes.

16 Q. And it's your understanding that
17 currently FirstEnergy Corp. is currently at
18 investment grade; is that correct?

19 A. Yes.

20 Q. And under Moody's, each individual public
21 debt is rated separately; is that correct?

22 A. I know that Moody's has a separate credit
23 rating for each legal entity. I don't know about
24 each individual debt instrument.

25 Q. And I think you testified earlier today

1 that Moody's rates -- separately rates each
2 individual subsidiary of FirstEnergy Corp.; is that
3 correct?

4 A. Yes.

5 Q. And if Moody's downgrades one of the
6 subsidiaries, one of the utilities, for instance,
7 wouldn't it necessarily downgrade the parent company?

8 MR. KUTIK: Objection.

9 EXAMINER PRICE: Grounds?

10 MR. KUTIK: Relevance.

11 EXAMINER PRICE: I'll allow this one.

12 A. Not necessarily.

13 Q. Now let's turn to page 11 of your
14 testimony, please. On page 11, line 17, are you
15 there?

16 A. Yes.

17 Q. You were asked whether FES will receive
18 any of the cash associated with the proposal, do you
19 see that?

20 A. Yes.

21 Q. And line 20, in response, you state there
22 are no contracts or agreements that would require the
23 companies to share the revenues or expenses
24 associated with the proposal; is that correct?

25 A. Yes.

1 Q. And the "expenses" you are referring to
2 here, are the expenses to administer rider RRS,
3 including the cost to prepare the rider, costs
4 associated with the rider audit, and for any credits
5 under rider RRS that we discussed previously,
6 correct?

7 A. Yes.

8 Q. With respect to the "revenue" you were
9 referencing in this statement, you were referring to
10 the money collected from customers under the
11 proposal, correct?

12 A. Yes.

13 Q. And with respect to those revenues on
14 page 11, line 20 to 21, you state the companies are
15 not required to share. Isn't it true there are no
16 prohibitions in place that would prevent them from
17 sharing the revenues?

18 A. I'm not aware of any mechanism within the
19 companies' organization that would allow them to
20 share dollars collected with FES.

21 Q. And the proposal contains no
22 prohibitions; is that correct?

23 MR. KUTIK: Objection, your Honor.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: She already testified she is

1 not aware of any means by which it could happen. The
2 fact there is no prohibition is irrelevant given
3 that.

4 EXAMINER PRICE: Overruled.

5 A. The proposal is explicit insomuch as the
6 implementation of rider RRS will be solely the
7 responsibility of the companies. We are clear that
8 there are no contracts or any other form of agreement
9 between the companies and FES associated with rider
10 RRS; and, beyond that, I am not aware of any means by
11 which the companies could transfer revenues or
12 expenses to FES.

13 Q. And isn't it true -- you talked a little
14 bit about dividends to FirstEnergy Corp. today, but
15 this question is slightly different. Isn't it true
16 there are no prohibitions from the companies'
17 providing dividends to FirstEnergy Corp. during the
18 eight-year term of the proposal?

19 A. Yes.

20 Q. And on line 22, still on page 11, you
21 state that the "proposal was not designed to transfer
22 regulated revenues to competitive operations"; is
23 that correct?

24 A. Yes.

25 Q. And earlier you were asked about moving.

1 I want to ask you does the proposal contain or
2 propose any prohibitions on FirstEnergy Corp. from
3 investing in FirstEnergy Solutions or any other
4 subsidiary during the eight-year term of the
5 proposal?

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

8 EXAMINER PRICE: I don't think she has
9 actually ever answered this question. You can go
10 ahead and answer.

11 MR. KUTIK: Your Honor, this was a
12 inquiry of Mr. Fisk.

13 EXAMINER PRICE: Understand. She --
14 actually what she said is that it's not the
15 companies' -- FirstEnergy Corporation has said that
16 currently it's not their intent to invest any further
17 into the companies. Ms. Bojko is asking a
18 separate -- a different question, not what their
19 intent is today, but whether there is a prohibition.
20 It's two separate issues.

21 MS. BOJKO: Thank you, your Honor.

22 A. The companies' proposal does not include
23 any direction with respect to the parent's
24 activities.

25 Q. And you referenced earlier the

1 corporation's intentions. Did you obtain those
2 intentions from an earnings call made in April of
3 2016?

4 A. No.

5 Q. Are you familiar with the earnings call
6 FirstEnergy Corp. made for Q1 2016 on April 27, 2016?

7 A. I did not listen to that earnings call.

8 Q. And did you review the transcript after
9 the earnings call?

10 A. No.

11 Q. Are you familiar with what happened on
12 the 2016 earnings call, April 27, 2016, earnings
13 call?

14 A. I'm not sure I understand "familiar," but
15 I would expect the company discussed the results,
16 financial results.

17 EXAMINER PRICE: Is that your
18 recollection or is that speculating?

19 THE WITNESS: I have no recollection. I
20 didn't hear the call. I didn't read the transcript.
21 That's why I said I don't know what "familiar" means.

22 EXAMINER PRICE: Did you read any news
23 reports about what the earnings call said?

24 THE WITNESS: I may have.

25 Q. It's your understanding that FirstEnergy

1 Corp. provides parental guarantees to its
2 subsidiaries; is that correct?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. KUTIK: Relevance.

