

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 9:00 a.m. on Wednesday,
July 13, 2016.

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REHEARING VOLUME III

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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.

10 Stone Mattheis Xenopoulos & Brew, PC
11 By Mr. Michael Lavanga
12 1025 Thomas Jefferson Street, N.W.
13 Eighth Floor West Tower
14 Washington, D.C. 20007-5201

15 On behalf of Nucor Steel Marion, Inc.

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1 Wednesday Morning Session,
2 July 13, 2016.

3 - - -

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

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

14 My name is Gregory Price. With me is
15 Megan Addison. We are the attorney examiners
16 assigned to preside over today's hearing.

17 We will dispense with appearances
18 unless -- except for Mr. Lavanga, do you want to make
19 an appearance?

20 MR. LAVANGA: Yes, thank you. On behalf
21 of Nucor Steel Marion, Michael Lavanga, with the law
22 firm of Stone Mattheis Xenopoulos & Brew. Thank you.

23 EXAMINER PRICE: Thank you. Anybody else
24 that joined us after Monday?

25 Okay. Before we take our first witness,

1 let's finish yesterday's business. We did indicate
2 that Ms. Turkenton could be re-called if the changes
3 in Mr. Buckley's testimony necessitate any additional
4 questions for Ms. Turkenton. Does any intervenor or
5 the company have questions for Ms. Turkenton?

6 Seeing none --

7 MR. KUTIK: No, your Honor.

8 EXAMINER PRICE: Mr. McNamee, do you want
9 to move admission of your exhibit?

10 MR. McNAMEE: Yes. Staff would move for
11 the admission of Staff Exhibit 14.

12 EXAMINER PRICE: Any opposition to the
13 admission of Staff Exhibit 14?

14 MR. KUTIK: No objection.

15 EXAMINER PRICE: Seeing none, it will be
16 admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER PRICE: Ms. Willis, you had a
19 housekeeping issue for us.

20 MS. WILLIS: Thank you, your Honor.

21 Your Honor, earlier in this proceeding
22 you ruled that the intervenors opposing the staff's
23 proposal would have the opportunity to file rebuttal
24 testimony to address the staff's proposal. And you
25 had asked that parties alert the Bench by noon on

1 Wednesday, noon today, with respect to whether or not
2 they have potentially identified witnesses who will
3 serve as rebuttal witnesses to the staff's proposal.

4 OCC has potentially identified Mr. Kahal
5 as a potential rebuttal witness. As you know,
6 Mr. Kahal is scheduled to present his direct
7 testimony in this proceeding Friday of this week. We
8 had earlier made a request on the record, I believe,
9 that instead of -- if Mr. Kahal was identified as a
10 potential rebuttal witness, that instead of requiring
11 Mr. Kahal to come into -- into the jurisdiction from
12 Washington, D.C., the Washington, D.C. area, that
13 Mr. Kahal be permitted to make one appearance in lieu
14 of two and that that appearance be scheduled next
15 week after the filing -- after the Friday filing of
16 rebuttal testimony.

17 We would -- at the point that this issue
18 was raised, your Honors, asked for a response from
19 Mr. Kutik and asked Mr. Kutik to consider that. In
20 off the record discussions this morning, Mr. Kutik
21 indicated he was not inclined to agree to bringing
22 Mr. Kahal on once instead of twice.

23 We are now asking for a ruling and moving
24 that the Bench rule that Mr. Kahal be brought into
25 the jurisdiction once instead of twice and that he be

1 presented as a rebuttal witness and a direct -- a
2 witness with direct testimony next week at a time to
3 be scheduled that's convenient for all the parties.

4 And we would do this, your Honors, in the
5 interest of administrative efficiency and fiscal --
6 being fiscally responsible and not requiring the
7 travel and expense associated with two trips into
8 Ohio versus one.

9 And we would also note, your Honor, that
10 given the rather short schedule to prepare rebuttal
11 testimony, it is important to preserve Mr. Kahal's
12 availability to work on those matters rather than to
13 require Mr. Kahal to travel and spend his time
14 otherwise. It takes away from the time that could be
15 spent working on the rebuttal testimony. That's
16 another additional reason why it is important to rule
17 and allow him one appearance as opposed to two in
18 this jurisdiction. Thank you.

19 EXAMINER PRICE: Thank you. Mr. Kutik.

20 MR. KUTIK: Your Honor, I think while we
21 would normally be inclined to accommodate a witness's
22 schedule, the balance of the interests of the
23 company, the other parties and the Commission, I
24 think, weigh against agreeing to OCC's proposal here.

25 You have granted an extraordinary

1 schedule to allow rebuttal testimony, but it
2 certainly has complicated the schedule in terms of
3 making sure that the record is clear as to what
4 particular issues are being addressed when, and also
5 with respect to the companies' burden with respect to
6 keeping track or preparing and responding to all of
7 these things.

8 We are concerned that if we allow
9 Mr. Kahal's combined cross-examination that will be a
10 confusion of issues and perhaps even allow Mr. Kahal
11 to respond to things that he otherwise would not have
12 had the opportunity to do so. That's unfair to us;
13 it's improper.

14 It also creates a burden for us in that
15 we are under the current schedule looking at having
16 at the same time to prepare our rebuttal, respond to
17 the intervenors's rebuttal, and then prepare
18 surrebuttal. There is quite a number of balls up in
19 the air for us and this just adds more complication
20 to it, and I think would also add to the possibility
21 of delaying these already-prolonged proceedings.

22 So for all of those reasons, your Honor,
23 although we would like to accommodate Mr. Kahal, we
24 regretfully say we cannot and the Bench should not.

25 EXAMINER PRICE: I am going to deny the

1 motion -- motion or request by OCC. I do believe it
2 would unduly delay these proceedings. The
3 application in this case was filed, I believe, on
4 August 4, 2014. We are rapidly approaching the
5 two-year anniversary of that filing date. If we
6 accommodated OCC's request, it would delay the
7 companies' ability to decide whether they are going
8 to file rebuttal and extend this hearing into a third
9 or even possibly fourth week.

10 Accordingly, OCC's request will be
11 denied.

12 Any other issues we need to take up?

13 Okay. Mr. Buckley, I believe you have
14 been sworn in already.

15 Mr. McNamee, would you like to continue
16 with your direct examination?

17 MR. McNAMEE: I believe we were finished
18 with the direct examination.

19 EXAMINER PRICE: Oh, that's right, you
20 are. Let me rephrase that. Do you have any
21 additional questions based on what happened yesterday
22 for Mr. Buckley?

23 MR. McNAMEE: No, no, I have no
24 additional questions. I believe we started the
25 cross-examination by somebody.

1 EXAMINER PRICE: Mr. Fisk was --

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

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

4 (Discussion off the record.)

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

7 Mr. Fisk, would you like to continue with
8 your cross-examination?

9 MR. FISK: Certainly, yes. I wasn't sure
10 if I was continuing or we were just starting over
11 from yesterday.

12 EXAMINER PRICE: You know what, in light
13 of what's happened, it's up to you if you want to
14 start over, that's just fine.

15 MR. FISK: Okay. Thank you. Thank you,
16 your Honor.

17 - - -

18 JOSEPH P. BUCKLEY
19 being previously duly sworn, as prescribed by law,
20 was examined and further testified as follows:

21 CROSS-EXAMINATION

22 By Mr. Fisk:

23 Q. Good morning, Mr. Buckley.

24 A. Good morning.

25 Q. Am I correct that your rehearing

1 testimony recommended a new distribution
2 modernization rider?

3 A. I don't make that recommendation, but I
4 was charged with coming up with a number. I think
5 that is staff's recommendation.

6 Q. But you personally are not the one who is
7 recommending it.

8 A. No.

9 Q. And do you know who is recommending it?

10 A. I believe Dr. Choueiki.

11 Q. Okay. And under staff's proposed rider,
12 the companies would be authorized to collect \$131
13 million per year from customers for at least three
14 years, correct?

15 A. Correct.

16 Q. And if you turn to page 7 of your
17 rehearing testimony, lines 3 through 5 state,
18 "Additionally if FE has not improved its credit
19 position after three years, it could request an
20 extension of the current plan for an additional two
21 years." Do you see that?

22 A. I do.

23 Q. Okay. And the "additional two years," at
24 what level of revenue would that be?

25 A. They would make a request. We would hope

1 that it would be as low as possible. And hopefully
2 it would be zero. Hopefully there wouldn't be a
3 request, but if they made a request, the burden of
4 proof would be on them to show that they continue to
5 need credit support.

6 Q. Okay. Could they request higher than
7 131 million?

8 A. I think it's up to them to decide what
9 they want to request. So they could request whatever
10 they would deem necessary.

11 Q. Okay. And what sort of filing, under the
12 staff's proposal, would the companies have to make in
13 order to request an extension of the DMR?

14 A. I don't know. I don't know the answer to
15 that question.

16 Q. Do you know who would know?

17 A. I don't. I'm sorry.

18 Q. And are -- is the staff proposing that
19 such an extension request would trigger a Commission
20 hearing?

21 MR. McNAMEE: Objection.

22 EXAMINER PRICE: Grounds?

23 MR. McNAMEE: That asks for a legal
24 opinion, I think, of this nonlawyer witness.

25 MR. FISK: Your Honor, I am asking what

1 the staff's proposal is, what the law may or may not
2 require, but what is the staff proposing something on
3 that.

4 EXAMINER PRICE: I will sustain the
5 objection based upon it's outside the scope of this
6 witness's testimony. I don't think he's making any
7 process recommendations. You know, he has not
8 indicated a familiarity with whether the company
9 would file an application, a motion, request, let
10 alone whether a hearing would or wouldn't be
11 required.

12 Q. (By Mr. Fisk) Do you know which witness
13 does have any information about what the process
14 would be for the companies to request an extension of
15 the DMR?

16 A. I don't know.

17 EXAMINER PRICE: There will only be one
18 staff witness left after this witness so.

19 MR. FISK: I guess my concern is that
20 witness does not mention a request for an extension
21 in his testimony. The only witness that does is
22 Mr. Buckley.

23 EXAMINER PRICE: He's the wrap-up
24 witness. You can ask him.

25 Q. (By Mr. Fisk) The purpose of the DMR is

1 to enable the companies to provide credit support to
2 FirstEnergy Corp., correct?

3 MS. WILLIS: May I have that question
4 reread, please.

5 EXAMINER PRICE: You may.

6 (Record read.)

7 A. The credit support will benefit the
8 operating companies because of the way companies
9 are -- are rated by specifically S&P where they do an
10 umbrella rating, so if -- if FirstEnergy Corp. were
11 to be downgraded the operating companies would, in
12 turn, be downgraded so the -- to say it only benefits
13 FirstEnergy Corp. I don't think would be accurate.
14 I think it benefits subsidiaries underneath the
15 corporate umbrella.

16 Q. And it does that by ensuring the
17 companies can provide credit support to FirstEnergy
18 Corp., correct?

19 A. Correct.

20 Q. Do you believe that any of the companies
21 face any emergency that threatens their financial
22 integrity?

23 A. I'm struggling with the definition of
24 "emergency." If it's the statutory language, I don't
25 believe that that would be the case.

1 Q. And why do you not believe that would be
2 the case under the statutory language?

3 A. I can't quote the statutory language, but
4 I think that is for situations where you can't meet
5 your short-term payments.

6 Q. Any other reasons?

7 A. Again, it -- an emergency type of rate
8 case is a dire situation where you can't meet -- you
9 can't pay your bills basically on a short-term --
10 it's not a long-term view, it's a short-term, we
11 can't pay our bills on a monthly basis. That's more
12 of the -- what an emergency rate case is set up to
13 do. Again, I can't quote the statute.

14 EXAMINER PRICE: Mr. Buckley, what you
15 are talking about there, is that an emergency rate
16 case under 4909.16 that you are talking about, or is
17 that the statutory provision Ms. Turkenton addressed
18 yesterday, 4928.142(D)?

19 THE WITNESS: I'm sorry. I don't know
20 the answer to that.

21 EXAMINER PRICE: Well, you said
22 "statutory language." So which statute were you
23 referring to?

24 THE WITNESS: I would have to go back and
25 review both of them. I don't know which one I am

1 referring to. I didn't -- I didn't look at the
2 numbers before I read them.

3 EXAMINER PRICE: Okay. Fair enough.

4 MR. FISK: Your Honor, may we approach?

5 EXAMINER PRICE: You may proceed --
6 approach, sorry.

7 MR. FISK: We don't need to mark this.
8 This is just the 142 language.

9 MS. WILLIS: I'm sorry, your Honor. It
10 would be really helpful if we could have his last
11 answer, substantive answer reread.

12 EXAMINER PRICE: Sure. My question or?

13 MS. WILLIS: No. When Mr. Buckley
14 referred to the emergency statute, that response.

15 EXAMINER PRICE: We can have the two
16 questions ago.

17 MS. WILLIS: Thank you.

18 (Record read.)

19 Q. (By Mr. Fisk) Mr. Buckley, you have been
20 handed a document that is a copy of Ohio Revised Code
21 4928.142; is that correct?

22 A. Correct.

23 Q. Okay. And we were just discussing the
24 statutory language regarding an emergency; is that
25 correct?

1 A. We were.

2 Q. Okay. Would this document help refresh
3 your recollection as to which statutory language you
4 were referring to and in specific -- specifically, I
5 will point you towards subsection (D)(4) which is on
6 the third page.

7 A. What's the question again?

8 Q. Would this refresh your recollection as
9 to the statutory language that you were referring to?

10 MR. McNAMEE: Your Honor, if I might
11 interject an objection. If he's to compare the
12 language, he would need to have the emergency statute
13 as well, 4909.16.

14 EXAMINER PRICE: Do you have a copy of
15 4909.16?

16 MR. FISK: Not a paper copy. I could
17 bring it up online.

18 MS. WILLIS: You've got a copy.

19 EXAMINER PRICE: Ms. Willis is well
20 prepared.

21 MS. WILLIS: Only happy to help to make
22 the record clear.

23 EXAMINER PRICE: Sometimes books are more
24 useful than the online versions of things.

25 MS. WILLIS: Make sure I don't have notes

1 on this one.

2 A. What I was speaking of was 4909.16.

3 Q. 4909.16, okay. And so it's your
4 testimony there is not -- the companies do not face
5 an emergency under that statutory provision?

6 A. Correct.

7 Q. And if you could refer to 4928.142(D)(4).

8 A. Yes.

9 Q. And for about -- about eight lines from
10 the bottom of that subsection, there's a sentence
11 that starts "Additionally, the commission may adjust
12 the electric distribution utility's most recent
13 standard service offer price...." Do you see that?

14 A. Yes.

15 Q. And then in that sentence it refers to
16 "any emergency that threatens a utility's financial
17 integrity...." Do you see that?

18 A. I do.

19 Q. Okay. And is it your regulatory opinion
20 that any of the companies face any emergency, that
21 threatens their financial integrity for purposes of
22 this language in 4928.142(D)(4)?

23 MR. McNAMEE: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. McNAMEE: Outside the scope of this

1 witness's testimony. Ms. Turkenton was already
2 examined on this question yesterday. And this
3 witness does not speak to that topic.

4 EXAMINER PRICE: And she was responsive.

5 MR. McNAMEE: Pardon?

6 EXAMINER PRICE: And she was responsive.

7 MR. McNAMEE: She was.

8 EXAMINER PRICE: She did not punt this to
9 Mr. Buckley.

10 MR. FISK: Your Honor, I believe she did
11 punt it.

12 EXAMINER PRICE: She gave her opinion as
13 to what she thought an emergency was.

14 MR. FISK: But she also stated she
15 thought Mr. Buckley would be the correct -- the best
16 person to answer that question.

17 EXAMINER PRICE: I don't recall whether
18 she did or didn't, but her counsel is saying no.

19 MR. McNAMEE: I don't think so. She
20 doesn't either.

21 EXAMINER PRICE: She punted so many
22 questions, but I am going to sustain Mr. McNamee's
23 objection.

24 Q. (By Mr. Fisk) So, Mr. Buckley, you are
25 not offering any testimony or opinion that any of the

1 companies phase any emergency that threatens their
2 financial integrity; is that correct?

3 A. My testimony does not address that
4 specifically, no.

5 Q. Are you offering that -- any opinion as
6 to whether the companies face any emergency that
7 threatens their financial integrity?

8 A. I'm not trying to be difficult, but I
9 don't understand the definition of "integrity."

10 Q. Okay. So if you -- you do not understand
11 the definition of "integrity." Does that mean --

12 EXAMINER PRICE: I think we need to move
13 on from this topic. This particular provision has
14 never been construed by the Ohio Supreme Court. To
15 the best of my knowledge, the Commission, itself, may
16 have addressed this particular provision at one time.
17 You are asking a nonlawyer witness to interpret a
18 statute that no lawyer has ever made -- ever ruled
19 upon. I think you got from him what you can get from
20 him.

21 MR. FISK: Well, respectfully, I believe
22 that Ms. Turkenton has cited this provision in her
23 MRO versus ESP testimony, and when asked about it,
24 she specifically punted the question.

25 EXAMINER PRICE: Respectfully, she gave

1 an answer as to what she thought in her personal
2 opinion what an emergency was.

3 MR. FISK: Right. And then she punted
4 the question to Mr. Buckley.

5 EXAMINER PRICE: And Mr. Buckley does not
6 appear able to answer it because no court has ever
7 ruled upon this. And as I said early, to the best of
8 my knowledge, the Commission may have ruled upon it
9 once.