6 EXAMINER PRICE: Ms. Bojko?

7 MS. BOJKO: Well, whether the FirstEnergy
8 Corp. provides parental guarantees to the companies
9 and other subsidiaries is relevant to the proposal
10 and the -- and the benefits that are purported to
11 flow through to customers.

12 EXAMINER PRICE: You just stated
13 something in the affirmative. You didn't give a
14 reason. You just said, yes, it's relevant. Why
15 don't you explain why it's relevant.

16 MS. BOJKO: Your Honor, whether there are
17 mechanisms in place to assist either subsidiaries or
18 the parent company based on cash flow coming in to
19 one subsidiary over another subsidiary and the
20 ability of the parent to invest in those subsidiaries
21 through either equity infusions or parental
22 guarantees is an important piece of this discussion
23 and why the proposal as proposed is problematic with
24 regard to the benefits that it purports to give to
25 customers.

1 EXAMINER PRICE: Well, we know that from
2 the 41 days in hearing before that FirstEnergy Corp.
3 invested 1.5 billion dollars into FES, so I -- we
4 already know that they can do that. I don't
5 understand why this proposal has changed that at all.

6 MS. BOJKO: Well, I think that's the
7 point. The point is whether the modified proposal
8 has revised the ability of the parent company to
9 either invest in a subsidiary, give equity infusions
10 into a subsidiary or provide parental guarantees to
11 subsidiaries. This proposal has supposedly changed
12 and we are trying to establish whether it really has
13 changed.

14 EXAMINER PRICE: Mr. Kutik.

15 MR. KUTIK: The proposal says nothing
16 with respect to the parental guarantees or inflows or
17 outflows from the companies. It talks about a way to
18 calculate or change the calculation of rider RRS.

19 MS. BOJKO: If I may respond, your Honor.
20 Actually, on page 11 of her testimony, she does
21 specifically say that FirstEnergy Solution will also
22 not receive any of the cash associated with the
23 modified proposal RRS. And what we are trying to
24 establish is we are challenging that statement and
25 whether the proposal does, in fact, allow FES to

1 receive cash.

2 EXAMINER PRICE: You've already
3 established that they can dividend up revenues to
4 the -- to the corporate level and that there is no
5 restrictions on the dividends once they reach the
6 corporate level. At this point it's just cumulative
7 and we need to move on.

8 Q. (By Ms. Bojko) Mr. Whitt talked to you
9 about Moody's and I believe you said you were
10 familiar with Moody's investor services; is that
11 correct?

12 A. Yes.

13 Q. He asked you whether financial analysts
14 rely on that information. I would like to ask you
15 whether the companies and its parent, FirstEnergy
16 Corp., rely on Moody's and other investor services in
17 preparing quarterly financial reports for earnings
18 calls or fact books, various reasons?

19 A. I think Mr. Whitt asked me about
20 financial markets, not financial analysts as it
21 relates to your question. And my recollection of his
22 question with respect to does the company -- is the
23 company mindful of information included in Moody's
24 reports, the answer is yes.

25 Q. It's not your opinion that the companies

1 or the parent company rely on Moody's in preparing
2 financial reports?

3 A. Financial reports are historical
4 documentation of financial activities of the
5 companies that are prepared in conformance with
6 Generally Accepted Accounting Principles, so I'm not
7 sure, in that context, how to reconcile that with
8 your question about when they prepare their financial
9 statements, do they rely on Moody's because they are
10 relying on their own internal books and records when
11 they prepare their financial statement.

12 Q. Okay. Do -- do Moody's actions impact
13 the companies' and FirstEnergy Corp.'s business?

14 MR. KUTIK: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. KUTIK: Now, your Honor, we are very
17 much far afield from the companies' proposal in her
18 testimony.

19 MS. BOJKO: Actually, your Honor, in both
20 testimony here today, data responses, the --
21 Ms. Mikkelsen has testified that various actions of
22 credit ratings, whether they are investment grade or
23 non-investment grade, how they can affect the
24 business of the companies and how it can affect the
25 business of FirstEnergy Corp. She's testified to

1 that. I am asking if Moody's actions, whether they
2 revise their outlook, whether they downgrade a
3 utility, affect the business of the companies.

4 EXAMINER PRICE: No. 1, I am going to
5 allow your question, but I will note that
6 bootstrapping onto questions she was asked
7 involuntarily under cross or data responses is not
8 really making it part of her testimony. She
9 testified that way because she was asked by other
10 attorneys on cross. However, you can -- you can have
11 that one.

12 Ms. Mikkelsen, you can answer the
13 question.

14 THE WITNESS: May I ask to have the
15 question reread, please?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. Yes.

19 MS. BOJKO: Your Honor, at this time I
20 would like to have marked as OMAEG Exhibit 32, I
21 believe. I thought we struck 32. Should I move onto
22 33?

23 EXAMINER PRICE: Make it 33 just so the
24 record is clear.

25 MS. BOJKO: Okay. 33. May we approach?

1 EXAMINER PRICE: You may.

2 MS. BOJKO: Your Honor, I would like to
3 mark as OMAEG Exhibit 33 a PowerPoint presentation
4 titled "Quarterly Highlights 1Q 2016 Earnings Call,"
5 dated April 27, 2016.

6 EXAMINER PRICE: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Ms. Mikkelsen, do you recognize the
9 PowerPoint presentation titled "Quarterly Highlights
10 1Q 2016 Earnings Call"?

11 A. No. I've not reviewed this document or
12 seen this document.

13 Q. So these are not the highlights you
14 referenced that you may be aware of from the earnings
15 call transcript?

16 MR. KUTIK: Objection. She said she
17 didn't hear the call, didn't read the transcript, may
18 have heard news reports or read news reports.

19 EXAMINER PRICE: Sustained.

20 Q. Do you have in front of you Direct
21 Exhibit 1 which is the Moody's article that you did
22 say you were familiar with?

23 A. Yes.

24 Q. And it's your understanding that the
25 Moody's -- Moody's revised its outlook on FirstEnergy

1 Corp. and merchant subsidiaries the day after the
2 Federal Energy Regulatory Commission made its
3 April 27 ruling that you discuss in your testimony;
4 is that correct?

5 MR. KUTIK: Objection.

6 EXAMINER PRICE: Grounds.

7 MR. KUTIK: Relevance.

8 EXAMINER PRICE: Ms. Bojko.

9 MS. BOJKO: The question or the -- I
10 mean, we have been discussing the Moody's article, so
11 is he objecting to the actual question?

12 EXAMINER PRICE: Yeah.

13 MS. BOJKO: The question goes to the
14 discussion in Ms. Mikkelsen's testimony on page 4,
15 where she discusses the Federal Energy Regulatory
16 Commission and the need for the proposed modified
17 rider RRS. Trying to establish timing of when the
18 Moody's -- when Moody's revised its outlook on
19 FirstEnergy Corp. and its subsidiaries and how that
20 timing was affected by the FERC ruling.

21 MR. KUTIK: Your Honor, Ms. Mikkelsen
22 says nothing in her testimony about Moody's, nothing
23 with respect to investment community with regard to
24 the FERC order and how it was affected by the FERC
25 order.

1 EXAMINER PRICE: Sustained.

2 Q. (By Ms. Bojko) Ms. Mikkelsen, to your
3 knowledge the companies did not receive a negative
4 outlook from Moody's on April 28, 2016; is that
5 correct?

6 MR. KUTIK: Same objection.

7 EXAMINER PRICE: She said she was aware
8 of the Moody's article. She can answer this one.

9 A. That's correct.

10 Q. Since Moody's has revised the outlook to
11 negative, are you aware of actions that FirstEnergy
12 Corp. has taken to improve its cash flow?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Sustained.

15 Q. Ms. Mikkelsen, it's my understanding that
16 Steve Staub in the Treasury Department reviewed the
17 proposal before it was filed; is that correct?

18 A. Yes.

19 Q. And the Treasury Department resides in
20 FirstEnergy Services company, I believe?

21 A. Yes.

22 MR. KUTIK: "Service company."

23 Q. And Mr. Staub is the VP and Treasurer of
24 FirstEnergy Corp.; is that correct?

25 A. Yes.

1 Q. And Mr. Staub also serves as Treasurer of
2 the Ohio operating companies; is that correct?

3 A. Yes.

4 Q. And Mr. Staub also serves as the
5 Assistant Treasurer and VP to FirstEnergy Generation,
6 LLC, correct?

7 A. I think that's right.

8 Q. Let's turn to page 8, line 16 of your
9 rehearing testimony, please. On page 8, line 16 you
10 discuss the effect that the proposal has on the
11 existing stipulations. Do you see that?

12 THE WITNESS: I'm sorry. May I have that
13 reread, please.

14 EXAMINER PRICE: You may.

15 (Record read.)

16 A. Yes.

17 Q. And you do list out how the proposal
18 actually revises or changes the stipulations; is that
19 correct?

20 A. On page -- beginning on page 13, line 11
21 of my testimony. I identified provisions of the
22 Commission's order that are no longer applicable.

23 Q. Thank you.

24 Have the companies entered into a fourth
25 supplemental stipulation regarding ESP IV since the

1 conclusion of the hearing on the original rider RRS
2 proposal?

3 A. No.

4 Q. Did the companies enter into a
5 stipulation concerning the modified rider RRS
6 proposal with any parties?

7 A. The companies discussed the modified
8 rider RRS proposal with the signatory parties to the
9 third supplemental stipulation prior to filing the
10 proposal and shortly thereafter, and learned from
11 those discussions that the signatory parties were in
12 support of the modified proposal and were anxious to
13 move forward in an expeditious fashion in order to
14 bring closure to the ESP IV proceeding. I would
15 except out of that the staff, who continued to do its
16 due diligence; and Kroger, who agreed not to oppose.

17 MS. BOJKO: Your Honor, I move to strike
18 the response as nonresponsive. I asked if the
19 companies entered into a stipulation concerning the
20 modified rider RRS proposal with any parties --

21 MR. KUTIK: I guess it depends on what
22 you call the stipulation, your Honor. If expressions
23 of support and agreement are stipulation, that's a
24 stipulation; if it's not, it's not. So given the
25 vague and ambiguous nature of the question, the

1 witness provided a response.