10 MS. BOJKO: Your Honor, may I be heard on
11 this issue?

12 EXAMINER PRICE: You may.

13 MS. BOJKO: Thank you. Mr. Buckley is
14 here to testify that there's a necessity for credit
15 support of the companies that will affect the parent
16 company. He just testified to that. So whether
17 there is an emergency or financial integrity or some
18 kind of financial need is directly responsive to his
19 testimony, and I think that intervenors have the
20 right to explore what was the basis of his testimony
21 that says the companies even need credit support. I
22 mean that's what this all goes to is the credit
23 support requirement.

24 MR. McNAMEE: If I may interject?

25 EXAMINER PRICE: You may.

1 MR. McNAMEE: He's speaking to a
2 financial need. He is not speaking to legalities at
3 all and that's the problem with -- with this line of
4 questioning, it seems to me.

5 EXAMINER PRICE: I agree with
6 Mr. McNamee. We tend to try to be flexible and let
7 parties ask questions of witnesses as to their
8 regulatory interpretations of statutes they cite in
9 their testimony. This witness cited no statute. To
10 the best of my knowledge, and I don't hear anybody
11 disputing, the Court has never ruled on this statute.
12 This is a pure legal question. And honestly, it's
13 not his job to give an interpretation of what the
14 statute means.

15 All the parties will have every
16 opportunity on brief to make the case that they want
17 to make as to what 142 means and what it doesn't
18 mean. And if you want to put on witnesses,
19 testifying as to what 142 means, we'll address that
20 when their testimony comes up.

21 MS. WILLIS: Your Honor, if I may, the
22 Court has addressed financial integrity and whether
23 or not it's appropriate for the Commission to include
24 charges to ensure the financial integrity. Perhaps
25 not under that statute.

1 EXAMINER PRICE: Not under 142.

2 MS. WILLIS: Perhaps not under that
3 statute, but they have financial integrity recently,
4 your Honor.

5 EXAMINER PRICE: I understand. That's a
6 different statute. It's a totally different
7 statutory provision.

8 MR. LANG: So, your Honor, the objection
9 is sustained and we can proceed?

10 EXAMINER PRICE: Actually, it wasn't an
11 objection; it was my own interjection, but yes, we
12 are going to move on from this topic so we can get
13 done sometime today.

14 MR. LANG: Thank you, your Honor.

15 MR. FISK: Thank you, your Honor.

16 Q. (By Mr. Fisk) Okay. Mr. Buckley, you --
17 in your testimony you calculate an amount of credit
18 support that you contend should be provided to
19 FirstEnergy Corp. through the DMR, correct?

20 A. Correct.

21 Q. And you identified that amount by
22 evaluating cash flow from operations to debt for
23 FirstEnergy Corp.; is that correct?

24 A. Yes. Preworking capital but yes.

25 Q. Okay. And can we refer to -- to that

1 cash flow from operations, preworking capital to
2 debt, as "CFO to debt"?

3 A. Yes.

4 Q. Okay. Thank you.

5 A. Please.

6 Q. And you use 14.5 percent as the level
7 of -- of CFO to debt that FirstEnergy Corp. needs to
8 achieve; is that correct?

9 A. Yes.

10 Q. And that 14.5 percent figure is based on
11 Moody's statement that a negative-rating action could
12 occur if FirstEnergy Corp. does not maintain a CFO to
13 debt ratio of at least 14 to 15 percent?

14 A. Yes.

15 Q. And are you aware that S&P also issues
16 credit ratings for FirstEnergy Corp.?

17 A. Yes.

18 Q. Okay. And in S&P's ratings they use a
19 metric of funds from operation to debt; is that
20 correct?

21 A. They do.

22 Q. Okay. And can we agree to refer to that
23 as "FFO to debt"?

24 A. Yes, we may.

25 Q. Okay. Thank you. And your -- your

1 testimony does not provide any evaluation of
2 FirstEnergy Corp.'s FFO to debt, correct?

3 A. It does not.

4 Q. Okay. And your CFO to debt calculation
5 is reflected in the table at the top of page 4 of
6 your rehearing testimony; is that correct?

7 A. Yes.

8 Q. Okay. And this table discusses the years
9 2011 through 2014 and then the first nine months of
10 2015; is that right?

11 A. Yes.

12 Q. Okay. And just to make sure I have -- I
13 fully understand this table, if we could just walk
14 through the various rows here. Row -- the row "CFO
15 Pre W/C over Debt" which is the third -- fourth row
16 down, it has the percentage figures in it?

17 A. Yes.

18 Q. Okay. That -- those percentage figures
19 are calculated by dividing the CFO preworking capital
20 line by the total debt line; is that right?

21 A. I anticipated this line of questioning,
22 and what I did was I kind of looked at it as an Excel
23 spreadsheet, so I'm using that line, it would be B5,
24 basically, is 22 percent, correct?

25 Q. Wait a minute.

1 A. Okay.

2 Q. E5?

3 A. No. B5.

4 Q. Oh, B5.

5 A. So if you are looking at this table as an
6 Excel spreadsheet, I am looking at B2 being CFO to
7 preworking capital, and then followed it down the
8 line that would be B3, B4, B5, and so on.

9 Q. Okay. And so just -- just so the record
10 is clear, the "B" is the column for 2011?

11 A. Correct.

12 Q. Okay. And -- okay. So to calculate the
13 CFO preworking capital to debt number, 14 percent,
14 that would be in cell B4, correct?

15 A. Correct.

16 Q. And that you calculated that by dividing
17 B2 by B3?

18 A. Exactly. I hope that's helpful.

19 Q. It is, yes. Okay. And then cell B6
20 would be CFO preworking capital over debt at 14.5
21 percent, correct?

22 A. Correct.

23 Q. And so -- and that cell B6 is the amount
24 of additional CFO that would be needed -- would have
25 been needed in that particular year to increase the

1 CFO pre/WC to debt percent to 14.5; is that right?

2 A. Correct.

3 Q. And then you -- you then took the figure
4 in cell B6, took 22 percent of that to come up with
5 an amount in B7?

6 A. Correct.

7 Q. Okay. And the 22 percent is the percent
8 that you are proposing of the credit support that
9 would be needed that you are allocating to customers,
10 correct?

11 A. To the distribution companies, yes.

12 Q. Okay. And then ultimately to their
13 customers.

14 A. Correct.

15 Q. Okay. And then -- and so you did that
16 similar calculation for each of the other years on
17 this table?

18 A. Correct.

19 Q. Okay. And so, 2012 would be C -- or
20 column C -- or row -- column C, yes. 2013 would be
21 D, 2014 would be E, and 2015 would be F?

22 A. Correct.

23 Q. And then you averaged the five figures in
24 row 7 to get the 131 million?

25 A. Yes.

1 Q. Okay. And the 131 million figure would
2 have been adequate to increase FirstEnergy Corp.'s
3 CFO to debt to 14.5 percent only in 2011, correct?

4 MR. McNAMEE: Could I have that question
5 reread, please.

6 EXAMINER PRICE: You may.

7 (Record read.)

8 MR. McNAMEE: Thank you.

9 A. Based on the math, yes.

10 Q. And it would have been -- that
11 \$131 million figure would have been inadequate to
12 increase FirstEnergy Corp.'s CFO to debt in any of
13 the years, 2012 to 2015, by hundreds of millions of
14 dollars each year; is that correct?

15 A. Yes.

16 Q. And your testimony does not provide any
17 projection of FirstEnergy Corp.'s CFO to debt level
18 without the DMR for any year of the staff's proposed
19 rider, correct?

20 A. We are not making future predictions,
21 no -- or projections, sorry.

22 Q. Okay. So you have -- you are not
23 providing any testimony as to what the CFO to debt
24 ratio for FirstEnergy Corp. might be in any year of
25 the rider?

1 A. No.

2 Q. And that's true both without or with the
3 rider?

4 A. Correct.

5 MR. FISK: May we approach, your Honor.

6 EXAMINER PRICE: You may.

7 MR. FISK: Oh, that's true.

8 Q. (By Mr. Fisk) Do you have Sierra Club
9 Exhibit 99?

10 A. I don't.

11 MR. FISK: Okay. May we approach?

12 EXAMINER PRICE: Give one to the Bench
13 too.

14 MR. FISK: Do we have one for the Bench?

15 MR. McNAMEE: How about one for me?

16 EXAMINER PRICE: Not for the Bench, I'm
17 sorry, I already have it.

18 MR. FISK: You already have it?

19 Q. (By Mr. Fisk) Okay. Mr. Buckley, you
20 have been handed a document that's been previously
21 marked and admitted as Sierra Club Exhibit 99, and it
22 is the companies' responses to Staff Data Request 34;
23 is that correct?

24 A. Yes.

25 Q. And have you ever seen this document

1 before?

2 A. I haven't seen it the way it's labeled
3 now, but I have seen the document -- I have seen this
4 response before, but I haven't seen the one labeled
5 as Sierra Club, but, yes, I have seen the document.

6 Q. Okay. So you have seen both the request
7 and the response?

8 A. Correct.

9 Q. Okay. And did you -- did you draft the
10 request?

11 A. I was involved in the drafting of the
12 request. I don't think it was sent out under my
13 name, but I was involved in the discussions of
14 creating this request.

15 Q. Okay. And what was your -- what was your
16 involvement?

17 MR. McNAMEE: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. McNAMEE: Staff's internal litigation
20 preparations are confidential.

21 EXAMINER PRICE: Sustained.

22 Q. (By Mr. Fisk) Okay. And if you look at
23 subsection 4 of the request, it says "Please provide
24 the forecasted cash from operations...and forecasted
25 adjusted debt values, for the years 2016 to 2018,

1 used to calculate the CFO to adjusted debt ratio by
2 Moody's." Do you see that?

3 A. I do.

4 Q. Okay. And the companies did not provide
5 those forecasted CFO or forecasted adjusted debt
6 values to you, correct?

7 A. Not in response to this Data Request,
8 they did not provide that.

9 Q. Have you ever seen that information?

10 A. I have.

11 Q. Okay. And did the companies provide that
12 information to you?

13 A. They did not provide it, but we looked at
14 it.

15 Q. How did you -- sorry.

16 A. We looked at it and they brought it, but
17 they did not leave that with us. So we reviewed it.

18 Q. So you've seen the information from the
19 companies, but you were not allowed to retain that
20 information.

21 A. Correct.

22 Q. And was that from the companies or from
23 FirstEnergy Corp.?

24 MR. McNAMEE: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. McNAMEE: Apparently this occurred
2 during settlement discussions. I was not party to
3 these discussions, so I'm not positive of that.

4 MR. LANG: And, your Honor, same
5 objection from the companies is this was part of
6 settlement discussions. We would object on that
7 basis.

8 EXAMINER PRICE: Sustained.

9 Q. (By Mr. Fisk) Looking at subsection 3 of
10 the Staff Data Request 34, it requests the
11 "forecasted funds from operations...and the
12 forecasted adjusted debt values for the years 2016 to
13 2018...." Do you see that?

14 A. I do.

15 Q. Okay. And was that information provided
16 by the companies to the staff?

17 A. Again, we did not take possession of it.
18 We reviewed it.

19 EXAMINER PRICE: Mr. Buckley, was your
20 review of this in the context of a settlement
21 discussion?

22 THE WITNESS: It was.

23 MR. McNAMEE: And I object.

24 EXAMINER PRICE: Your objection -- well,
25 he has already answered the question.

1 MR. McNAMEE: I know.

2 EXAMINER PRICE: Mr. Fisk, it would be
3 helpful, if you are going to continue down this line,
4 if you could at least -- since you now are aware that
5 there were settlement discussions, if you could at
6 least preface the witness that you are not asking for
7 anything that happened in a settlement discussion.

8 MR. FISK: Okay. Certainly.

9 MR. LANG: And, your Honor, it might be
10 helpful just to have an instruction for the witness,
11 I think he probably understands where we are going
12 now, but it could help just to instruct the witness
13 to keep any settlement discussions off to the side of
14 his answers.

15 EXAMINER PRICE: Yes, exactly. If they
16 ask you a question that is something that occurred in
17 a settlement discussion, you need to make that clear
18 to the Bench before you answer that question. Thank
19 you.

20 Please proceed, Mr. Fisk.

21 Q. (By Mr. Fisk) Mr. Buckley, without
22 revealing the contents of any information you may
23 have received in settlement discussions, are you --
24 with regard -- and with regards to your response to
25 my question regarding Staff Data Response 34,

1 subsection 4, are you relying on any information you
2 received through settlement discussions in support of
3 your testimony?

4 A. No.

5 Q. Okay. And with regards to the
6 information about FFO and adjusted values discussed
7 in Staff Data Request 34, subpart 3, are you relying
8 on any information received during settlement
9 discussions in support of your testimony?

10 A. No.

11 Q. And with regards to Staff Data Request
12 34, subpart 2, you -- the staff requested detailed
13 projected financial statements from the years 2016
14 through 2018, correct?

15 A. Correct.

16 Q. And without revealing any information
17 that you may or may not have received during
18 settlement discussions, with the exception of
19 settlement discussions, have the staff -- have the
20 companies provided the information requested in Staff
21 Data Response 34, subpart 2, to the staff?

22 MR. McNAMEE: Could I have that question
23 reread, please?

24 EXAMINER PRICE: You may.

25 (Record read.)

1 MR. McNAMEE: Thank you.

2 A. No.

3 Q. So am I correct there is no assurance
4 that the DMR would enable FirstEnergy Corp. to
5 achieve a CFO to debt level of at least 14.5 for any
6 year of the staff's proposed rider?

7 A. I think in the testimony it talks about
8 distribution companies paying a percentage or
9 supporting -- their support is a percentage of the
10 total, so I don't think it's intended for it to cover
11 the whole amount.

12 Q. Okay. And as such, that means that
13 there's no assurance that the DMR would enable
14 FirstEnergy Corp. to achieve a CFO to debt level of
15 at least 14.5 percent in any year of the rider,
16 correct?

17 MR. LANG: Objection, your Honor.

18 EXAMINER PRICE: Grounds?

19 MR. LANG: Asked and answered.

20 EXAMINER PRICE: Slightly different
21 question. We will allow it. We will give a little
22 bit of leeway.

23 THE WITNESS: Can I have my answer to the
24 last question read back?

25 EXAMINER PRICE: You may.

1 (Record read.)

2 Q. Were you asking for the question to be
3 read back?

4 A. My answer. Now I am going to ask for the
5 question to be read back.

6 EXAMINER PRICE: Can we have the question
7 and answer so I can keep it together in my head?

8 MR. KUTIK: Your Honor --

9 MS. WILLIS: Could we also have the
10 pending question reread?

11 EXAMINER PRICE: Okay. Exactly.

12 MR. LANG: The question and the answer
13 and the question.

14 EXAMINER PRICE: Let's have the preceding
15 question and the answer and then the pending question
16 in that order.

17 (Record read.)

18 A. In response to that the -- again, it's
19 intended for the distribution companies to support a
20 percentage. What we are hoping for is this increase
21 in distribution investment will lead the rating
22 agencies to view them in a different light as a more
23 regulated entity and potentially lower the threshold
24 of 14.5 percent.

25 MS. WILLIS: May I have the answer

1 reread, please.

2 EXAMINER PRICE: You may.

3 (Record read.)

4 EXAMINER PRICE: Mr. Buckley, without --
5 one second. Without revealing anything that occurred
6 in settlement conferences or settlement discussions,
7 does the staff expect that FirstEnergy Corp. would
8 take additional measures to improve their ratio
9 beyond simply relying upon rider DMR?

10 THE WITNESS: Yes.

11 EXAMINER PRICE: Thank you.

12 Q. (By Mr. Fisk) I would like to --

13 MS. BOJKO: Your Honor.

14 MR. FISK: I would like to go back and
15 move to strike his answer as not responsive to my
16 question. He is talking about the staff's intent.
17 My question was directly focused on is there an
18 assurance this will get FirstEnergy Corp. to 14.5
19 percent and that's a simple "yes" or "no" question.

20 EXAMINER PRICE: I am going to deny your
21 motion to strike, but I will direct the witness to
22 respond to your previous question on a "yes" or "no"
23 basis.

24 MR. FISK: Thank you, your Honor.

25 Q. Would you like the question read back?

1 A. No.

2 EXAMINER PRICE: No, you don't need the
3 question read back, or "no" is your answer?

4 THE WITNESS: Both.

5 Q. (By Mr. Fisk) And there is also no
6 assurance that the DMR would enable FirstEnergy Corp.
7 to achieve an FFO to debt level of at least 12
8 percent for any year of the proposed staff rider,
9 correct?

10 A. Correct.

11 Q. I'm sorry, your Honor. If we could go
12 back to the Q and A that you instructed him to answer
13 "yes" or "no." I believe that -- I believe that
14 my -- I believe that given the answer he just gave on
15 the FFO, I believe on the answer on the CFO, I think
16 I asked "correct" and then he said "no" and --

17 EXAMINER PRICE: Let me -- we will just
18 start over. You phrase the question in the way you
19 want to phrase it and Mr. Buckley will answer it on a
20 "yes" or "no" basis.

21 MR. FISK: Okay. Thank you.

22 EXAMINER PRICE: Not "correct." Not any
23 other words; "yes" or "no."

24 MR. FISK: Yes. Okay.

25 Q. (By Mr. Fisk) Okay. Mr. Buckley, there

1 is no assurance that the DMR would enable FirstEnergy
2 Corp. to achieve a CFO to debt level of at least 14.5
3 percent for any year of the proposed staff rider,
4 correct?

5 A. It would not allow them to achieve that
6 14 percent level, correct.

7 Q. Thank you.

8 EXAMINER PRICE: Declare a victory. Move
9 on.

10 MR. FISK: Yes. I just wanted to make
11 sure.

12 Q. Okay. And turning to page 3 of your
13 rehearing testimony, you -- in the box that's kind of
14 in the -- close to the middle of the page, you
15 calculate an allocation factor for the companies of
16 22 percent; is that correct?