2 EXAMINER PRICE: I think we all know what
3 a stipulation is, but I am going to deny the motion
4 to strike anyways.

5 MS. BOJKO: Could I still have an answer
6 to my question?

7 Q. (By Ms. Bojko) Did the companies enter
8 into a written stipulation concerning the modified
9 rider RRS proposal with any parties?

10 A. I thought I had already answered that
11 question when you asked me if we entered into a
12 fourth supplemental stipulation. I responded no.

13 Q. Have the companies entered into any
14 written agreements with any parties regarding --
15 strike that.

16 Have the companies entered into any
17 agreements with any written parties --

18 MR. KUTIK: You mean written agreements
19 with any parties?

20 Q. Written agreements with any parties
21 concerning additional benefits that those parties
22 would receive for their support of modified rider
23 RRS?

24 A. No. The only written agreements the
25 company had with signatory parties have been filed in

1 the docket.

2 Q. And in response to one of -- or several
3 questions you've referenced a letter filed in the
4 docket and that's been marked as Companies' Exhibit
5 198; is that correct?

6 A. Yes.

7 Q. And that letter is signed by the
8 companies; is that correct?

9 MR. KUTIK: We'll stipulate it's filed by
10 Carrie Dunn, Attorney for the companies.

11 Q. Well, Ms. Mikkelsen, the signatory
12 parties did not sign that letter; is that correct?

13 A. Yes. But I have not --

14 Q. The signatory -- I'm sorry.

15 A. Go ahead.

16 Q. And the signatory parties referenced in
17 this filing are referring to all the signatory
18 parties except staff and Kroger; is that correct?

19 A. The letter refers to all of the signatory
20 parties, and makes clear that the staff was still
21 conducting their review when the letter was filed,
22 and that Kroger reviewed the proposal and agreed not
23 to oppose the proposal.

24 Q. So the reference in the third paragraph,
25 the signatory parties fully support the filing and

1 the proposed schedule for review, that excludes the
2 staff and Kroger; is that correct?

3 A. And the sentence you refer to has a clear
4 footnote designation at the end which has the
5 exceptions that we've discussed, yes.

6 Q. Thanks.

7 And since the filing of this letter,
8 you've stated that staff -- excuse me. Strike that.

9 Since the filing of this letter, staff
10 has stated its opposition to the proposal; is that
11 correct?

12 A. I think staff can speak for staff's
13 positions.

14 EXAMINER PRICE: Staff filed a different
15 proposal; is that correct?

16 THE WITNESS: Yes, sir.

17 Q. And that different proposal specifically
18 states or requests that the Commission deny the
19 companies' proposal because it no longer offers the
20 stated benefits that the Commission approved with
21 regard to the original rider and because it is a
22 generation charge; is that correct?

23 MR. KUTIK: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. KUTIK: The testimony of the staff is

1 the testimony of the staff. That fact doesn't need
2 to be established through asking the witness if
3 that's the staff's testimony.

4 EXAMINER PRICE: I agree. Sustained.

5 Q. (By Ms. Bojko) Isn't it true that the
6 letter does not specifically modify the third
7 supplemental stipulation?

8 A. The letter does not modify the third
9 supplemental stipulation.

10 Q. Do the companies have a common interest
11 agreement regarding the modified rider RRS with any
12 parties?

13 MR. KUTIK: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. KUTIK: Relevance.

16 EXAMINER PRICE: Ms. Bojko?

17 MS. BOJKO: Your Honor, the existence of
18 a common interest agreement and whether parties have
19 agreed to items regarding the modified proposal is
20 relevant to many factors that the Commission should
21 consider including if the Commission considers the
22 stipulation test in this case.

23 EXAMINER PRICE: Why?

24 MS. BOJKO: Why?

25 EXAMINER PRICE: Yeah. You just stated

1 in the affirmative the exact opposite of what he
2 said. He said it's not relevant; you said that's
3 relevant. That's not helpful.

4 MS. BOJKO: I said with regard to the
5 stipulation factors, with regard to the letter that's
6 been offered as evidence in this case, with regard to
7 other benefits that parties may receive.

8 EXAMINER PRICE: It has been the Bench's
9 longstanding practice to allow parties to work
10 together on pleadings without formal common interest
11 agreements. I know that in this case the intervenors
12 worked together on numerous pleadings without joint
13 defense agreements and without common interest
14 agreements. There is no reason that same courtesy
15 shouldn't be applied to the companies and the
16 signatory parties. The objection is sustained.

17 Q. (By Ms. Bojko) Have the companies had
18 settlement discussions with staff since April 27 --

19 EXAMINER PRICE: Don't answer that. I am
20 not even going to allow that question.

21 MS. BOJKO: Your Honor, under Supreme
22 Court ruling, Ohio Consumers' Counsel versus the
23 PUCO, 111 Ohio St. 3d 300, 2006-Ohio-5789, the
24 existence of settlement discussions and the existence
25 of the parties in attendance at settlement

1 discussions is not privileged or confidential. The
2 content of those settlements are.

3 EXAMINER PRICE: You got me there --

4 MS. BOJKO: Whether they existed or not
5 is not confidential.

6 MR. KUTIK: I was going to say, your
7 Honor, I think she can answer "yes" or "no" to that
8 question.

9 EXAMINER PRICE: Fair enough.
10 Overcautious. You can answer.

11 A. Yes.

12 Q. Have the companies had settlement
13 discussions with staff regarding the modified rider
14 RRS?

15 MR. KUTIK: That, your Honor, I would
16 object to.

17 EXAMINER PRICE: And I'll sustain that
18 one. That's the content.

19 MS. BOJKO: If I can have one minute,
20 please. I have just a couple more questions. I'm
21 almost done.

22 Your Honor, at this time we would like to
23 mark as OMAEG Exhibit 34, the companies' data
24 response to Sierra Club Set 13-INT-236. May we
25 approach?

1 EXAMINER PRICE: You may. That will be
2 so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. KUTIK: I'm sorry, what number?

5 MS. BOJKO: 34.

6 And, your Honor, for clarity purposes,
7 this is a packet of information that also includes
8 companies' response to Sierra Club Set 14
9 Interrogatory 251 which also has an Attachment 1 to
10 it. They -- both interrogatories -- one
11 interrogatory references the other one.

12 EXAMINER PRICE: It's noted for the
13 record.

14 MS. BOJKO: Thank you.

15 Q. (By Ms. Bojko) Ms. Mikkelsen, are you
16 familiar with the companies' responses to Sierra Club
17 Set 13 Interrogatory 236?

18 A. Yes.

19 Q. And you are the witness responsible for
20 this discovery response?

21 A. Yes.

22 Q. And this appears to be a true and
23 accurate copy of the companies' response?

24 A. Yes.

25 Q. And, Ms. Mikkelsen, in question

1 Subsection b., are the companies asked if there's any
2 -- to "Identify each and every safeguard that the
3 Companies have established to ensure none of the cash
4 associated with Rider RRS charges would flow to FES."
5 Do you see that --

6 A. Yes.

7 Q. -- the question? And the response, after
8 a series of objections, is see Subpart a., and then
9 it states that "The Companies have not established
10 additional unique procedures with respect to cash
11 management of revenues recovered from Rider RRS and
12 the Companies will manage cash associated with Rider
13 RRS consistent with existing public policies"; is
14 that correct?

15 A. Yes.

16 Q. And if you turn to the attached company
17 response to Sierra Club Set 14 Interrogatory 251,
18 does the Data Request a. ask the companies to
19 identify the existing corporate policies that were
20 referenced in Sierra Club 13 Interrogatory 236?

21 A. Yes.

22 Q. And is the companies' response to provide
23 Attachment 1?

24 A. I'm sorry?

25 Q. The companies' response, section --

1 Subsection a. of 14 Interrogatory 251, was to provide
2 an attachment which is a cost-allocation manual
3 appendix, policies and procedures?

4 A. Yes.

5 Q. And this is -- appears to be a true and
6 accurate copy of the corporate policies that were
7 referred to in both interrogatories and responses?

8 A. Yes.

9 Q. And also if you look at Sierra Club 13
10 Interrogatory 236, Subpart i., regarding the cash
11 associated with rider RRS, "charges could be included
12 in any sums distributed to FirstEnergy Corp., state
13 whether such cash could affect FirstEnergy Corp.'s
14 credit." Do you see that?

15 MR. KUTIK: I'm sorry. What subpart?

16 MS. BOJKO: "i."

17 A. I see that.

18 Q. And the response, after a series of
19 objections is "No. FirstEnergy Corp.'s credit
20 ratings are not affected by whether FirstEnergy Corp.
21 receives dividends from the utility"; is that
22 correct?

23 A. Yes.

24 MS. BOJKO: I have no further questions.
25 Thank you, your Honors.

1 EXAMINER PRICE: Thank you.

2 MS. BOJKO: Thank you, Ms. Mikkelsen.

3 THE WITNESS: Thank you, Ms. Bojko.

4 EXAMINER PRICE: Mr. Royer.

5 MR. ROYER: Thank you, your Honor. Just
6 a couple of questions.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Royer:

10 Q. With no actual cost to be recovered
11 through the rider when its a charge and with no
12 revenue stream to support the credits to the
13 customers, when the rider is a credit, did the
14 company consider -- did the companies' consider
15 making rider RRS optional for customers?

16 A. No.

17 Q. And why not?

18 A. As we discussed in the original portion
19 of this case, the companies felt it was important
20 that a proposal applied to all customers, shopping
21 and nonshopping customers, and the proposal that the
22 company has before the Commission now does not change
23 any of the underlying basis for rider RRS; rather,
24 it's proposing some modifications to the calculation
25 of rider RRS.

1 Q. Right. I'm sorry, had you finished?

2 A. Yes, sir.

3 Q. Right. But I'm not talking about a rider
4 that would be bypassable. I am talking about a rider
5 that customers could opt into. So, for example,
6 doesn't that preserve all the benefits you are
7 looking for?

8 A. That's not the companies' proposal, sir.

9 Q. I know it's not. I am asking you why --
10 why that wouldn't preserve all the benefits you are
11 looking for, in that, A, it would provide customers
12 that rate stability as desirable and might make
13 decisions based on the availability of rider RRS,
14 give them the option to participate, it would make
15 the potential benefit a quantifiable benefit, the
16 same as it was, since if everybody participated, that
17 could count in the more favorable MRO test, and I
18 don't see why customers should be forced to enter
19 into this.