17 A. Yes.

18 Q. Okay. And that allocation factor you
19 calculated because the staff is proposing that
20 customers should only bear a portion of the amount
21 that would have been needed for FirstEnergy Corp. to
22 achieve 14.5 percent CFO to debt ratio; is that
23 correct?

24 A. Yes.

25 Q. And that is because the customers should

1 not be the only constituents providing credits for
2 the entire FirstEnergy Corp.; is that correct?

3 A. Correct.

4 Q. Would you agree that the level of credit
5 support that any particular constituent of
6 FirstEnergy Corp. should be asked to provide should
7 be consistent with the proportion of the credit
8 shortfall that such constituent is responsible for?

9 MR. McNAMEE: Objection.

10 MR. SAUER: Could that question be
11 reread?

12 EXAMINER PRICE: Let's have the question
13 back and then Mr. McNamee will give his grounds.
14 Please don't answer just yet, Mr. Buckley.

15 (Record read.)

16 MR. McNAMEE: The question is ambiguous.
17 We don't know what "responsible for" means.

18 EXAMINER PRICE: Mr. Fisk, if you could
19 rephrase.

20 MR. FISK: Certainly.

21 Q. (By Mr. Fisk) In deciding how much of the
22 credit support is allocated -- should be allocated to
23 customers, would you agree that you should evaluate
24 what portion of any credit shortfall the companies
25 are responsible for?

1 EXAMINER PRICE: I don't think you
2 reworded the part he objected to, and I am not sure I
3 know what "credit shortfall" means.

4 MR. FISK: Okay. Fair enough.

5 Q. Let me step back then. Looking back at
6 your table on page 4 of your rehearing testimony, the
7 row we identified as 6, "CFO Pre W/C Debt at
8 14.50 percent," do you see that row?

9 A. I do.

10 Q. Okay. The amounts listed in that row are
11 the amounts by which the CFO is below the level
12 needed for FirstEnergy Corp. to have a 14.5 percent
13 CFO to debt figure, correct?

14 A. Yes.

15 Q. Okay. Would it be fair to call that a
16 CFO shortfall?

17 A. Yes.

18 Q. Okay. So in determining how much of that
19 CFO shortfall should be allocated to any particular
20 constituent of FirstEnergy Corp., would you agree
21 that there should be an evaluation of each
22 constituent's -- how much -- how much of that
23 shortfall each constituent of FirstEnergy Corp. is
24 responsible for?

25 A. No. There are certain constituents that

1 we're discussing that would not have been involved at
2 all in the shortfall; shareholders, employees. They
3 did not create that shortfall, I don't believe, so
4 how could they make up parts of it? So, no, I don't
5 believe that would be the appropriate way to look at
6 this.

7 Q. Do the -- FirstEnergy Corp. has more
8 subsidiaries than just the companies, correct?

9 A. Yes.

10 Q. Okay. And do each of the subsidiaries
11 contribute to the overall CFO to debt level for
12 FirstEnergy Corp.?

13 MR. McNAMEE: Object.

14 EXAMINER PRICE: Grounds?

15 MR. McNAMEE: I guess I'm sort of behind
16 the game here in that I'm not sure what was discussed
17 in the settlement discussion, the unsuccessful
18 settlement discussions that I was not involved in.
19 And I am not sure if that is eliciting information
20 that would have been discussed there. So I interpose
21 the objection.

22 EXAMINER PRICE: I'm just going to
23 caution the witness again, if the answer to your
24 question is based upon information you received in
25 settlement discussions, you should notify the Bench

1 before you give your substantive answer.

2 MR. LANG: Thank you, your Honor.

3 THE WITNESS: Can I have that question
4 reread, please?

5 EXAMINER PRICE: You may.

6 (Record read.)

7 A. The combination of the financial
8 statements, when put together, are used in creating
9 that metric. If that's what you're asking.

10 Q. Yeah. So just as a general matter, each
11 of the subsidiaries -- just as a general matter,
12 not -- I am not asking for any specific numbers.
13 Just as a general matter, each of the subsidiaries of
14 FirstEnergy Corp. would have a CFO to debt level; is
15 that correct?

16 A. They could be -- one could be calculated
17 for each subsidiary.

18 Q. And the CFO to debt level of all the
19 subsidiaries play a role in determining what the
20 overall CFO to debt level for FirstEnergy Corp. is,
21 correct?

22 A. Correct.

23 Q. And in deciding -- strike that.

24 So each of the subsidiaries could have a
25 CFO shortfall potentially?

1 A. Yes.

2 Q. Okay. And did you -- and in determining
3 how much of the CFO shortfall for FirstEnergy Corp.
4 to allocate to the companies, did you evaluate how
5 much of the overall FirstEnergy Corp.'s shortfall was
6 due to any CFO shortfalls that might exist in any of
7 the subsidiaries?

8 A. We examined the Ohio operating companies.
9 We did not really look much beyond that. We looked
10 at the Ohio operating companies and we looked at the
11 parent company. Obviously, we've -- in evaluating --
12 in our ongoing evaluation of these companies we look
13 at a lot of different financial statements and
14 metrics and things like that. But in this proceeding
15 we mainly focused on the Ohio operations and the
16 parent.

17 Q. Okay. And did you ever calculate the CFO
18 debt-to-debt level for any of the companies for any
19 of the years 2011 through 2015?

20 A. I don't recall if we calculated them for
21 all those years. I know I've seen it for 2015, but I
22 can't recall -- we did a lot of different
23 back-of-the-envelope-type calculations. I don't
24 recall all of them that we did, so I don't -- I'm not
25 certain of that answer.

1 Q. And in deciding on how to allocate -- or
2 what portion of the CFO shortfall for FirstEnergy
3 Corp. to allocate to the companies, did you do any
4 evaluation comparing how much of a CFO -- CFO
5 shortfall the companies had compared to how much of a
6 CFO shortfall the other subsidiaries of FirstEnergy
7 Corp. might have?

8 A. Again, we looked at -- we mainly focused
9 on the Ohio companies and the parent.

10 Q. Okay. So you didn't do any evaluation of
11 whether other subsidiaries of FirstEnergy Corp. might
12 have -- might contribute -- might have been the cause
13 of more of the CFO shortfall for FirstEnergy Corp.
14 than the companies?

15 A. Again, we mainly concentrated on the Ohio
16 utilities and the parent. We looked at a lot of
17 different financial statements. I don't recall us
18 making those type of calculations for every
19 subsidiary.

20 Q. And did you ever in -- in determining the
21 22 percent allocation, did you ever specifically look
22 at the CFO to debt level for FirstEnergy Solutions?

23 MR. McNAMEE: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. McNAMEE: I believe this question has

1 been -- well, not about Solutions specifically, but
2 the -- this topic has been examined thoroughly and
3 the witness has indicated his answer. He has not
4 done calculations for the other companies. It was a
5 comparison between the Ohio operating companies and
6 FirstEnergy Corp. So asked and answered.

7 EXAMINER PRICE: I am going to overrule
8 the objection. He can answer if he did FirstEnergy
9 Solutions specifically as opposed to all the other
10 subsidiaries that he did not do.

11 MR. FISK: Thank you, your Honor.

12 A. No.

13 Q. Thank you. And are the companies'
14 customers responsible for any of the CFO shortfall
15 for FirstEnergy Corp.?

16 MR. McNAMEE: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. McNAMEE: The question again is
19 ambiguous. It is unclear what company he is talking
20 about.

21 MR. FISK: I said the "companies" which
22 is our agreed --

23 EXAMINER PRICE: He is referring to the
24 operating utilities --

25 MS. WILLIS: The Ohio.

1 EXAMINER PRICE: The Ohio operating
2 utilities' customers.

3 MR. LANG: Your Honor, we would further
4 object on the basis that it is unclear what -- what
5 "responsible" means.

6 EXAMINER PRICE: I'll sustain that
7 objection. If you could -- we are all struggling
8 with "responsible," so if you could use a different
9 phrase or word for that, it might be helpful.

10 MR. FISK: Okay. Thank you.

11 Q. (By Mr. Fisk) Mr. Buckley, am I correct
12 that earlier you testified that FirstEnergy Corp.
13 employees and shareholders are not responsible for
14 the CFO shortfall?

15 A. Correct.

16 Q. Okay. And so using that same
17 nomenclature of "responsible," are the companies'
18 customers responsible for the CFO shortfall at
19 FirstEnergy Corp.?

20 A. I don't -- if the rates don't support a
21 certain credit -- or the revenue doesn't support
22 that, then -- could you rephrase the question? I am
23 just struggling with how to answer it.

24 Q. When you said that the FirstEnergy
25 employees and shareholders are not responsible for

1 the CFO shortfall, what did you mean by
2 "responsible"?

3 A. They don't pay rates. They don't
4 contribute to the revenue of the company.

5 Q. And the "company," which company are you
6 referring to there?

7 A. The -- either of the operating -- the
8 Ohio operating companies or the parent company.

9 MS. BOJKO: Your Honor, may I have his
10 response read back now with the clarification?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 Q. (By Mr. Fisk) But the FirstEnergy Corp.
14 shareholders do benefit from healthy financial credit
15 metrics for FirstEnergy Corp., correct?

16 A. There are a lot of things that go into
17 the pricing of a utility's stock. You know, general
18 market conditions. A healthy company would not
19 typically detract from how a stock is viewed. But
20 there are a lot of healthy companies that have sell
21 ratings on them also.

22 So to say that they benefit going
23 forward, I don't know if you could say that, but I
24 think the company, in general, would benefit and they
25 are the owners of the company, so they would be

1 better -- it would be better, in the long term, if
2 they were healthy than not healthy.

3 Q. Better for shareholders.

4 A. Better for shareholders and I think all
5 of the constituents.

6 Q. And is the companies' -- I am sorry.
7 Strike that.

8 Does the staff proposed rider require
9 shareholders to make any contribution towards
10 ensuring that FirstEnergy Corp. maintains an
11 investment grade rating?

12 A. I have never run a utility. We're saying
13 that we believe that the customers are -- are able to
14 offer a bridge and pay their share or a portion of
15 it. How they come up with the rest of that is up to
16 them. They -- there are an almost infinite number of
17 ways they can address that problem and hopefully
18 solve that problem, but we are not saying one
19 constituent should pay any certain amount or any
20 certain percentage. We are just saying that the
21 customers should only be liable for a certain
22 percentage. How they address that otherwise is going
23 to be up to them.

24 Q. (By Mr. Fisk) Your Honor, I would move to
25 strike. My answer was a very -- my question was a

1 very direct question of is the staff proposing
2 anything that requires shareholders to help
3 contribute to maintaining FirstEnergy Corp.'s
4 investment grade utility. Very straightforward
5 question.

6 MR. McNAMEE: Your Honor, I don't see it
7 as a straightforward question at all. The question
8 require -- uses the term "requires." And the only
9 way the question can be answered is with an
10 exposition of what that means and that's what the
11 witness has just given.

12 EXAMINER PRICE: I am going to agree with
13 Mr. McNamee. You have already observed that the
14 staff's proposal would not -- is not the entire
15 amount necessary to reach that certain ratio.

16 I asked Mr. Buckley whether the staff
17 expected the corporation to take other steps. He
18 said yes. He's simply expanding on the whole context
19 of what we are talking about. So your motion is
20 denied.

21 MR. FISK: Thank you, your Honor.

22 Q. (By Mr. Fisk) Could I have the answer
23 read back?

24 EXAMINER PRICE: Yes.

25 (Record read.)

1 MR. FISK: Thank you.

2 Q. (By Mr. Fisk) So you just testified you
3 are not saying one constituent should pay any certain
4 amount, but aren't you -- isn't your proposal that
5 the companies' customers should pay a specific
6 amount?

7 A. What I am saying is anyone other than the
8 customers.

9 EXAMINER PRICE: Than the Ohio customers.

10 THE WITNESS: Than the Ohio customers of
11 the distribution companies.

12 Q. Okay. And I believe in response to
13 Attorney Examiner Price's question a little while
14 ago, you testified that the staff has an expectation
15 that FirstEnergy Corp. will take other steps to help
16 address the CFO -- CFO shortfall; is that correct?

17 A. Correct.

18 Q. Okay. What is the basis for your -- for
19 that expectation?

20 EXAMINER PRICE: Mr. Fisk, you are asking
21 that, of course, without disclosing any settlement
22 discussions.

23 MR. FISK: Yes. My apologies, yeah.

24 MR. McNAMEE: And I object.

25 EXAMINER PRICE: Grounds?

1 MR. McNAMEE: It asks the witness to
2 speculate about what FirstEnergy may do. That is
3 pure speculation and provides nothing for the record.
4 Nothing useful.

5 EXAMINER PRICE: Mr. Fisk.

6 MR. FISK: I mean, if the staff wants to
7 stipulate that they are only speculating as to
8 whether FirstEnergy Corp. will take any steps to
9 improve its investment grade or its credit metrics or
10 its CFO shortfall, that's fine.

11 EXAMINER PRICE: I think he was saying
12 you are asking the staff to speculate just to
13 specific steps, not whether it is going to take
14 additional steps. Mr. Buckley has already indicated
15 there are an infinite number of steps that they could
16 take. Why don't you ask him specific steps that you
17 think they could take and ask him if he agrees that's
18 the step they could take.

19 Q. (By Mr. Fisk) Can you, Mr. Buckley, give
20 me an example of a transmission expansion plan that
21 FirstEnergy Corp. could take to improve its credit
22 metrics?

23 MR. LANG: And, again, your Honor, the
24 instruction is continued with regard to settlement
25 discussions; is that correct, your Honor?

1 EXAMINER PRICE: Yes. In fact, maybe it
2 would be better if you simply asked him what a
3 company could generally do, the steps a company --
4 not necessarily FirstEnergy, but a hypothetical
5 company could do to improve their situation.

6 MR. FISK: Certainly.

7 EXAMINER PRICE: Then stay away from
8 settlement discussions.

9 MR. FISK: Well, we'll start there.

10 EXAMINER PRICE: Okay.

11 MR. FISK: See where we go.

12 Q. (By Mr. Fisk) Mr. Buckley, assuming a
13 hypothetical company is facing a CFO shortfall, can
14 you identify any steps that that company could take
15 to address the CFO shortfall?

16 A. As staff, I am not making any suggestions
17 on what the companies should do. I don't want to
18 give -- in stating things I don't want to say that we
19 believe, as staff, we give preference over any of
20 these options. Some of the options, however, could
21 be cutting expenses, increasing revenues, and there's
22 a multitude of different types of expenses that could
23 be addressed. But anything that -- that helps the
24 financial situation would be -- would be useful.

25 Q. And with regards to FirstEnergy Corp.,

1 the staff's DMR proposal does not require FirstEnergy
2 Corp. to take any such steps that you were just
3 referring to, correct?

4 MR. McNAMEE: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. McNAMEE: I don't believe the staff's
7 recommendation requires anybody to do anything. It
8 is a recommendation that the Commission impose a
9 charge.

10 EXAMINER PRICE: It would require
11 customers to pay that charge.

12 MR. McNAMEE: Assuming the Commission
13 agrees.

14 EXAMINER PRICE: Assuming the Commission
15 agrees.

16 MR. FISK: And I guess, your Honor,
17 that's what I am trying to get on the record is that
18 nothing -- there is no requirement for anybody else
19 to do anything, FirstEnergy Corp. to do anything, as
20 part of this proposed DMR.

21 MS. WILLIS: If the staff wants to
22 stipulate that, we would be happy.

23 MR. FISK: Yeah.

24 MS. WILLIS: Mr. McNamee's statement
25 about it, doesn't do anything for anybody.

1 EXAMINER PRICE: I will allow the
2 question.

3 A. There's not a requirement, but there is
4 definitely an incentive for them to do something.
5 There is an incentive for the company to remain
6 investment grade. We have a hard time requiring
7 entities or constituents that we don't regulate to do
8 things, but the company definitely has an incentive.

9 EXAMINER PRICE: For example,
10 Mr. Buckley, you could not order the companies to
11 raise rates on Pennsylvania ratepayers, could you?

12 THE WITNESS: No.

13 EXAMINER PRICE: You couldn't ask -- you
14 couldn't require FirstEnergy Corp. to raise rates on
15 New Jersey ratepayers, could you?

16 THE WITNESS: No.

17 EXAMINER PRICE: They are regulated by
18 other states.

19 THE WITNESS: Correct.

20 EXAMINER PRICE: But, on the other hand,
21 you have also testified, have you not, you're not --
22 staff is not willing to ask the ratepayers of the
23 state to pay the full amount to maintain the
24 14.5 percent ratio; is that correct?

25 THE WITNESS: Correct.

1 Q. (By Mr. Fisk) Okay. So following up,
2 Mr. Buckley, on your statement FirstEnergy Corp. has
3 an incentive to remain investment grade, is it your
4 testimony that the DM -- the DMR, if approved by the
5 Commission, would provide an incentive to remain
6 investment grade?

7 A. The -- my testimony would say it would
8 help them to remain investment grade.

9 Q. But are you -- is it your opinion that
10 the DMR, if it were approved, would provide
11 FirstEnergy Corp. with an incentive to do anything
12 else to address -- or to remain investment grade?

13 MR. McNAMEE: Could we have that question
14 reread, please?

15 EXAMINER PRICE: You may.

16 (Record read.)

17 A. I think the incentive would remain for
18 FirstEnergy to try to be -- to stay investment grade.
19 I'm not sure that the rider being there or not being
20 there changes the incentive. I think the incentive
21 is still there for them to remain investment grade.

22 EXAMINER PRICE: Let's change the
23 question around a little bit. Aren't there
24 disincentives to the FirstEnergy Corp. and to the
25 companies to lose their investment grade rating?

1 THE WITNESS: I believe there are.

2 EXAMINER PRICE: And what would those
3 disincentives be?

4 THE WITNESS: Capital calls, higher
5 financing rates, there's a multitude of potential
6 problems. Investment -- being dropped below
7 investment grade is almost the equivalent of stepping
8 off the sidewalk where there's a noticeable drop in
9 how you are treated by the investment community.

10 EXAMINER PRICE: Well, let me ask this in
11 terms I can understand; simple words. They would
12 have to pay higher interest rates to borrow money, to
13 do anything, operations, investments in the
14 distribution system, investments in anything else; is
15 that correct?

16 THE WITNESS: All things being equal,
17 yes.

18 EXAMINER PRICE: Would they be
19 significantly higher rates?

20 THE WITNESS: Again, by dropping below
21 investment grade, it creates additional burdens, so,
22 yes.

23 Q. (By Mr. Fisk) And so going back to the
24 22 percent allocation, why did you decide to use
25 energy operating revenues as the basis for

1 calculating the allocation?

2 A. We struggled with that. We look -- we
3 looked at a lot of different -- is this still on?

4 EXAMINER PRICE: Yes.

5 A. We looked at a lot of different
6 allocators we could potentially use. We just thought
7 revenues was the most consistent way of allocating
8 those -- those -- this rider. It's not the only way,
9 but it's one way, and we thought it was the best way
10 in this situation.

11 Q. What other ways would you consider
12 reasonable to determine the allocation?

13 A. I don't recall the specific ways that we
14 looked at it. I mean, some of the allocators you
15 could look at would be averaging multiple allocators
16 together. I know that we did that. I can't remember
17 the exact ones we used. Obviously, you could use
18 employee head count. It could be energy based on
19 usage or something like that. But there's a
20 multitude of things you could use to allocate. I
21 don't know specifically the other ones that we looked
22 at.

23 MR. OLIKER: Excuse me, your Honor.
24 Could I have that question and answer read back,
25 please?

1 EXAMINER PRICE: You may.

2 (Record read.)

3 Q. (By Mr. Fisk) In determining the
4 allocation, could you use the comparative levels of
5 debt for the various subsidiaries?

6 A. You could. I don't know how appropriate
7 that would be in this situation, but it could be one
8 that you would use.

9 Q. Why would you -- what is your hesitation
10 about whether that's appropriate?

11 A. I don't know the debt levels of all the
12 other companies. I don't know what they look like.

13 Q. Okay. But your -- but do you think the
14 method, leaving aside what the debt levels might look
15 like, is the methodology of using comparative debt
16 levels of the various subsidiaries unreasonable in
17 your mind?

18 MR. LANG: Objection, asked and answered.
19 That was two questions ago.

20 EXAMINER PRICE: Sustained.

21 Mr. Buckley, the debt at FirstEnergy, is
22 that held by the individual companies or is that held
23 at the corporate level, or do you not know?

24 THE WITNESS: Both.

25 EXAMINER PRICE: Both.

1 THE WITNESS: Both.

2 EXAMINER PRICE: So there is some portion
3 of the debt that's held by the holding company. Is
4 that why it's difficult to allocate the -- this
5 according to debt, because you don't know what may be
6 held at the corporate level that was originally one
7 of the subsidiaries?

8 THE WITNESS: That would be one of the
9 issues. And, again, sitting here, I don't know
10 whether that would be appropriate or not without
11 seeing the levels and seeing how different companies
12 are financed at FirstEnergy. Some of the companies
13 that we are not as familiar with, I don't know how
14 they are financed.

15 EXAMINER PRICE: So it's just not a
16 simple question in your mind.

17 THE WITNESS: Correct.

18 Q. (By Mr. Fisk) Do you know the level of
19 debt for the three companies?

20 A. I have not committed those to memory, no.
21 However, in my testimony they are listed; the total
22 debt of the companies is listed on page 4 of my
23 testimony.

24 Q. That's the total debt of the companies or
25 FirstEnergy Corp.?

1 A. That's FirstEnergy Corp.

2 Q. Okay. Okay. So just to be clear, my
3 question was --

4 A. The operating companies.

5 Q. The operating companies' debt levels.

6 A. I have looked at them. I just have not
7 committed them to memory.

8 Q. Okay. And you -- you've attached -- you
9 have an Attachment 1 to your testimony that is some
10 financial highlights pages from SNL; is that correct?

11 A. Correct.

12 Q. And you used Attachment 1 to identify the
13 comparative levels of energy operating revenues for
14 FirstEnergy Corp. and the various three operating
15 companies?

16 A. Correct.

17 Q. Correct?

18 A. Correct. And as I am sitting here -- oh,
19 no. Go ahead.

20 Q. And so the -- does the SNL financial
21 highlights documents provide the levels of debt for
22 the three companies and FirstEnergy Corp.?

23 A. It does.

24 Q. Okay. So you could do the same
25 calculation that is reflected in the box on page 3 of

1 your rehearing testimony, but using debt levels
2 rather than energy operating revenues?

3 A. Definitely.

4 Q. And using the financial highlights
5 documents in Attachment 1, could you calculate for
6 the three companies the CFO to debt percent?

7 A. No, I don't believe you could.

8 Q. Okay. And why not?

9 A. It's kind of Moody's specific. Moody's
10 and S&P kind of have their own way of making these
11 calculations, and they'll put in some things that
12 aren't necessarily intuitive. You could probably get
13 pretty close, but to get the exact amount, you would
14 probably have to get it from Moody's.

15 Q. If you were to get it pretty close, what
16 lines of information would you use?

17 MR. McNAMEE: May we have the question
18 reread, please.

19 EXAMINER PRICE: You may.

20 (Record read.)

21 MR. McNAMEE: Thank you.

22 A. So how I would probably do it is take the
23 debt level, okay?

24 Q. Which -- I'm sorry.

25 A. Oh, I'm sorry.

1 Q. Let's look at the First Corp. attachment,
2 financial highlight document in the attachment.

3 A. Okay. So what I would do would be to
4 take the debt levels and then set it equal to
5 whatever percentage I wanted it to equal and then
6 calculate the FFO by using simple algebra.

7 Q. Okay. So the debt levels, which lines
8 would those be?

9 A. Oh, I'm sorry. If you look at the
10 balance sheet, you see the current assets, net PP&E,
11 total assets, non-current long-term debt would be the
12 long-term debt.

13 Q. Okay. You would just use that
14 non-current long-term debt line?

15 A. Correct.

16 Q. And then -- and then you would -- you
17 said you would set a percentage?

18 A. So if I was looking for a percentage of
19 14.5 percent, I would just calculate it that way. To
20 calculate CFO over debt, what I would do is I would
21 go to Moody's and get their calculation. And then
22 you could potentially walk through the statement of
23 cash flows and try to re -- to basically kind of
24 audit it.

25 Q. Okay.

1 A. But from this -- from this statement, you
2 probably couldn't do that on your own.

3 Q. Okay. Is -- on this financial highlights
4 statement from -- if you see the heading says "Cash
5 Flow Statement Highlights"?

6 A. Correct.

7 Q. And do you see the first line is "Cash
8 Flow from Operating Activities"?

9 A. Correct.

10 Q. Is that CFO or is that something
11 different?

12 A. It's probably not the exact amount that
13 Moody's used. Again, if it were -- if I were doing
14 it, I would go to Moody's, and Moody's -- that's
15 public information. This is not the best source to
16 use for Moody's information. I think it would just
17 be easier to do it that way.

18 Q. Okay. Fair enough.

19 Going -- going back to the question when
20 I asked could you do the calculation that you did in
21 the box on page 3 of your rehearing testimony using
22 debt levels instead of energy -- operating energy
23 revenue, do you recall that?

24 A. Yeah.

25 Q. Okay. Which -- which line would you use

1 from Attachment 1 for those debt levels?

2 MR. LANG: Objection, your Honor. At
3 this point he has already said he can't do it using
4 this document. He said he would go to Moody's. This
5 is simply rehashing an exploration of trying to tie
6 this document to his numbers. The witness has said
7 several times that you can't get there using these
8 numbers. So, at this point, I would object that it's
9 both asked and answered, and, at this point, beyond
10 the scope of his testimony. I think we should move
11 on.

12 MR. FISK: Your Honor, this is a
13 different -- I am not asking to recreate the Moody's
14 numbers. I am going back to the previous testimony
15 where he said you could do just the debt calculation
16 for purposes of the allocation. I am not trying to
17 figure out CFO to debt.

18 MR. LANG: And, your Honor, he has
19 clarified he can't do that using this document.

20 EXAMINER PRICE: Let's ask him.

21 Q. (By Mr. Fisk) You testified you could do
22 the calculation in box -- in the box on Table 3,
23 comparing the energy operating revenues for
24 FirstEnergy Corp. and the companies, you could do
25 that calculation using debt level instead of energy

1 operating levels, correct?

2 A. You could create an allocator.

3 Q. Okay.

4 A. Yes.

5 Q. So my question is using -- what line of
6 information from SNL financial highlights would you
7 use to create that allocator if you were trying to
8 compare debt levels?

9 A. I would -- I would go back to Moody's and
10 look at their debt levels to try to remain
11 consistent. If you were forced to use these, you
12 would use the line that we spoke about earlier that
13 is non-current long-term debt. But, again, to be
14 consistent, I would try to go to the same source for
15 everything.

16 Q. Okay. And --

17 EXAMINER PRICE: One second. I have a
18 follow-up. Now, you are confusing the Bench. I
19 thought you indicated that some portion of the debt
20 is held at the corporate level.

21 THE WITNESS: It is.

22 EXAMINER PRICE: So how would you
23 allocate that corporate debt among the various
24 subsidiaries?

25 THE WITNESS: In creating that allocator,

1 I would assume that you would just use the debt
2 that's held at the subsidiaries and you would remove
3 the corporate debt.

4 EXAMINER PRICE: What would be your basis
5 for doing that?

6 THE WITNESS: I would not use that
7 allocator.

8 EXAMINER PRICE: And would you not use
9 that allocator for that reason?

10 THE WITNESS: That would be one of the
11 reasons, yes.

12 EXAMINER PRICE: Now, I am not confused.
13 Please proceed.

14 MR. LANG: Your Honor, we have been going
15 for a while. Would it be appropriate to take a break
16 at this time?

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

18 (Discussion off the record.)

19 EXAMINER PRICE: Let's go back on the
20 record. We will take a break in a couple of
21 questions.

22 Please proceed, Mr. Fisk.

23 MR. FISK: Thank you.

24 Q. (By Mr. Fisk) The energy operating
25 revenue that you used on your table -- or in your box

1 on page 3 for the allocator, is that data you could
2 have obtained from Moody's?

3 A. I believe that's from this financial
4 statement. Maybe this will help clear up this line
5 of questioning. The CFO to debt, Moody's publishes
6 that. They don't really want you to be able to
7 calculate it because they want you to pay for them to
8 calculate it. So they don't -- there's some
9 guesswork in making that calculation using financial
10 statements.

11 As far as operating revenues and things
12 like that, we are usually pulling those just from
13 regular financial statements because those are what's
14 published. Anything that Moody's is doing
15 specifically, they are making it hard for you to make
16 that calculation.

17 Q. So -- so the Moody's calculation of CFO
18 to debt, getting the numbers that go into that is
19 not -- aren't -- those numbers aren't really publicly
20 available.

21 A. They -- they make those numbers publicly
22 available, but they don't tell you how to calculate
23 them exactly. You can get fairly close, but you
24 can't get the exact numbers unless you make some
25 inferences.

1 Q. Okay. And so just the debt levels and
2 the CFO levels are published by Moody's.

3 A. Yes.

4 Q. Okay.

5 A. That they are using.

6 Q. So to be -- you could get those exact --
7 those same CFO number -- you could get the CFO number
8 and the debt level numbers from SNL, correct?

9 A. They don't -- they would not match up
10 exactly with Moody's typically. You could get their
11 interpretation.

12 MR. FISK: Okay. That ends this line of
13 questioning.

14 EXAMINER PRICE: Thank you. At this time
15 we will take a 10-minute break. Let's come back at
16 11:05.

17 We are off the record.

18 (Recess taken.)

19 EXAMINER PRICE: Mr. Fisk, you may
20 proceed. Let's go back on the record.

21 MR. FISK: Thank you, your Honor.

22 Q. (By Mr. Fisk) Mr. Buckley, on page 7 of
23 your testimony, lines 2 to 3, you state "Staff
24 believes three years is adequate time for FE to begin
25 to address its financial situation." Do you see

1 that?

2 A. I do. I do.

3 Q. Okay. And the "financial situation" you
4 are referring to there is the CFO shortfall?

5 A. It's what measures the problem so -- or
6 situation, yes.

7 Q. Okay. So it -- the fact of the CFO
8 shortfall is what shows that there's a financial
9 situation that needs to be addressed?

10 A. Again, the company -- going forward,
11 Moody's could change their hurdle for what the
12 company needs to meet to remain investment grade if
13 they become a more regulated entity as a whole.
14 That's one of the reasons this distribution
15 modernization rider is important, because it
16 increases investment in a regulated entity.

17 MR. FISK: I'm sorry. Could I have that
18 question and answer read back?

19 EXAMINER PRICE: You may.

20 MR. FISK: Thanks.

21 (Record read.)

22 Q. So if you look back on page 4, the table
23 on page 4, does this -- this table shows that
24 FirstEnergy Corp. has had a CFO to debt shortfall
25 for -- since -- for five years; is that correct?

1 A. Correct.

2 Q. Okay. And so given that that shortfall
3 has existed for at least five years, how is there any
4 basis to believe that the company -- that FirstEnergy
5 Corp. will -- will be able to address that shortfall
6 within three years?

7 A. We believe that there's an incentive --
8 that Moody's has given them an incentive. We're
9 giving them -- that there is incentive for them to --
10 to make improvements and that they will focus on
11 making those improvements going forward.

12 Q. Has FirstEnergy Corp. focused on making
13 those improvements in the past five years?

14 A. I don't -- I don't know exactly what goes
15 on in FirstEnergy's board room and what they're
16 discussing and what their long-term or short-term
17 goals are. So I don't know what they have been
18 focusing on in the last five years from a strategy
19 standpoint.

20 Q. And you also don't know, therefore, what
21 their strategy will be for the next three years
22 outside of anything you might have learned in
23 settlement discussions?

24 A. In listening to investor calls, it
25 appears that they've discussed pivoting and becoming

1 a more regulated operation.

2 Q. And what investor calls are you referring
3 to?

4 A. I don't want to be nonresponsive, but the
5 best way to find these investor calls are to go to
6 their website and on their investor page, they have a
7 list of all the investor calls that they've had. I
8 can't think of the exact names of them, but they are
9 public calls that anybody can -- can listen to, and
10 typically there's transcripts or presentations that
11 you can view. And they archive those for a period of
12 time.

13 EXAMINER PRICE: As part of your job, do
14 you routinely listen to utility investment calls?

15 THE WITNESS: We either listen to them or
16 read the transcripts.

17 EXAMINER PRICE: And is that why you are
18 not able -- it's not like you read one in the last
19 five years.

20 THE WITNESS: No. We typically listen to
21 as many as we can and hopefully all of them.

22 EXAMINER PRICE: For each of the
23 utilities.

24 THE WITNESS: For each of the utilities
25 that we regulate.

1 Q. (By Mr. Fisk) Have you seen any written
2 plan for FirstEnergy Corp. that you are relying on in
3 your testimony in this proceeding of how they would
4 address their financial situation?

5 A. We haven't examined any specifics or
6 detailed plans; just what's been made public. That
7 type of information would be very proprietary, so I
8 don't think we would have access to that or would
9 really even think to ask that.

10 Q. Okay. The staff's proposed rider would
11 not require the companies to spend any of the
12 revenues from the rider on distribution
13 modernization, correct?

14 MR. McNAMEE: Objection. Outside the
15 scope of this witness's testimony.

16 EXAMINER PRICE: That's something that
17 Dr. Choueiki can answer?

18 MR. McNAMEE: I think so.

19 EXAMINER PRICE: Sustained.

20 Q. (By Mr. Fisk) Are you offering any
21 testimony, Mr. Buckley, as to whether the staff
22 proposal creates a financial incentive for the
23 companies to carry out any distribution
24 modernization?

25 A. I believe that there is an incentive

1 there to do that so they can become a more regulated
2 entity.

3 Q. But the "incentive" you are referring to,
4 are you saying that the staff's proposed DMR, if it
5 were approved by the Commission, provides that
6 incentive?

7 A. We believe it does.

8 Q. And how so?

9 A. Because it would increase investment in
10 the regulated operations of the utilities, of the
11 Ohio utilities.

12 EXAMINER PRICE: Mr. Buckley, if the
13 company invested hundreds of millions of dollars in
14 deploying SmartGrid, that would increase their rate
15 base; isn't that right?

16 THE WITNESS: It would.

17 EXAMINER PRICE: And they would get a
18 rate of return on and of that investment, would they
19 not.

20 THE WITNESS: If they came in to seek
21 recovery, yes.

22 EXAMINER PRICE: Presumably they seek
23 recovery. If they sought recovery, they would seek a
24 return on and of their investment and that would make
25 them a more regulated -- is that what you are saying

1 when you say it would make them a more regulated
2 company?

3 THE WITNESS: Correct.

4 Q. (By Mr. Fisk) But that -- but that --
5 that is a separate question than the impact of the
6 DMR, correct? They are coming in separately for rate
7 recovery on distribution -- or SmartGrid investments,
8 that's separate from the question of whether the DMR
9 itself provides an incentive for them to invest in
10 distribution modernization, isn't it?