20 MR. KUTIK: I object, your Honor. First,
21 that's not a question and it's argumentative.

22 EXAMINER PRICE: Sustained.

23 MR. ROYER: Which part?

24 EXAMINER PRICE: The argumentative part.
25 The part where it says "I don't see why customers

1 should be forced to enter into this."

2 MR. KUTIK: And plus the speech before
3 that.

4 MR. ROYER: All right.

5 Q. I'll ask again. Wouldn't -- wouldn't
6 the -- making the rider an opt-in rider preserve all
7 the benefits to customers that underlie the original
8 proposal?

9 A. I wouldn't think so. The original
10 proposal called for the retail rate stability rider
11 to apply to all customers across the service
12 territory.

13 Q. Right. But at that point you needed to
14 fund the costs of the PPA and you needed revenues to
15 support the credits, you would have revenues from the
16 PPA or from the -- from the comparison of the market
17 to the costs to the PPA costs, to support the credit.
18 Now, with no underlying cost and no revenue treatment
19 to support the credits, why is it necessary to have
20 all customers participate in it if a customer doesn't
21 want to?

22 A. In order to provide the benefits that the
23 companies and the Commission approved associated with
24 rider RRS, the initial filing in this case, we
25 continued the proposal so that it would apply to all

1 customers.

2 Q. Okay. But if the benefit you are
3 referring to is the quantifiable benefit
4 associated -- the Commission ascribed to rider RRS,
5 the 256 million?

6 A. In part, but not in total.

7 Q. Well, let's take that part first. If
8 the -- if it was still optional, if the rider RRS was
9 optional, wouldn't the potential be there for that
10 same benefit to exist if all customers were -- if all
11 customers participated? I mean, the company would be
12 on the hook for that amount, right?

13 MR. KUTIK: Well, I object. I think
14 there are a couple of questions in that.

15 MR. ROYER: Okay. I apologize. Can I
16 have the question, so I can remember where I was?

17 EXAMINER PRICE: Sure. Let's have the
18 question back again.

19 MR. ROYER: Never mind. I remember now.

20 Q. (By Mr. Royer) So if even if all
21 customers did not participate, if rider RRS were an
22 opt-in rider, the same benefit the Commission -- the
23 same quantitative benefit that the Commission
24 ascribes to the rider for purposes of the MRO test
25 would still exist, wouldn't it?

1 A. If the question is are the quantifiable
2 benefits dependent upon the number of customers, the
3 answer is no.

4 Q. Okay. Okay. I agree.

5 Now, what were -- you said there were
6 other -- there were other benefits to the rider apart
7 from that?

8 A. Yes.

9 Q. What were those?

10 A. Qualitative benefits associated with the
11 notion of retail rate stability over the term of the
12 ESP period.

13 Q. But if you left that choice with the
14 customer, wouldn't that still provide the customers
15 with the same benefit without forcing them to
16 participate if they didn't want to?

17 A. No. I don't see how the customers could
18 enjoy the qualitative benefit of retail rate
19 stability if they didn't participate in the rider.

20 Q. Well, for example, if I had -- if
21 somebody like my client addresses -- addresses rate
22 stability by entering into long-term fixed-price
23 contracts, that won't cost them another 100-plus
24 thousand dollars over the first three years, won't
25 they -- wouldn't they see that as a benefit?

1 MR. KUTIK: Objection. Assumes facts.

2 EXAMINER PRICE: Sustained. You can't
3 testify as to what your client would be -- the costs.

4 Q. Well, let's take care of -- let's assume
5 a customer who tries to manage risk and rate
6 volatility by entering into long-term fixed-price
7 contracts with a -- with a supplier would determine
8 that they believe that was a better way to achieve
9 rate stability than participating in rider RRS, does
10 that have any impact on your answer?

11 A. No.

12 Q. So the customers should be forced to do
13 what it doesn't want to do because the Commission's
14 judgment and the companies' judgment is superior in
15 these matters to the customers; is that right?

16 MR. KUTIK: Objection, argumentative.

17 EXAMINER PRICE: Sustained.

18 Q. Are there any other benefits?

19 A. None that come to mind at this time.

20 Q. And the only thing -- the only reason the
21 company really wouldn't -- assuming that the
22 Commission would count -- continue to count the
23 256 million as a quantitative benefit, the only reason
24 the companies wouldn't support a proposal to make the
25 rider optional would be because what they're really

1 after is the upfront revenues they'll get under the
2 proposal; isn't that right?

3 MR. KUTIK: Objection.

4 EXAMINER PRICE: Argumentative?

5 MR. KUTIK: Yes.

6 EXAMINER PRICE: Sustained.

7 MR. ROYER: You just didn't like the
8 tenor of the question?

9 EXAMINER PRICE: Yes.

10 MR. ROYER: Okay.

11 EXAMINER PRICE: I think it's the part
12 about what the company is really after.

13 MR. ROYER: Well, okay.

14 Q. (By Mr. Royer) The downside, from the
15 companies' perspective, of what I am suggesting about
16 making the rider RRS an opt-in rider is that the
17 companies would not receive the full amount -- would
18 likely not receive the full amount of cash resulting
19 from rider -- from the rider RRS charges over the
20 early years of the ESP, right?