11 A. Yes, but, again, the recovery of the
12 investment is -- creates a very stable cash flow.
13 That stable cash flow is valued by the rating
14 agencies as opposed to revenues or cash flows that
15 vary greatly on different market conditions.

16 Q. Okay. But my question is does the -- if
17 the companies are able to come in and seek recovery
18 and a return on SmartGrid investments in a separate
19 proceeding, separate rate rider, et cetera, does the
20 DMR, if it were approved by the Commission, provide
21 any incentive that they would actually do
22 distribution modernization investments?

23 A. I believe it does because, again, it
24 would create this pivot towards a more regulated
25 entity.

1 Q. And how does that incentivize the
2 companies to do distribution modernization
3 investments?

4 MR. LANG: Your Honor, I object. Asked
5 and answered. I think it's been answered five
6 different ways so far.

7 EXAMINER PRICE: I understand what you
8 are saying, but we will give Mr. Fisk a little bit of
9 leeway.

10 A. I don't understand the -- how that
11 question is different. I am not picking up on the
12 question, I guess. I don't understand what you are
13 looking for.

14 EXAMINER PRICE: Let me try, Mr. Fisk.

15 Mr. Buckley, if the DMR is provide -- is
16 approved, it will provide credit support to the
17 companies, correct?

18 THE WITNESS: Correct.

19 EXAMINER PRICE: And that will improve
20 their access to capital markets, correct?

21 THE WITNESS: Correct.

22 EXAMINER PRICE: Then they will have the
23 cash to invest on the SmartGrid, correct?

24 THE WITNESS: Correct.

25 EXAMINER PRICE: Then they will get the

1 rate of return on the SmartGrid, correct?

2 THE WITNESS: Correct.

3 EXAMINER PRICE: And all those taken
4 together is the incentive.

5 THE WITNESS: Correct.

6 MS. BOJKO: Your Honor, I didn't hear.
7 Did you say "companies" or "company" in your
8 question?

9 EXAMINER PRICE: I said "companies."

10 MS. WILLIS: Can we have the question and
11 answer reread, please?

12 EXAMINER PRICE: Sure. If I said
13 "company," I intended to say "companies" so.

14 MS. BOJKO: You were talking about the
15 distribution companies.

16 EXAMINER PRICE: I am talking about the
17 distribution companies.

18 (Record read.)

19 MS. WILLIS: Thank you.

20 Q. (By Mr. Fisk) The companies could seek to
21 do distribution modernization investments and seek
22 return for those regardless of whether the DMR is
23 approved, correct?

24 MR. LANG: Objection, your Honor.

25 EXAMINER PRICE: Grounds?

1 MR. LANG: Beyond the scope. This
2 witness's testifying is to calculation. I believe
3 Dr. Choueiki is testifying to the purposes of the --
4 the reasons for the calculation that's being provided
5 by this witness.

6 EXAMINER PRICE: Overruled. He can
7 answer if he knows. If he doesn't know, he can say
8 he doesn't know.

9 THE WITNESS: Could you reread the
10 question, please?

11 EXAMINER PRICE: Please.

12 (Record read.)

13 A. Correct. But we're hoping that in
14 providing this bridge, that they will be able to do
15 so under more favorable conditions.

16 Q. Okay. And when you say you're hoping,
17 this DMR doesn't guarantee they will be able to do so
18 under more favorable conditions, correct?

19 A. The hope was more directed towards
20 favorable conditions. The financial markets have
21 been kind of volatile and we're hoping they don't
22 turn against us before investments can be made.

23 Q. And when you say "turn against us," who
24 is the "us" you're referring to?

25 A. The general participants of the world

1 economy, I guess. It was a broad, very broad "us."

2 Q. Fair enough.

3 EXAMINER PRICE: But if I can ask the
4 question more narrowly. If the companies are
5 downgraded, it will be more expensive to borrow the
6 money in order to invest in SmartGrid; is that
7 correct?

8 THE WITNESS: All else being equal, yes.

9 EXAMINER PRICE: And that will increase
10 the companies' long-term cost of debt; is that
11 correct?

12 THE WITNESS: Again, all else being
13 equal, yes.

14 EXAMINER PRICE: The companies', plural
15 with an apostrophe, long-term cost of debt. And
16 ultimately, that long-term cost of debt would be
17 passed back to the ratepayers as part of the rate of
18 return in a base rate case; is that correct?

19 THE WITNESS: Yes, correct.

20 EXAMINER PRICE: Thank you.

21 Q. (By Mr. Fisk) And have you done any
22 calculation of how much -- by how much the borrowing
23 costs for the companies would increase if FirstEnergy
24 Corp. were downgraded?

25 A. We have not specifically made those

1 calculations. However, in a Data Request, we -- we
2 asked for general calculations or general expenses
3 and weren't provided those. To be fair, there could
4 be a lot of variations and a lot of play in -- in
5 what happens.

6 Q. So there's a lot of conditions out -- a
7 lot of conditions outside of the DMR that could
8 determine whether or not there's a downgrade,
9 correct?

10 A. The DMR will not gather -- make any
11 guarantees there won't be a downgrade.

12 Q. And there are a lot of conditions outside
13 the DMR that would determine what impact a downgrade
14 would have on the companies' borrowing costs?

15 A. There are a lot of things that can happen
16 that affect borrowing costs. I don't think a
17 downgrade would be positive. I don't think it would
18 in any way lower the borrowing costs.

19 Q. And if the companies were required to
20 spend the revenues from the distribution
21 modernization rider on distribution modernization,
22 would that -- would the revenues received under that
23 rider still provide credit support to FirstEnergy
24 Corp.?

25 MR. LANG: Objection, your Honor.

1 EXAMINER PRICE: Grounds?

2 MR. LANG: Beyond the scope again.

3 MR. FISK: He is offering -- being
4 offered as a witness talking about how this DMR would
5 provide credit support to FirstEnergy Corp. and I am
6 trying to determine whether --

7 EXAMINER PRICE: Actually, he is a
8 witness who is testifying as to the amount of the
9 DMR. I believe the larger policy questions are
10 Dr. Choueiki. I think I've tried to give you some
11 leeway on scope, but I think it's time to pull it
12 back in. So we'll sustain the objection.

13 MR. FISK: Okay. Thank you, your Honor.

14 Q. (By Mr. Fisk) And to your knowledge,
15 Mr. Buckley, in developing the DMR proposal, did the
16 staff evaluate the reliability of the companies'
17 distribution system?

18 MR. McNAMEE: Objection.

19 EXAMINER PRICE: Can I have the question
20 back.

21 (Record read.)

22 EXAMINER PRICE: Grounds?

23 MR. McNAMEE: Outside the scope of this
24 witness's testimony. He is only speaking to the
25 numbers in the recommendation, not to any other

1 topic.

2 EXAMINER PRICE: Sustained.

3 Q. Okay. The testimony on page 7, starting
4 at line 7, you -- you state that the staff recommends
5 two conditions on the DMR; is that correct?

6 A. Correct.

7 Q. Okay. So are these the only two
8 conditions on the DMR that the staff are
9 recommending?

10 A. Yes.

11 Q. And the first one is that FirstEnergy
12 Corp. must keep its corporate headquarters and nexus
13 of operations in Akron, Ohio, for the entire time of
14 the ESP; is that correct?

15 A. Correct.

16 Q. And have you -- have you seen any
17 evidence that FirstEnergy Corp. is considering moving
18 its headquarters out of Akron?

19 A. We have not seen any -- information that
20 states that that's going to happen in the short term.

21 Q. Have you seen any information that it --
22 that suggests it might happen during any time in the
23 term of the ESP IV?

24 A. We haven't seen anything definitive, no.

25 Q. Do you know if FirstEnergy Corp. has a

1 lease on its current headquarters in Akron?

2 A. I don't.

3 Q. And if FirstEnergy Corp. did move its
4 corporate headquarters during the term of the ESP,
5 how would the Commission get the monies that have
6 been paid under DMR refunded?

7 A. I don't know.

8 Q. Do you know if the -- if the companies
9 had moved the revenues under the DMR up to
10 FirstEnergy Corp. through dividends, would the
11 Commission be able to require that those monies be
12 refunded?

13 MR. LANG: I have to just object to the
14 extent, your Honor, he's asking for a -- a legal
15 determination as to what the Commission can require
16 and not require. It sounds like what he is asking,
17 this witness cannot provide that legal opinion as to
18 what the Commission requires. The Commission has
19 legal authority and that sounds like what he is
20 asking about.

21 EXAMINER PRICE: You are not asking for a
22 legal opinion, are you?

23 MR. FISK: No.

24 EXAMINER PRICE: You can answer if you
25 know.

1 A. The monies aren't going to be marked so
2 there's not -- it's fungible so there's not certain
3 money there or certain money here. If the
4 dividend -- if the money is dividended up, it doesn't
5 mean that the operating companies don't have any more
6 money. It just means there was a dividend that was
7 paid. We are not going to mark those dollars as DMR
8 money.

9 Q. So under this proposed condition, if the
10 DMR were approved and the companies received
11 \$393 million over three years, and then in year five
12 FirstEnergy Corp. moves its headquarters, it's your
13 proposal that the companies would have to find a way
14 to pay that \$393 million back?

15 A. That is the recommendation, yes.

16 Q. And if that -- if that revenue had
17 already been dividended up to FirstEnergy Corp.,
18 wouldn't the companies take a pretty significant
19 financial blow if they had to pay that \$393 million
20 back to customers?

21 MR. LANG: Objection, your Honor.

22 EXAMINER PRICE: Grounds?

23 MR. LANG: Speculation. He's already
24 answered that he is not talking about the money that
25 comes in. The issue of the refund is monies

1 available at the time if there is a refund. So, on
2 both grounds, I object.

3 EXAMINER PRICE: Sustained.

4 MR. FISK: Your Honor, I mean, what I am
5 trying to examine here is whether this is a credible
6 condition. I mean, is there any reasonable basis to
7 think that --

8 EXAMINER PRICE: He's already testified
9 that money is fungible and that the dollars -- they
10 would have to refund the specific dollars that are
11 involved. They have lines and poles and transformers
12 in the state, the Commission will know how to find
13 them.

14 MR. FISK: Right, but that is going to be
15 a significant financial blow to the companies that
16 would, you know, lead to a downgrade, then the chance
17 of that happening --

18 EXAMINER PRICE: I think that's the point
19 of the incentive to keep the corporate headquarters
20 here, from staff, but it seems that's the point of
21 providing a strong incentive to keep the corporate
22 headquarters here to make sure that it would be
23 painful if they moved it. Otherwise, it wouldn't be
24 much of a condition, would it?

25 MR. FISK: Well, if it's so painful that

1 it's a condition that will never be enforced is the
2 problem.

3 EXAMINER PRICE: That's -- now you are
4 getting really into the highly-speculative mode, so
5 I'm not persuaded that my ruling is incorrect.
6 Sustained.

7 Q. (By Mr. Fisk) Okay. Looking at page 7 of
8 your testimony, line 12, it discusses -- starting
9 there, it discusses the second condition on the DMR,
10 correct?

11 A. Correct.

12 Q. And it says "if FE or its subsidiaries
13 were to undergo a change in ownership," do you see
14 that?

15 A. I do.

16 Q. Which subsidiaries are you referring to
17 there?

18 A. The subsidiaries in which we have
19 jurisdiction.

20 EXAMINER PRICE: Just to be clear, which
21 ones specifically are you referring?

22 THE WITNESS: CEI, Ohio Edison, Toledo
23 Edison.

24 Q. Only those three?

25 A. Correct.

1 Q. Okay. Are you familiar with the
2 companies' proposed modified rider RRS?

3 A. I am not.

4 Q. Are you familiar with the rider RRS that
5 was approved by the Commission?

6 A. That's not something that I -- that is --
7 I'm involved with in my general work.

8 Q. Okay. So you -- you would not be
9 offering any opinions or testimony regarding how
10 DMR's impact to customers may compare to the
11 companies' proposed modified rider RRS?

12 A. No.

13 MR. FISK: Can I take one minute, your
14 Honor?

15 EXAMINER PRICE: You may. Let's go off
16 the record.

17 (Discussion off the record.)

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

20 Please proceed, Mr. Fisk.

21 MR. FISK: Thank you, your Honor.

22 Q. (By Mr. Fisk) Mr. Buckley, you, earlier,
23 there was a reference to the revenues under DMR
24 possibly being dividended up to FirstEnergy Corp.; is
25 that correct?

1 A. Correct.

2 Q. Okay. And if that money was dividended
3 up to FirstEnergy Corp., could that money then be
4 provided to other regulated entities -- regulated
5 subsidiaries of FirstEnergy Corp. so they could
6 pursue investments that would get them recovery?

7 MR. LANG: Objection, your Honor.

8 EXAMINER PRICE: Grounds?

9 MR. LANG: Same as before on the same
10 line of questioning.

11 EXAMINER PRICE: We'll give him some
12 leeway and allow this one.

13 A. Again, the dollars aren't marked, so to
14 the extent that Ohio Edison, for example, dividends
15 up to FirstEnergy Corp., what they do with that money
16 is FirstEnergy Corp.'s prerogative. So the money for
17 the DMR is not going to be marked different than any
18 other money that Ohio Edison were to receive.

19 Q. But that -- if those revenues are
20 dividended up and then distributed to some other
21 subsidiary, that is money that the companies could
22 not spend on distribution modernization, correct?

23 A. If -- if Ohio Edison were to dividend up
24 more money than -- that would -- if Ohio Edison were
25 to dividend up more money than they typically -- than

1 they could spend, there would be less money to spend
2 on other things.

3 EXAMINER PRICE: This is an issue that we
4 are addressing tomorrow, though, or addressing
5 yesterday, Mr. Buckley. If the Commission issues an
6 order, ordering the companies to deploy SmartGrid,
7 and Ohio Edison dividends up too much money, their
8 obligation to deploy SmartGrid will not go away, will
9 it?

10 THE WITNESS: No, it won't.

11 EXAMINER PRICE: They will still have to
12 invest the money, won't they?

13 THE WITNESS: Correct.

14 EXAMINER PRICE: Thank you.

15 Q. (By Mr. Fisk) But that money -- if the
16 Commission were to order companies to invest in the
17 SmartGrid in a separate proceeding, it would be a
18 separate rider through which those monies would be
19 recovered, correct?

20 A. I don't know.

21 EXAMINER PRICE: Let's assume,
22 hypothetically, that Mr. Fisk is correct and there is
23 a separate rider recovery; the companies would still
24 have to have the cash to invest in the SmartGrid and
25 then they would recover back their investment over

1 time; isn't that correct?

2 THE WITNESS: Correct. It could be
3 different ways, but correct.

4 EXAMINER PRICE: If a smart meter had a
5 15-year amortization, they don't get the full cost of
6 the smart meter in year one, do they?

7 THE WITNESS: No.

8 EXAMINER PRICE: How long -- how long
9 would the recovery for that smart meter be?

10 THE WITNESS: It should be 15 years.

11 EXAMINER PRICE: But they have to pay for
12 the smart meter up front.

13 THE WITNESS: Correct.

14 EXAMINER PRICE: Thank you.

15 You may proceed, Mr. Fisk.

16 MR. FISK: I have nothing further.

17 EXAMINER PRICE: Mr. Whitt.

18 MR. WHITT: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Whitt:

22 Q. Just to conclude the hypothetical you
23 just posed, to the extent a utility makes an
24 investment --

25 EXAMINER PRICE: It's not lighted yet,

1 the red light that only you cannot see.

2 Q. To the extent a utility makes an
3 investment and recovers the investment over some
4 amortization period, that describes how the utility
5 achieves a return of its investment, correct,
6 Mr. Buckley?

7 A. Correct.

8 Q. But during that period, the utility would
9 also receive a return on its investment, correct?

10 A. Correct.

11 Q. And the return on investment is paid by
12 ratepayers, correct?

13 A. Correct.

14 Q. Okay. Now, you talked about how staff
15 had hoped or believed that the FirstEnergy
16 organization's business plan was to pivot to
17 regulated operations; is that correct?

18 A. To more regulated operations.

19 Q. And that would obviously mean more
20 distribution investment in Ohio, correct?

21 A. It would be more regulated. It wouldn't
22 specifically to be Ohio, but, yes, it would be more
23 regulated operations. It could include transmission
24 also.

25 Q. And that was going to be my next

1 question. FERC regulates transmission rates,
2 correct?

3 A. Correct.

4 Q. And is it your understanding that FERC
5 would typically or has the ability to offer or
6 provide what they call an "enhanced rate of return"
7 or "incentive rate of return" on equity?

8 MR. McNAMEE: Objection.

9 EXAMINER PRICE: Grounds?

10 MR. McNAMEE: This witness is not
11 speaking to FERC's authority or its practices. It's
12 outside the scope.

13 MR. WHITT: The witness is a qualified
14 and certified rate of return analyst, offering an
15 opinion on credit, and talking about incentives, and
16 I want to explore exactly what other incentives there
17 may be.

18 EXAMINER PRICE: I don't believe
19 Mr. McNamee was questioning his qualifications. I
20 believe he was simply questioning it was outside the
21 scope. Nonetheless, I will give you a limited amount
22 of leeway so you have a couple of questions on this
23 line and then we'll move on.

24 THE WITNESS: Could you reread the
25 question, please.

1 (Record read.)

2 A. I don't know the specifics of what FERC's
3 rate of return policy is. I do know they have some
4 incentive rates, but I'm not exactly sure what
5 they -- what the incentive is, but I know they do
6 offer some incentive rates.