21 A. The companies have always been very, very
22 vested, very interested in the economic vitality of
23 their service territories and all of the attendant
24 economic development tenants and that very much was
25 an underpinning of and continues to be an

1 underpinning of the company's proposal.

2 Q. Okay. So if you thought that -- you
3 think rider RRS is, in effect, an economic
4 development rate that will increase production and
5 attract new business in a Ohio, all those customers
6 would have to do would be to opt into the rate if the
7 proposal was optional, correct?

8 A. I haven't really thought about it in that
9 context. I would have to give that some thought,
10 sir.

11 Q. And just one other question, just a
12 clarifying question. So if I missed this in your
13 testimony, I apologize. So as a part of the proposal
14 you are not incorporating the feature of the
15 Commission order that limited the amount of the
16 increase in the two years -- two first years of the
17 rider to the average -- what the Commission styled, I
18 think, was the average bill?

19 A. We are incorporating that into our
20 proposal, sir, and it is explicitly stated in my
21 testimony. Page 7, line 10 to 11.

22 Q. Okay. I apologize. I didn't see it.

23 A. Thank you.

24 MR. ROYER: Thank you. That's all I
25 have.

1 EXAMINER PRICE: Okay. Is there any
2 intervenor counsel who has not had a chance to
3 cross-examine Ms. Mikkelsen?

4 Mr. Hays.

5 MR. HAYS: I am not going to ask for a
6 haste exclusion. I see they are just ephemeral, your
7 Honor. Just a couple of very quick questions.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Hays:

11 Q. Tired yet, Eileen?

12 A. No, sir.

13 Q. You are doing better than me.

14 What is the total debt of the companies?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Relevance.

18 EXAMINER PRICE: Mr. Hays?

19 MR. HAYS: Well, I believe the relevance,
20 your Honor, there has been a tremendous amount of
21 talk about the benefits to the company and about --
22 and I think this is a legitimate concern for the
23 Commission, the financial viability of Toledo Edison,
24 CEI, and I'm missing one.

25 EXAMINER PRICE: Ohio Edison.

1 MR. HAYS: Yeah, the biggest of the one.
2 So if this thing -- if this proposal we are currently
3 talking about, where we will have large outflows of
4 cash in the out years, 2009 and on, I think it's
5 certainly relevant to know what the condition, what
6 the financial condition of the subsidiaries are.

7 They are the regulated utilities. That's
8 what our customers, that's what Suzie Smith in Toledo
9 pays her bill for to make sure that company is viable
10 and that she gets her service.

11 EXAMINER PRICE: I think, again, I raised
12 this with Ms. Bojko, the company is not purporting
13 that will benefit the company at all. They are not
14 representing that they are -- they need this to
15 maintain their viability. All those other questions
16 have been bootstrapped in, based upon Staff
17 Interrogatories 34 and 35.

18 Nowhere in her testimony does she say
19 this is a benefit to the company or this is necessary
20 for the company. The only thing she says is they may
21 take some of the cash and use that to invest in the
22 SmartGrid systems. Therefore, your question -- the
23 objection is sustained.

24 MR. HAYS: I am going to take an
25 exception to that, your Honor. I believe that the

1 financial viability of a regulated utility, and
2 traditionally, as I am not always up with these buzz
3 words, has a "ring around it" to protect it from
4 outside forces that could harm it, so I would note my
5 objection for the record. Thank you, your Honor.

6 EXAMINER PRICE: Noted. Thank you.

7 Q. (By Mr. Hays) Ms. Mikkelsen, are you
8 familiar with the term "securitization"?

9 A. Yes.

10 Q. What is "securitization" under Ohio
11 Revised Code in regard to the EDUs?

12 MR. KUTIK: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. KUTIK: Relevance.

15 EXAMINER PRICE: If you could just ask a
16 more specific question about securitization.

17 MR. HAYS: Sure.

18 Q. (By Mr. Hays) Isn't it true that unlike
19 the generation subsidiaries of FirstEnergy, there is
20 securitization financing available to the companies?

21 MR. KUTIK: Objection.

22 EXAMINER PRICE: I'm not sure what you
23 mean, Mr. Hays.

24 Q. (By Mr. Hays) Well, let me just ask you,
25 is it not true that the companies, under the Ohio

1 Revised Code, could use securitization --

2 MR. KUTIK: Objection.

3 Q. -- to finance debt?

4 MR. KUTIK: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. KUTIK: Well, first, I'm not sure
7 that it makes any sense, that's No. 1. No. 2,
8 securitization, financing debt, not relevant.

9 EXAMINER PRICE: I am -- I'm sorry,
10 Mr. Hays. I'm not following your question. Maybe
11 I'm missing something.

12 MR. HAYS: Maybe I'll try to go just a
13 little slower, but I am not going to go so slow I go
14 long.

15 EXAMINER PRICE: That will work.

16 Q. (By Mr. Hays) Ms. Mikkelsen, how do you
17 understand securitization under the Ohio Revised
18 Code?

19 A. It -- the Ohio Revised Code engaged the
20 utilities to take existing regulatory assets on their
21 books and securitize those assets through credit --
22 through issuing lower cost debt and moving that --
23 those assets off the companies' books for recovery at
24 a lower interest rate to provide savings overall to
25 the customers. In fact, the three FirstEnergy Ohio

1 utilities were the first companies in Ohio to
2 securitize the regulatory assets on their books to
3 bring benefit to their customers.