7 Q. To the extent any utility could achieve a
8 greater rate of return on equity through a FERC
9 proceeding in a transmission project than that
10 organization could achieve in a state-regulated
11 project, all other things being equal, the incentive
12 would point towards investing in the FERC-regulated
13 transmission project, correct?

14 A. I am not familiar enough with FERC, but I
15 think, in general terms, a company would look to
16 invest in what gives them the greatest amount of
17 return that -- that tries to accomplish their
18 long-term goals. I'm not familiar enough with how
19 transmission is sited, how transmission is recovered.
20 That's not something I'm very comfortable speaking
21 to. But I think you would typically try to invest in
22 what gives you the highest return, all other things
23 being equal, which I'm not sure that's the case in
24 this situation.

25 Q. To the extent the FirstEnergy

1 organization decided to use revenue received through
2 rider DMR to invest in transmission projects, that
3 would be the companies' prerogative to do so, would
4 it not?

5 A. Yes.

6 Q. The --

7 EXAMINER PRICE: Can I just ask a
8 follow-up, Mr. Whitt?

9 Mr. Buckley, are you aware whether the
10 stipulation provides that the SmartGrid investments
11 return on equity will be the ATSI FERC-regulated
12 return on equity?

13 THE WITNESS: I don't know that.

14 EXAMINER PRICE: Thank you.

15 Q. (By Mr. Whitt) The \$131 million figure
16 you calculated is above and beyond the regulated
17 utilities's revenue requirement, correct?

18 A. Correct.

19 Q. And the purpose of the 131 million, I
20 think, as we've established, is to provide credit
21 support for the FirstEnergy organization, correct?

22 A. Correct.

23 Q. And as of today, when we talk about
24 credit ratings or actions by rating agencies, as of
25 today, FirstEnergy Corp. maintains an investment

1 grade rating, correct?

2 A. They do.

3 Q. And that is notwithstanding the FERC
4 decision in the PPA case, correct?

5 A. Their ratings are -- the rating agencies
6 have -- have kind of put them on notice that they are
7 being looked at and scrutinized and need to improve
8 their financial situation. Ratings don't change --
9 because of the ramifications of a downgrade, rating
10 agencies are very slow to act moving in either
11 direction.

12 Q. Well, but my question is FirstEnergy
13 Corp., today, remains at an investment grade rating,
14 correct?

15 A. Correct.

16 Q. And we can assume, because they've
17 actually told us so, that the rating agencies
18 consider material information and under whatever
19 processes they use, make their own determination of
20 whether they are going to revise a rating, correct?

21 A. Yes. They are very independent.

22 Q. And they have issued, I think what you
23 are referring to, have changed the outlook of the
24 company from stable to negative, correct?

25 A. Correct.

1 Q. But the rating itself remains at
2 investment grade, correct?

3 A. It does. Again, because the rating
4 agencies really don't want to react to anything
5 quickly. There is a -- there is a big -- there is a
6 lot of ramifications from a rating downgrade or
7 upgrade, so they are very calculated in how they act.

8 MR. WHITT: Your Honor, I am going to
9 move to strike everything after "yes."

10 EXAMINER PRICE: Can I have the question
11 and answer back, please.

12 (Record read.)

13 EXAMINER PRICE: You never used "yes."
14 Overruled -- or denied.

15 Q. Okay. Well --

16 EXAMINER PRICE: "It does" is what he
17 said.

18 Q. Let me move on from that.

19 When we talk about the rating agencies in
20 the context we have been discussing today, the idea
21 of what is actually being rated are the securities
22 and financial instruments of a company, correct?

23 A. Correct.

24 Q. And it's not a rating of a company, per
25 se, like you or I might have a FICO score and we

1 think of a credit score in that terms.

2 A. The ratings we are talking about are
3 slightly different, aren't they, or maybe not. So I
4 am looking at Moody's ratings for, let's say,
5 FirstEnergy Corp. They have an issuer's rating of
6 Baa3, they have a senior unsecured bank credit
7 facility of Baa3, and a senior unsecured credit
8 rating of Baa3.

9 EXAMINER PRICE: Could you please
10 identify for the record what you are looking at and
11 where?

12 THE WITNESS: This is my Attachment 2.

13 EXAMINER PRICE: Page?

14 THE WITNESS: Page 6.

15 EXAMINER PRICE: Thank you.

16 Q. Which would seem to, I think, confirm
17 what I was suggesting which is that -- that there are
18 instruments or classes of instruments that are rated
19 and which may be different for the same organization,
20 correct? Although, in this case, it appears they are
21 the same.

22 A. Yes, you could have different ratings on
23 different classifications.

24 Q. And the reason that ratings are important
25 to companies is so that they can access capital

1 markets, correct?

2 A. Correct.

3 Q. And --

4 A. It's not just access, but also the terms
5 and conditions.

6 Q. Correct. And to the extent the
7 FirstEnergy utilities have ratings from Moody's, they
8 are able to access the capital markets directly,
9 correct? And I believe you had testified that, in
10 fact, some of the debt is owned directly -- or held
11 directly by the utilities, some by FE Corp., correct?

12 A. Correct.

13 Q. And to the extent the regulated utilities
14 are able to access capital markets directly based on
15 their own rate, then the rating of the parent company
16 or affiliates wouldn't matter, correct?

17 A. For Moody's, they -- they rate agencies
18 more independently -- or subsidiaries more
19 independently. S&P has more of an umbrella type of
20 rating system.

21 Q. But to the extent a corporation is able
22 to achieve its own rating, then the financial markets
23 would consider the rating of that entity and not
24 affiliated entities, correct?

25 MR. LANG: Objection, your Honor.

1 EXAMINER PRICE: Grounds?

2 MR. LANG: Just a rephrasing of a prior
3 question; asked and answered.

4 EXAMINER PRICE: Please rephrase again in
5 a slightly different fashion, Mr. Whitt.

6 MR. WHITT: Well, now I am trying to
7 figure out how I phrased it two questions ago.

8 Q. Let me try it this way. Let's -- let's
9 assume that the -- that Ohio Edison Company, the
10 regulated public utility, had no parent company. It
11 was publicly owned -- I guess the ownership doesn't
12 even matter. But Ohio Edison, as a stand-alone
13 company, if it had a rating from any of the major
14 rating agencies it would be able to access the
15 capital markets, correct?

16 A. Even if it -- the terms are much more
17 favorable if they are rated. It doesn't mean they
18 wouldn't be able to raise capital if they are not
19 rated. And typically you need ratings from more than
20 one rating agency to access the markets, I think,
21 that you are speaking of. But it doesn't mean that
22 you would be shut off from raising funds at all.
23 They wouldn't be very favorable or wouldn't be as
24 favorable, but -- I think that's it.

25 Q. But in terms of -- just before I move off

1 the topic -- that the -- to the extent an entity has
2 its own credit rating, the financial markets are
3 going to, with respect to that entity, focus on that
4 entity's rating and not the rating of affiliates,
5 necessarily, correct?

6 A. With S&P, they look much more at the
7 entire umbrella. So if you are Ohio Edison and the
8 parent is downgraded, most likely you are going to be
9 downgraded also.

10 Q. How do you know that?

11 A. They actually issued a report back in --
12 I'm sorry. I don't have the date. I can't find the
13 date to it.

14 Q. Are you referring to your Attachment 3?

15 A. No. It states "A strong subsidiary owned
16 by a weak parent generally is rated no higher than
17 the parent."

18 Q. May I see what you're referring to?

19 A. Yeah.

20 MR. WHITT: May I approach?

21 EXAMINER PRICE: You may.

22 MS. PETRUCCI: Can we have that answer
23 reread?

24 EXAMINER PRICE: Yes. While he
25 approaches.

1 MR. McNAMEE: May I approach too?

2 EXAMINER PRICE: You may.

3 (Record read.)

4 MR. WHITT: Can I have the last question
5 and answer?

6 EXAMINER PRICE: Can we have the last
7 question and answer back again, please.

8 (Record read.)

9 Q. (By Mr. Whitt) Would you consider the
10 FirstEnergy utilities to be strong utilities owned by
11 a weak parent?

12 A. According to S&P, I don't know if that --
13 I'm not sure that's the case and that's how they look
14 at it. I know when Moody's does their ratings, they
15 have different ratings on at least one of the
16 operating companies than they do the parent.

17 Q. And would that be Mon Power?

18 A. No, that would be -- I'm talking about
19 the Ohio companies.

20 Q. Okay.

21 A. So Ohio Edison, for example, is rated
22 higher than FirstEnergy Corp.

23 Q. What does that suggest?

24 A. That they are in a better financial
25 situation -- they have better credit metrics than the

1 corporation does on a stand-alone basis.

2 Q. And the proposal that staff has put
3 forward is intended to address possible future action
4 by rating agencies, correct?

5 A. Correct.

6 Q. And another way to address this situation
7 would be to wait and see if, in fact, the rating
8 agencies do take any action, correct?

9 MR. LANG: Objection, your Honor.

10 EXAMINER PRICE: Grounds?

11 MR. LANG: Beyond the scope. The staff
12 has a proposal that's been submitted. The staff
13 isn't submitting other proposals, which is what he is
14 being asked about.

15 EXAMINER PRICE: Mr. Whitt.

16 MR. WHITT: Well, it goes toward whether
17 the staff proposal actually fulfills its stated goal.

18 MR. LANG: Yeah. And, your Honor, that's
19 a question better addressed to Dr. Choueiki.

20 EXAMINER PRICE: That's a good point, but
21 we'll allow Mr. Buckley to answer the question if he
22 knows.

23 THE WITNESS: Can I have the question
24 reread?

25 EXAMINER PRICE: You may.

1 (Record read.)

2 A. Again, usually the rating agencies are
3 very calculated in their moves. They don't tend to
4 change ratings very frequently or -- or based on a
5 one-year review. There's a substantial dropoff
6 between being investment grade and not being
7 investment grade. So if you wait for that dropoff to
8 occur, to get them back up could take a substantial
9 amount of time, and we're worried that constituents
10 would be negatively affected, including the
11 ratepayers.

12 Q. Well, given the deliberative process
13 you've described that the agencies go through and
14 your opinion that it would take a substantial amount
15 of time for the agencies to take any action, that
16 would suggest, would it not, there is no eminent
17 likelihood of a downgrade of the FE Corp. credit
18 rating?

19 MR. LANG: Objection, your Honor,
20 mischaracterizes his previous answer.

21 EXAMINER PRICE: Sustained.

22 Q. Do you have any reason to believe that
23 the rate -- any rating agencies will downgrade
24 FirstEnergy Corp. at any time in calendar year 2016?

25 A. I'm not going to anticipate how they are

1 going to react. I know what they've stated. For
2 example, "A negative rating action may result if the
3 PUCO rejects or materially modifies the ESP
4 settlement, especially the 8-year PPA...."

5 Q. And, in fact --

6 EXAMINER PRICE: I am not sure he was
7 finished with his question.

8 MR. WHITT: I'm sorry.

9 EXAMINER PRICE: Mr. Buckley, if you were
10 finished let us know; otherwise, please continue.

11 A. "...does not allow FE to maintain
12 financial metrics adequate for its investment grade
13 ratings, chiefly a CFO preworking capital debt of at
14 least 14 to 15 percent."

15 Whether they would actually act on it in
16 2016, I don't know. I don't know how quickly they
17 would act on something like that. But when we hear
18 that, it does -- it does worry the staff.

19 MS. BOJKO: Your Honor --

20 EXAMINER PRICE: Mr. Buckley -- go ahead.

21 MS. BOJKO: -- the witness keeps reading
22 from a document, and I know we took a break for
23 certain parties to see what that document was, but if
24 he could maybe disclose where he is reading for the
25 rest of us.

1 EXAMINER PRICE: He was just reading from
2 his testimony.

3 THE WITNESS: Yes. It's from Attachment
4 2 to my testimony.

5 MS. BOJKO: Thank you for the
6 clarification. It's not from the testimony. He's
7 reading from a -- a different investor document
8 attached to his testimony; is that correct?

9 THE WITNESS: It's Attachment 2 to my
10 testimony, Moody's Investor Services.

11 EXAMINER PRICE: I had a follow-up.
12 Further clarification first.

13 Mr. Buckley, just to boil it down, you
14 believe it will be easier to forestall a downgrade
15 than to reverse a downgrade; is that what you're
16 trying to say?

17 THE WITNESS: Correct.

18 EXAMINER PRICE: Thank you.

19 Q. (By Mr. Whitt) FirstEnergy Corp. has
20 never had a CFO to debt ratio of 14-and-a-half
21 percent in any of the literature you've provided,
22 correct? Let's look -- in fact, we were just talking
23 about Attachment 2. On page 2 of Attachment 2, if
24 you look at the chart at the bottom.

25 A. Yes.

1 Q. Under "Key Indicators," CFO preworking
2 capital to debt, and then it gives a figure for
3 various periods of time going back to 2011. Do you
4 see that?

5 A. Yes.

6 Q. And in 2011, there was a CFO to debt
7 ratio of 14 percent, correct?

8 A. Correct.

9 Q. And it had fallen to as low as 10.2
10 percent, correct?

11 A. Correct.

12 Q. And despite that ratio, FE Corp.
13 maintained investment grade ratings, did it not?

14 A. Correct.

15 Q. And as of September 30, 2015, it had a
16 12.4 percent ratio, correct?

17 A. Correct.

18 Q. And that was sufficient to maintain an
19 investment grade rating, correct?

20 A. They have not been downgraded yet.

21 Q. What I said was correct; they have
22 maintained an investment grade rating.

23 A. Correct.

24 Q. And if we go to Attachment 3 of your
25 testimony, Attachment 3 reflects a Standard & Poor's

1 guidance, changing their outlook to negative, but not
2 changing the FirstEnergy companies' credit rating,
3 correct?

4 A. Correct.

5 Q. And you're not offering any sort of
6 assurance to the Commissioners, are you, that if
7 staff's proposal is adopted, any negative credit
8 rating action would be averted? You are not going to
9 make that assurance, are you?

10 A. I cannot definitively say that.

11 Q. And the 131 million would be basically
12 guaranteed to the companies regardless of any rating
13 action, correct?

14 A. It is not -- whether they collect it or
15 not is not based on their credit rating.

16 Q. Correct. If the staff's proposal is
17 adopted, the companies get the money no matter what
18 the rating agencies do, correct?

19 MR. LANG: Objection.

20 Q. It's not contingent on there being a
21 downgrade, in other words?

22 MR. LANG: Objection. It was asked and
23 answered and now it's compound.

24 EXAMINER PRICE: Sustained on both
25 grounds.

1 Q. (By Mr. Whitt) The companies would get
2 the money for rider DMR even if FirstEnergy Corp.
3 maintains an investment grade rating, correct?

4 A. Yes. We would hope that would remain
5 investment grade.

6 Q. Well, if they do remain investment grade,
7 should we all conclude that that is only because
8 staff's proposal was adopted?

9 A. No.

10 Q. Okay. And you talk about how staff used
11 its proposal as a bridge between the uncertainty that
12 exists today and some longer-term solution, correct?

13 A. Correct.

14 Q. And could we also fairly characterize
15 that as a transition period for the FirstEnergy
16 organization?

17 MR. LANG: Objection, your Honor.

18 MR. McNAMEE: Objection.

19 EXAMINER PRICE: Grounds, Mr. Lang?

20 MR. LANG: To the extent that it calls
21 for a legal conclusion, there is no definition here
22 of what is meant by a "transition period."

23 EXAMINER PRICE: Mr. McNamee, grounds?

24 MR. McNAMEE: In addition to that, this
25 witness is not speaking to any transition issue, if

1 there is a transition issue here.

2 EXAMINER PRICE: Sustained.

3 MR. WHITT: Your Honor, what do you mean
4 by -- all my question asked is what do you mean by
5 "bridge"; is that the same as transition?

6 EXAMINER PRICE: I think that in our
7 field, "transition" has a specific and particular
8 meaning and it would muddy the record to try to
9 equate the "bridge" to "transition."

10 MR. WHITT: Am I to understand I am not
11 allowed to ask the witness if the money that staff is
12 proposing the companies get is intended to apply for
13 a period of transition or a transition period?

14 EXAMINER PRICE: Yeah. I think that's
15 what I'm saying.

16 MR. WHITT: Okay.

17 EXAMINER PRICE: It's outside the scope
18 of his testimony.

19 MS. BOJKO: I'm sorry, your Honor. I
20 couldn't hear. It's hard for me to hear over that
21 computer.

22 EXAMINER PRICE: It's outside the scope
23 of his testimony. Just to reiterate, the purpose --
24 according to the witness, "The purpose of my
25 testimony is to sponsor the Staff recommended

1 calculation of the new Distribution Modernization
2 Rider amount...."

3 Q. (By Mr. Whitt) With respect to the amount
4 of the charge, if you will go to Attachment 2 of your
5 testimony, please, page 4, the last paragraph on
6 page 4 begins "As of September 30, 2015." Do you see
7 that?

8 A. I do.

9 Q. And to continue with that sentence, "FE's
10 combined exposure under the collateral provisions
11 under a 'material adverse event' was 387 million."
12 Do you see that?

13 A. I do.

14 Q. And do you know whether the rating
15 agencies would consider or have considered the FERC
16 action a "material adverse event"?

17 A. Unless I'm missing something, I don't
18 know what they considered -- would consider a
19 material event and not a material event. I have not
20 had a conversation with them on what's a material
21 event or not a material event.

22 Q. Okay. The next sentence after the one I
23 just read, "Specifically, up to \$252 million may be
24 triggered from one credit rating agency's downgrade
25 of FES/AE Supply to Bal." Do you see that?

1 A. I do.

2 Q. And the revenue that the companies would
3 collect from rider DMR would be sufficient to pay the
4 exposure under the collateral provisions I just
5 addressed, correct?

6 MR. LANG: Objection, your Honor.

7 EXAMINER PRICE: Grounds?

8 MR. LANG: It's assuming -- it's assuming
9 facts. He's assuming -- he is asking about paying an
10 exposure. You don't pay an exposure and there's been
11 no -- there has been no establishment, in fact this
12 document says the potential collateral requirement
13 appears manageable and therefore there's no payment
14 of that collateral requirement that he is asking for
15 and, therefore, the question is assuming facts and
16 doesn't make sense for that basis.

17 EXAMINER PRICE: Sustained.

18 Q. (By Mr. Whitt) Mr. Buckley, did you not
19 testify at page 6 of your testimony that one of the
20 adverse event -- adverse effects of the loss of an
21 investment grade rating would be, at line 16,
22 "Collateral provisions would require additional cash
23 calls for the Utilities and FE Corp., on a
24 consolidated basis," correct?

25 A. Correct.

1 Q. And on Attachment 2 to your testimony,
2 the last paragraph explains the level of what that
3 cash collateral obligation may be, correct?

4 A. They do speak to what the material
5 adverse -- I'm sorry. They do speak to what the
6 collateral provision would be.

7 Q. I guess to wrap up my line of
8 questioning, I'll pose a statement that may be the
9 only one we all agree on in the whole hearing which
10 is the general proposition that a financially-viable
11 and healthy public utility is, in fact, in everyone's
12 best interests for all of the reasons you discussed
13 in your testimony, correct?

14 A. Correct.

15 Q. And, now, given that, has staff
16 considered measures to insulate the financial
17 integrity of the utilities from the activities of its
18 parent company or affiliates?

19 MR. LANG: Objection, your Honor.

20 EXAMINER PRICE: Grounds?

21 MR. LANG: Beyond the scope.

22 EXAMINER PRICE: I'll allow it.

23 THE WITNESS: Could you -- could I have
24 the question reread, please.

25 EXAMINER PRICE: You may, yes.

1 (Record read.)

2 A. At different times we have definitely
3 considered that, and I can't think of the time frame,
4 but back during Dayton's problems, we opened a COI to
5 talk about ring-fencing type of issues. And I don't
6 recall where we came out on that. But we have
7 considered those at different times.

8 Q. Does staff have any concern that its
9 proposal for the DMR creates a moral hazard in the
10 sense of establishing a precedent for a regulated
11 utility to become a conduit for the collection of
12 monies to support the credit of unregulated
13 affiliates or a parent?

14 MR. LANG: Objection.

15 MR. McNAMEE: Objection.

16 MR. LANG: And objection.

17 EXAMINER PRICE: Mr. McNamee, grounds?

18 MR. McNAMEE: Outside the scope. He is
19 asking for a broad policy kind of consideration and
20 this witness speaks only to the numbers.

21 EXAMINER PRICE: Mr. Lang.

22 MR. LANG: And I would add to that, your
23 Honor, he is mischaracterizing the testimony that the
24 credit support is for the companies for all the
25 reasons that has been discussed this morning and is

1 discussed in Dr. Choueiki's testimony.

2 EXAMINER PRICE: It's well outside the
3 scope of his testimony. I gave you a little leeway
4 in the previous one, but I think it's time to move
5 on.

6 MR. WHITT: Well, with respect to your
7 ruling, your Honor, I think we agree that there are
8 policy issues involved in the case, and I think it
9 would be helpful to the Commission to understand
10 where its own staff is on what staff considered and
11 whether its proposals meet its objectives.

12 EXAMINER PRICE: I agree, but as
13 Mr. McNamee pointed out, that's a question for
14 Dr. Choueiki.

15 MR. WHITT: Very well. I have no further
16 questions.

17 EXAMINER PRICE: Let's go off the record.
18 (Discussion off the record.)

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

21 Ms. Petrucci.

22 MS. BOJKO: Your Honor.

23 EXAMINER PRICE: Let's go back off the
24 record.

25 (Discussion off the record.)

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

3 Ms. Petrucci.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Petrucci:

7 Q. Good afternoon, Mr. Buckley.

8 A. Hello.

9 Q. On page 2 in your testimony, lines 15
10 through 18, you indicate that the staff proposed
11 rider's purpose is "to allow the Ohio Regulated
12 Distribution Utilities to provide the appropriately
13 allocated support for FirstEnergy Corporation...."
14 What do you mean by "appropriately allocated
15 support"?

16 A. It is the percentage of support that we
17 believe the utility customers should help. That's
18 their portion of the help that FirstEnergy needs to
19 maintain investment grade.

20 Q. The credit support is not for the
21 provision of a distribution service by the
22 distribution companies to the ratepayers, correct?

23 A. Correct.

24 Q. And then you also describe the credit
25 support in your testimony on page 6 as "a bridge" for

1 FirstEnergy. That's at line 24. Do you see that?

2 A. I do.

3 Q. What do you mean by "a bridge" for
4 FirstEnergy? Or, actually, you indicate "FE."

5 A. It is a method for them to get to and
6 maintain appropriate -- or investment-level credit
7 metrics.

8 MR. SAUER: Can I have that question
9 reread, please?

10 EXAMINER PRICE: You may.

11 (Record read.)

12 Q. And in your answer, when you refer to
13 "they" or "them," who are you referring to?

14 A. I'm referring to FirstEnergy and -- and
15 in S&P's view that would be the subsidiaries also.

16 EXAMINER PRICE: When you say "I'm
17 referring to" -- we have a nomenclature issue so far
18 throughout this hearing. When we are referring to
19 the holding company, we are call it "FirstEnergy
20 Corp."

21 THE WITNESS: Okay.

22 EXAMINER PRICE: If we say just
23 "FirstEnergy," it just means the operating utilities.
24 So if you could try to follow that, or the companies
25 as the operating utilities, if you could try to

1 follow that nomenclature, it will keep our record
2 cleaner.

3 MS. WILLIS: Your Honor, to make it
4 further cleaner, we've been referring to the Ohio
5 utilities, FirstEnergy Ohio utilities, when we are
6 referring only to the operating companies in Ohio,
7 which is different than FirstEnergy operating
8 companies.

9 EXAMINER PRICE: Exactly. Thank you.

10 Q. (By Ms. Petrucci) And then also on page
11 6, where you refer to that bridge, you use the
12 acronym "FE." In your testimony that means
13 FirstEnergy Corp., correct?

14 A. Correct.

15 Q. Under the staff's proposal, is it your
16 understanding that the Ohio distribution utilities
17 would not be required to spend the money collected
18 through the staff proposed rider on modernizing the
19 distribution grid?

20 MR. McNAMEE: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. McNAMEE: Outside the scope. Again,
23 he is speaking to the number, not ultimately what
24 other conditions may be posed.

25 EXAMINER PRICE: Can I have the question

1 back again.

2 (Record read.)

3 MS. PETRUCCI: I'll just note, your
4 Honor, his testimony includes the purpose for the
5 rider.

6 EXAMINER PRICE: I think that question
7 has been asked and answered, I don't know, 18, 24
8 times already. I think the record is clear that
9 there is no requirement that they spend it on the
10 operating -- on the SmartGrid modernization.

11 You're sustained on different grounds,
12 Mr. McNamee.

13 Q. (By Ms. Petrucci) Would the revenue
14 received under the staff proposed rider count toward
15 the success -- the SEET test, significantly excessive
16 earnings test?

17 MR. McNAMEE: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. McNAMEE: The witness does not speak
20 to the SEET test.

21 EXAMINER PRICE: Is Dr. Choueiki prepared
22 to speak to this question?

23 MR. McNAMEE: That's not in his testimony
24 either.

25 EXAMINER PRICE: That's not what I asked.

1 I know it's not in his testimony. I am asking if he
2 is prepared to speak to this question.

3 MR. McNAMEE: I think not so.

4 MS. PETRUCCI: And Mr. Buckley, if he
5 knows, should be permitted to answer.

6 MS. WILLIS: I might add, Mr. Buckley has
7 testified on SEET numerous times in a number of
8 proceedings. He is the staff witness --

9 EXAMINER PRICE: It is not a question as
10 to his qualifications; he's perfectly qualified to
11 speak to the SEET. The question is whether it's
12 outside the scope of his testimony. In light of the
13 fact that it's not a question that's apparently
14 puntible to the next staff witness, we will allow the
15 question.

16 You can answer if you know.

17 A. We have not discussed how it will be
18 treated for SEET. And the company could ask for it
19 to be treated differently than typical revenues if
20 they so choose. But we could act on it how we
21 thought it was appropriate at the time. But we
22 haven't really discussed it yet.

23 Q. We've talked about each of the
24 attachments to your testimony. These are
25 publicly-available financial documents about both the

1 electric distribution companies and FirstEnergy
2 Corp., correct?

3 A. The only thing I struggle with is how
4 public they are. They are available. You might have
5 to subscribe to the service to get S&P's, but I don't
6 think so. But they are available.

7 Q. And we learned yesterday there was an
8 additional item that you reviewed as part of your
9 testimony in the other version of your testimony;
10 isn't that correct?

11 MR. LANG: Objection, relevance. It's
12 not part of his testimony.

13 MR. McNAMEE: I object as well. I don't
14 even know what we're talking about.

15 EXAMINER PRICE: Can you clarify,
16 Ms. Petrucci, what we are talking about?

17 MS. PETRUCCI: Yesterday, when we had
18 discussions about the other version of Mr. Buckley's
19 testimony, there was an additional attachment, No. 4.

20 MR. McNAMEE: That would be a draft and
21 not relevant.

22 MS. PETRUCCI: My question was asking
23 whether he had reviewed that document.

24 EXAMINER PRICE: Okay. I am not sure,
25 even if he has reviewed it or not, why it is still

1 relevant.

2 MS. PETRUCCI: I am going -- I am going
3 toward the different documents he did review in order
4 to prepare his testimony.

5 EXAMINER PRICE: I'll allow whether he
6 reviewed it.

7 Q. (By Ms. Petrucci) Would it help if I told
8 you which one I'm referring to?

9 A. Yes.

10 Q. It's the Barclay's CEO Power Energy
11 Conference, dated September 10, 2015.

12 A. We -- I reviewed that, yes. I don't have
13 a copy of it here.

14 Q. And the other document that is getting
15 copied is a completely separate document that you
16 also reviewed in preparation of your testimony; is
17 that correct?

18 A. Correct. To be clear, we reviewed a lot
19 of different documents, not just the ones you are
20 speaking of, but a lot of different documents that
21 the financial community has produced.

22 Q. Can you just generally describe what
23 those were?

24 A. As a general course of business, we look
25 at investor presentations. We look at bond rating

1 companies' opinions, actions. We've -- on SNL, we
2 try to follow all the press releases that are put out
3 by the company or articles that are written about the
4 company. We even will -- not the same amount of
5 detail, but we will look at what equity analysts have
6 to say about the company.

7 Q. When you use the word "the company" --

8 MR. McNAMEE: The witness is not.

9 MS. PETRUCCI: I understand, I am trying
10 to get him to be very clear.

11 A. About FirstEnergy Corp. and its Ohio
12 operating companies. We concentrate more on the Ohio
13 operating companies than the affiliates that aren't
14 in Ohio and that we don't regulate, but that's not to
15 say we ignore them. If there's an article that
16 catches our eye about a company in New Jersey, we
17 will try to review that also.

18 MR. LANG: With that clarification, was
19 the witness done with his previous answer?

20 THE WITNESS: Oh, I don't remember what
21 the response was, so.

22 EXAMINER PRICE: Let's try to take care
23 we are allowing the witness to finish his answer,
24 please.

25 Q. (By Ms. Petrucci) When you refer to "Ohio

1 operating companies," did you consider FirstEnergy
2 Solutions to be an Ohio FirstEnergy operating
3 company?

4 A. No.

5 Q. Did you also look at any earnings call
6 presentations to develop your testimony?

7 A. As a general course of business, we look
8 at those things and listen to those calls. We didn't
9 increase the activity before writing the testimony or
10 after, but we definitely follow them.

11 Q. Previously marked during the hearing
12 was -- as OMAEG Exhibit 33.

13 MS. PETRUCCI: Your Honor, can we
14 approach to give the witness a copy of it?

15 EXAMINER PRICE: You may.

16 Q. Mr. Buckley, is this an earnings call
17 presentation you have looked at in the past?

18 A. I have seen this. I don't recall the
19 specific -- specifics of it, but, yes, I have seen
20 this document before.

21 Q. And it's dated April 27, 2016, correct?

22 A. Correct.

23 EXAMINER PRICE: Do you recall if you
24 listened to or read the transcript of this earnings
25 call?

1 THE WITNESS: No. I think I did, but I'm
2 not 100-percent sure.

3 EXAMINER PRICE: Thank you.

4 MR. HAYS: Mr. Price, I couldn't hear
5 your question.

6 EXAMINER PRICE: I asked him if he had --
7 why don't we just reread the question and answer.

8 (Record read.)

9 Q. (By Ms. Petrucci) It you turn to page 18.

10 A. Yes. 18 or 8?

11 Q. 18.

12 MS. PETRUCCI: It's not working.

13 EXAMINER PRICE: Now, you have to turn it
14 back on.

15 Q. You're there?

16 A. Yes.

17 Q. Okay. And on this page there are --
18 there's a chart with several columns, one entitled
19 "Utilities." Do you see that?

20 MR. LANG: Objection, your Honor.

21 EXAMINER PRICE: Grounds?

22 MR. LANG: This particular information
23 has -- there has not been a foundation established
24 for the use of it with this witness. It has been
25 established that he may have seen the document in the

1 past, but with regard to the information on here, it
2 hasn't been -- his knowledge has not been established
3 with regard to that information.

4 MS. PETRUCCI: And, your Honor,
5 Mr. Buckley has testified that he regularly reviews a
6 number of documents, including investment call
7 earnings presentations, and he did say that he
8 believed he had either participated in the call or
9 reviewed the transcript. He also indicates, as part
10 of his normal business duties, that he looks at a
11 wide variety of information about the utilities.

12 EXAMINER PRICE: Why don't you ask him,
13 now that he has actually looked at it, whether it
14 refreshes his recollection whether he has seen it
15 before.

16 MS. PETRUCCI: Okay.

17 Q. (By Ms. Petrucci) Mr. Buckley, now
18 that -- why don't you take a look at the -- at the
19 whole package there and indicate to me if you believe
20 you've actually looked at it previously.

21 A. I believe I have.

22 Q. And specifically on page 18, can you tell
23 me what the chart on page 18 is depicting?

24 A. It's titled "Collateral Dependent on
25 Investment Grade Rating."

1 Q. And generally, that chart is showing us,
2 in more laymen's terms, what?

3 A. The cost of -- the collateral cost of
4 being downgraded below investment grade.

5 Q. Of FE Corp., correct?

6 A. Could you rephrase the question? I don't
7 understand the question, I'm sorry.

8 Q. This -- I am trying to understand if this
9 chart is showing us the impact of FE Corp. being
10 downgraded.

11 MR. LANG: I would again, your Honor.
12 It's clear that it's not the witness's chart. You
13 know, simply because the witness has seen it, the
14 witness, you know, can speculate as to what the
15 FirstEnergy company's prepared in this document, but
16 he can't do more than that. If they want testimony
17 on this, it should come from the preparer of the
18 document or someone from FirstEnergy that's
19 knowledgeable of the document.

20 EXAMINER PRICE: Ms. Petrucci.

21 MS. PETRUCCI: Mr. Buckley indicated he
22 regularly reviews documents of this type and all
23 kinds of other financial documents that are
24 available. I think he should be able to explain what
25 he understands this document to be portraying.

1 EXAMINER PRICE: I think he is competent
2 to testify what his understanding of the document is.
3 Overruled.

4 A. I'm uncomfortable in making a lot of
5 statements about this document because I haven't
6 really reviewed it in great detail. If you could
7 point me to what you're speaking about, I can comment
8 on it.

9 Q. Okay. Let's take a look at the last row
10 in the table. It's entitled "Total Exposure from
11 Contractual Obligations." And the number that's
12 listed under the column entitled "Utilities" is -- is
13 \$40 million, correct?

14 A. Correct.

15 Q. And that's for all of the utilities in
16 the FirstEnergy Corp. family?

17 A. I don't know if that's for all of them.
18 I'm assuming that it is.

19 EXAMINER PRICE: But you don't know.

20 THE WITNESS: But I don't know.

21 Q. And then in the column immediately to the
22 left which is entitled "FES/AE Supply," the number in
23 that bottom row of 341 million, is that reflecting --
24 can you tell me what that number is reflecting?

25 A. The total exposure from contractual

1 obligations.

2 Q. And it's -- it's the exposure that FE
3 Corp. has for its competitive -- the competitive side
4 of its business, correct?

5 A. Correct.

6 Q. And this chart is also then reflecting
7 what would be the collateral amounts that would
8 require additional cash calls in the event of a -- if
9 FirstEnergy Corp. fell below investment grade; is
10 that accurate?

11 THE WITNESS: Could I have the question
12 reread, please?

13 EXAMINER PRICE: You may.

14 (Record read.)

15 A. I believe so.

16 EXAMINER PRICE: I'm not sure when you
17 say you believe so, does that mean you know that to
18 be true or you're -- that's your best understanding?

19 THE WITNESS: That's my best
20 understanding based on being handed this document
21 today. I have not really had time to review it in
22 great detail. So based on my short period of time to
23 review it, that's -- I think that's true, but.