4 MR. HAYS: That's the only question I
5 have on that, your Honor. I did have a couple real
6 quick ones. What were the -- and if I get this
7 wrong, your Honor, I apologize. I don't want to ask
8 something too broad. I want to ask the ones you are
9 allowed to ask.

10 Q. What were the dates of the settlement
11 discussions with staff?

12 A. I don't recall the specific dates, but
13 any discussion would have occurred subsequent to the
14 filing of the company's proposal on May 2.

15 Q. About how many occasions were there?

16 MR. KUTIK: Well, now, I'll object.

17 EXAMINER PRICE: Sustained.

18 Q. When was the last time you had settlement
19 discussions, last date?

20 MR. KUTIK: I'll object, your Honor.

21 EXAMINER PRICE: Sustained.

22 MR. KUTIK: At this point --

23 MR. HAYS: Kim, I believe that was part
24 of what you read from the Ohio Supreme Court that we
25 are allowed to ask the parties and the dates.

1 EXAMINER PRICE: When was the last date?

2 MR. HAYS: Yes, the last time they had
3 discussions.

4 MR. KUTIK: Well, I mean, in that
5 context, your Honor, it was the result of a
6 settlement. There is no result -- there is no
7 settlement as a result of any discussions the staff
8 and companies had.

9 EXAMINER PRICE: Obviously, since the
10 staff has a different proposal. I agree. I think
11 you are misusing the Supreme Court precedents. If I
12 am wrong, the Court will tell me so. Sustained.

13 MR. HAYS: That's all I have, your Honor.
14 And I'm sorry that I added the last minute to the
15 hearing.

16 EXAMINER PRICE: Oh, no, we're not done
17 yet.

18 MR. HAYS: I'm sorry I contributed
19 anyway.

20 EXAMINER PRICE: Any other intervenor
21 witnesses cross -- any other intervenor
22 cross-examinations of this witness?

23 Mr. McNamee?

24 MR. McNAMEE: No. Thank you.

25 EXAMINER PRICE: I will be the one that

1 causes us to stay over time even though the building
2 appears to have turned off the air conditioning. So
3 I will try to be brief.

4 - - -

5 EXAMINATION

6 By Examiner Price:

7 Q. Ms. Mikkelsen, in our previous
8 proceedings you testified numerous times that
9 Davis-Besse and Sammis were at risk; is that correct?

10 A. Yes.

11 Q. And the companies's proposal does nothing
12 to mitigate that risk; is that correct?

13 A. The companies' proposal does nothing
14 directly to mitigate that to the extent it provides
15 for economic development and job-retention benefits
16 in the service territory that give rise to additional
17 load that may --

18 Q. Sort of a tertiary effect.

19 A. That's correct, sir.

20 Q. So in -- it is possible that ratepayers
21 will pay charges for the first three years as
22 projected by the companies, and at some point in the
23 future, irrespective of that, the FirstEnergy
24 Solutions may retire Davis-Besse and Sammis, and all
25 of the employees who are currently at the -- at

1 Davis-Besse and Sammis will lose their jobs; is that
2 correct?

3 A. Yes, the rider RRS proposal is
4 independent of any actions with respect to any plants
5 at FES.

6 Q. Okay. In addition, previously in this
7 hearing you testified that there will be reliability
8 benefits to the approved version of rider RRS,
9 specifically that Davis-Besse and Sammis are
10 electrically interconnected with the companies'
11 systems and that they operated on a -- a
12 non-just-in-time fuel sourcing; is that correct?

13 A. Yes.

14 Q. And the proposal does nothing -- does not
15 have those reliability benefits; is that correct?

16 A. Not directly, correct.

17 Q. Yes. And in the event Davis-Besse and
18 Sammis are, in fact, retired, ratepayers may be on
19 the hook for transmission investments which have been
20 estimated between 400 million and I believe \$1.2
21 billion; is that correct?

22 A. I think the number was somewhat lower
23 than 1.2, but yes.

24 Q. Thank you. It's in the record.

25 A. Correct.

1 Q. Either way the range is in the record.

2 A. Correct.

3 EXAMINER PRICE: I think Ms. Willis asked
4 the supply diversity question, so I don't think we
5 need to ask that. Okay. That's all I have.

6 We will resume again tomorrow at 9:00
7 o'clock at what time -- at which time we will take
8 the confidential questions of our -- for this
9 witness.

10 Mr. Settineri.

11 MR. SETTINERI: I'm open, but I have the
12 Supreme Court argument that won't get out till like
13 10:10, so I won't be here until 10:30 at the best.

14 MR. KUTIK: Can we do this off the
15 record?

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

17 We are going to adjourn for tonight.

18 Let's go off the record.

19 (Thereupon, the hearing was adjourned at
20 6:16 p.m.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Monday, July 11, 2016,
5 and carefully compared with my original stenographic
6 notes.

7
8

Karen Sue Gibson, Registered
9 Merit Reporter.

10
11

Carolyn M. Burke, Registered
12 Professional Reporter.

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14 (KSG-6218)

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Case No(s). 14-1297-EL-SSO

Summary: Transcript in the matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company hearing held on 07/11/16 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.