24 EXAMINER PRICE: There is some degree of
25 uncertainty.

1 THE WITNESS: Correct.

2 Q. (By Ms. Petrucci) Have you reviewed this
3 kind of information about collateral being dependent
4 on investment grade ratings outside of this
5 particular earnings call report?

6 A. Yes.

7 Q. And to be very particular, you reviewed
8 it for FirstEnergy Corp.?

9 A. I have seen different estimates for what
10 the collateral calls might be for FirstEnergy Corp.

11 Q. And the information you reviewed,
12 occurred over a period of time, or are you thinking
13 of a specific group that were related to the same
14 time period?

15 A. It's around the same time period. I
16 don't know how specific you're talking about, but
17 around the same time period.

18 Q. And that other information that you
19 recall reviewing similar to the information that's
20 depicted on page 18 of OMAEG Exhibit 33?

21 MR. LANG: Your Honor, just objection at
22 this point, and I don't know how this affects the
23 answer, but I think it's probably best at this time
24 to remind the witness and the Bench of the settlement
25 discussions issue. I don't know whether he's

1 reviewed this information that's been requested as
2 part of settlement discussions.

3 EXAMINER PRICE: Please remember that
4 when you are being asked these questions, information
5 you got through settlements should not be disclosed;
6 you should notify the Bench and counsel you obtained
7 that information in settlement.

8 A. I apologize. I don't remember the
9 numbers. I just -- I look at a lot of numbers on a
10 lot of different companies every day. FirstEnergy is
11 not the only company, and I get confused about what
12 numbers are where. So I don't know if they were -- I
13 don't know how close they were to be honest and I
14 don't know if it was 10 percent or 15 percent. But I
15 have seen numbers like this before. I just don't
16 know how close they are.

17 Q. And the documents that you are referring
18 to were publicly-available documents?

19 A. Yes. We tend to focus only on
20 publicly-available documents. The -- the other
21 documents I really don't recall that in great detail
22 so I'm not really speaking to those.

23 Q. And does that include the FirstEnergy
24 FactBook? Do you review that as well?

25 A. I've seen it before. If it was publicly

1 available, I've seen it. I don't remember the facts
2 that are in the FactBook very closely at all.

3 MS. PETRUCCI: Your Honor, we previously
4 marked as P3/EPISA Exhibit 14, the FirstEnergy
5 FactBook, dated February 16, 2016.

6 Q. And, Mr. Buckley, I believe it's just
7 been handed to you.

8 A. Correct.

9 Q. Is this a document you've seen previously
10 and reviewed?

11 A. I have seen it and I have reviewed it,
12 but not in depth.

13 Q. And if you could turn to --

14 EXAMINER PRICE: Excuse me, Ms. Petrucci,
15 if I could interrupt.

16 When you say "I have reviewed it, but not
17 in depth," does that mean you have read every page,
18 you have scanned it for interesting information, or
19 something less than committing it to memory?

20 THE WITNESS: I have read every page.
21 Unfortunately, I don't remember the information that
22 closely. Again, we look at a lot of different types
23 of these documents and I don't really commit them to
24 memory or sometimes even focus that closely on
25 certain aspects of it.

1 EXAMINER PRICE: Thank you, Ms. Petrucci.

2 Q. (By Ms. Petrucci) And if you could turn
3 to page 72, and the page numbers are at the very
4 bottom right-hand corner, not the numbers -- page
5 numbers on the slides.

6 A. Yes.

7 Q. Do you see the heading there for the
8 first slide on that -- on page 72 that's marked
9 "Financial"?

10 A. Yes.

11 Q. If you could just take a moment to review
12 the next several pages.

13 A. Yes.

14 Q. And if you could look on page 73, Slide
15 No. 143, can you indicate what that slide is
16 depicting?

17 MR. LANG: Objection. Objection, your
18 Honor.

19 EXAMINER PRICE: Grounds?

20 MR. LANG: Your Honor, this document is
21 not part of the record, even though it had been
22 marked previously, it was not admitted, it was not
23 moved.

24 With regard to this witness, simply
25 because he's seen the document does not make him a

1 competent witness to testify as to what the contents
2 of the document are.

3 It hasn't been established he prepared
4 the document. And, in addition, I also believe it's
5 outside the scope of his testimony and, therefore,
6 not relevant to his testimony with regard to his
7 calculation.

8 EXAMINER PRICE: Ms. Petrucci?

9 MS. PETRUCCI: Your Honor, Mr. Buckley
10 indicated he had reviewed the entire document. I've
11 turned him -- had him focus specifically on the
12 financial section. I was about to begin to ask him
13 about the particular slide on page 73. He's
14 indicated that in the normal course of his business
15 activities, he reviews this type of information
16 that's published and available publicly, and this is
17 one of the items that he reviews and had reviewed.

18 EXAMINER PRICE: You know, I think what
19 you're missing here is the question whether he relies
20 upon this sort of information and considers it to be
21 something that the Commission should rely upon. He
22 might review a lot of things, I mean, you know, I
23 read a lot of science fiction, that doesn't make it
24 true. If the question is, is this something that he
25 relies upon in the course of doing his job.

1 MR. SAUER: Your Honor, I would point out
2 OCC Witness Wilson was on the stand, and FirstEnergy
3 showed him many documents, none that he relied on,
4 but documents that generally were perceived to be
5 documents he would review in the course of his work,
6 and those documents came in and he was allowed to be
7 cross-examined on them.

8 EXAMINER PRICE: He must have been more
9 persuasive on creating the foundation.

10 So, Ms. Petrucci, if you can just make it
11 clear -- make the record clear that this is something
12 he considers to be reliable and that he would use in
13 the course of his business, then we can move on from
14 this question of foundation.

15 MS. PETRUCCI: Okay. Thank you, your
16 Honor.

17 Q. (By Ms. Petrucci) Mr. Buckley, a couple
18 moments ago you indicated you had, in fact, reviewed
19 this -- the February 16, 2016, FirstEnergy FactBook,
20 and you indicated, I believe, that you had reviewed
21 it in total, correct?

22 A. Correct.

23 Q. Okay. And in the course of your duties
24 at the PUCO, is this information that you review and
25 rely upon in conducting your duties?

1 A. It depends what duties I'm -- I'm
2 conducting. I don't necessarily go back and reread
3 all the investor reports or general press releases or
4 articles about companies every time I do something.
5 I reviewed this at least once. I didn't commit it to
6 memory and I don't -- I'm not that familiar with it.

7 EXAMINER PRICE: Let me try one time.

8 If you were preparing a staff report to
9 file in a proceeding, would you rely upon this type
10 of document for the numbers and information and data
11 contained here or would you go to a different
12 document?

13 THE WITNESS: If I were relying on
14 numbers, I would probably try to, for as much as I
15 can, go to audited financial statements.

16 Q. (By Ms. Petrucci) Based on that answer,
17 you are indicating you would use this and then also
18 look at other information, correct?

19 A. If I were to create a staff report, I
20 wouldn't use this. But it's helpful to know what's
21 being reported.

22 EXAMINER PRICE: Would you use this as
23 the basis for your testimony in a Commission
24 proceeding?

25 THE WITNESS: No.

1 MS. BOJKO: Your Honor, may I respond?

2 EXAMINER PRICE: You may.

3 MS. BOJKO: He does, in fact, use
4 comparable information in his testimony in this
5 proceeding. It's an attachment to his testimony. So
6 the information is comparable to what he relied on
7 when preparing his testimony.

8 EXAMINER PRICE: Well, "comparable" is
9 all in the eye of the beholder. I think he stated
10 pretty clearly he would not rely upon this for a
11 staff report; he would not rely upon this for
12 testimony. I don't think you are going to be able to
13 get the numbers in through this witness.

14 MR. HAYS: Your Honor, if I may be heard
15 for a moment?

16 EXAMINER PRICE: You may.

17 MR. HAYS: As a statement of a party
18 opponent that they put out to the investment
19 community and the world at large, we would ask you to
20 take judicial notice of the document.

21 EXAMINER PRICE: It's not a question of
22 the authenticity of the document. It's a question
23 about whether the witness is competent to have
24 knowledge to testify regarding the numbers contained
25 in the document, which is a long way of saying we are

1 sustaining Mr. Lang's objection.

2 MR. LANG: Thank you, your Honor.

3 EXAMINER PRICE: We still do not have a
4 proper foundation for this document.

5 MR. HAYS: And, your Honor, would you
6 take judicial notice of it?

7 EXAMINER PRICE: No, no. I am not going
8 to take judicial notice of it. I don't know -- I
9 don't have any understanding that this is the sort of
10 information relied upon in the general course of
11 events. I've -- I personally have never even seen
12 any FirstEnergy FactBook before in my life, so, nor
13 do I ever recall a witness testifying as to the
14 FirstEnergy FactBook in a Commission proceeding.

15 Q. (By Ms. Petrucci) Can we turn to page 4
16 in your testimony, please, Mr. Buckley. And
17 specifically at lines 11 through 12.

18 A. Yes.

19 Q. You indicate that the staff believes it's
20 appropriate to average the proposed cash flow from
21 operations preworking capital ratio to debt
22 percentages. Do you see that?

23 A. Yes.

24 Q. What do you mean by "it's appropriate to
25 average"?

1 A. When Moody's made their suggestion of 14
2 to 15, we didn't know whether it was 14 or 15, so we
3 averaged it.

4 Q. Does the cash flow from operations, on
5 which that 14.5 percent is based, account for cash
6 flows expected from the original rider RRS proposal?

7 A. I don't know.

8 Q. If you could turn to Attachment No. 2 to
9 your testimony, page 4.

10 A. Yes.

11 Q. And if you could look at the second
12 paragraph under the heading "Strained financial
13 profile."

14 A. Yes.

15 Q. The paragraph begins "We also expect
16 management to strengthen ratios...."

17 A. Yes.

18 Q. Is the ratio that's being referred to,
19 the cash flow to debt ratio?

20 A. Yes.

21 Q. And then if we look at the paragraph --
22 the first paragraph under the "Strained profile
23 heading," the reference to the -- it's the second
24 sentence, do you see that where it begins "As a
25 result of higher cash flows from the PPA...."?

1 A. Yes.

2 Q. Moody's is expecting the ratio to range
3 between 14 to 16 percent, correct?

4 A. Starting in 2017, that's what they state.

5 EXAMINER PRICE: I think -- I think if
6 you are going to -- I think that's misleading. If
7 you are going to have him reading part of that
8 paragraph, I think you need to have him read in all
9 that part of that paragraph, because I think there is
10 a caveat in the preceding sentence that's pretty
11 relevant.

12 Q. (By Ms. Petrucci) Are you -- I'm sorry,
13 are you asking me to read into the record the
14 paragraph or are you asking --

15 EXAMINER PRICE: I am going to say if you
16 are going to ask him to point out if this says 14 to
17 16, you at least want to give the context to which
18 the 14 to 16 percent is, so if you want to have him
19 read it into the record, that's fine. I just think
20 you're pulling it out of context.

21 MS. PETRUCCI: All righty.

22 Q. (By Ms. Petrucci) Mr. Buckley, why don't
23 we go ahead and put the full context into the record
24 here. That first paragraph is -- under the heading
25 "Strained financial profile," do you see that,

1 correct?

2 A. Yes.

3 Q. Okay. Could you read that, please,
4 aloud.

5 A. "FE's historical financial profile has
6 been weak for the rating. However, the expected
7 improvement on account of the Ohio PPA, PJM capacity
8 auction and cost reductions has led us to affirm the
9 company's ratings. As a result of higher cash flows
10 from the PPA, improved capacity revenues and cost
11 reductions, we expect FE's consolidated ratio of CFO"
12 preworking -- or "Pre-WC to debt to range between 14
13 and 16 percent starting in 2017, up from 11 to 12
14 percent in 2014 and '15. The ratio could be slightly
15 below 14 percent in 2016 because the PPA will be in
16 affect for only 7 months."

17 Q. And Moody's is indicating that the cash
18 flow to debt ratio range -- expected range starting
19 in 2017 is, in part, because of higher cash flows
20 from the PPA, correct?

21 MR. LANG: Objection, your Honor. Asked
22 and answered.

23 EXAMINER PRICE: I am going to overrule.

24 A. Correct.

25 Q. So does the cash flow from operations on

1 which staff is proposing a 14.5 percent, is that
2 based -- I'm sorry. Is it based on cash flow
3 expected from the original rider RRS proposal?

4 EXAMINER PRICE: Can you repeat -- can we
5 have the question back again?

6 (Record read.)

7 A. No.

8 Q. Does the 14 -- the cash flow from
9 operations on which the 14.5 percent is based include
10 cash flows from the original rider RRS proposal?

11 A. No.

12 Q. Can you tell me why? That it's not
13 included?

14 EXAMINER PRICE: I don't understand your
15 question, Ms. Petrucci. I don't think the staff
16 expects a cash flow of 14 to 15 percent. I think the
17 staff is trying to assist them in getting to a cash
18 flow of 14 to 15 percent. I think Moody's was
19 expecting it to be 14 to 16 percent with the PPA, but
20 I don't think the staff had -- in his testimony, his
21 expectation, the staff used historic data and said we
22 would like them to get to 14-and-a-half percent. It
23 wasn't a expectation; it was a goal. So I guess it's
24 a long way of saying I think your question is not --
25 is not consistent with the testimony he gave, or at

1 least it's misleading. Sorry.

2 MS. PETRUCCI: Let me start again here.

3 Q. (By Ms. Petrucci) You indicated that you
4 relied upon the Moody's Investors Service report
5 that's Attachment 2 to your testimony, correct?

6 A. I used it, correct.

7 Q. And you also indicate that you averaged
8 the cash flow to debt percentages and reached a
9 percentage of 14.5, correct?

10 A. Correct.

11 Q. And is it correct that the percentages
12 that you averaged had been based, in part, upon an
13 assumption that cash flows would be expected from the
14 original rider RRS proposal?

15 MR. LANG: Yeah, objection. Asked and
16 answered and it's just -- it's confusing the facts
17 that are in the record. She is asking him about a
18 benchmark that's being -- that he's relying on in his
19 testimony. Apparently trying to ask about
20 operational results that could affect the -- the
21 actual cash flow to debt results, but as your Honor
22 pointed out earlier, that's -- has nothing to do with
23 his -- the benchmark of 14.5 percent he's testifying
24 to. So the question -- I would object that the
25 question is assuming facts and doesn't make sense in

1 terms of something the witness could even answer.

2 EXAMINER PRICE: If you could rephrase,
3 Ms. Petrucci.

4 Q. The range that's contained in the Moody's
5 Investors Service report which is Attachment 2 to
6 your testimony, and specifically on page 4 in the
7 middle of the page, I think you agreed with me
8 earlier that the cash flow to debt ratio there is
9 based, in part, upon an expectation that there will
10 be higher cash flows from the PPA, correct?

11 EXAMINER PRICE: I think one of the
12 difficulties here is his cite in his -- in his -- to
13 his quote only has the attachment, not the page. Can
14 you tell us which page you're quoting here when you
15 averaged the 14 to 15 percent? She's referring to
16 page 4 and I am not seeing the quoted language on
17 page 4.

18 THE WITNESS: The quote appears for the
19 first time on page 2. "Such ratios include CFO
20 preworking capital to debt of at least 14 to
21 15 percent."

22 EXAMINER PRICE: And that's in the
23 factors that could lead to a downgrade; is that
24 correct?

25 THE WITNESS: It's out of the "Ratings

1 Outlook," under that heading.

2 EXAMINER PRICE: Okay. But the actual
3 quote that you pulled is from "Factors that Could
4 Lead to a Downgrade," correct? The heading on page
5 2, "Factors that Could Lead to a Downgrade"?

6 THE WITNESS: It's also included there.
7 I was referring to right under "Ratings Outlook," but
8 they list it under "Factors that Could Lead to a
9 Downgrade" also.

10 EXAMINER PRICE: I am just asking where
11 you got the quote. I think the quote is from
12 "Factors that Could Lead to a Downgrade."

13 THE WITNESS: Correct.

14 EXAMINER PRICE: So -- on that page, on
15 page 2, you know, the heading, "Factors that Could
16 Lead to a Downgrade" was the source of your quote,
17 and your quote is where you got the 14 and
18 15 percent.

19 THE WITNESS: Correct.

20 EXAMINER PRICE: Now, with that
21 established clearly in the record, Ms. Petrucci, if
22 you can rephrase your question.

23 MR. KUTIK: Your Honor, can we go off the
24 record?

25 EXAMINER PRICE: Yes.

1 (Discussion off the record.)

2 (Thereupon, at 1:19 p.m., a lunch recess

3 was taken.)

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1 Wednesday Afternoon Session,
2 July 13, 2016.

3 - - -

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

6 Ms. Petrucci, please proceed.

7 MS. PETRUCCI: Thank you.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Petrucci:

11 Q. Mr. Buckley, could you turn to page 4 of
12 your testimony.

13 A. Yes.

14 Q. If you look at the chart at the top of
15 the page, specifically given the way we lettered and
16 numbered the chart, if you could look at E7. The --
17 that's \$255 million that's in that part of the chart,
18 correct?

19 A. Yes.

20 Q. Do you know why that proportion is so
21 much larger than the other portions in the chart?

22 A. I did not search for a reason as to why
23 that was higher that year, no.

24 Q. Then we can turn to page 7 in your
25 testimony. On line 2 you indicate that staff

1 believes that three years for the staff-proposed
2 rider is adequate time. Do you see that?

3 A. I do.

4 Q. What do you know by "adequate"?

5 A. It's enough time to begin to address that
6 situation. It's long enough, I guess.

7 Q. And when you use the word "that
8 situation," are you referencing the shortfall?

9 A. Again, this idea that they become more
10 regulated and begin to pivot away, hopefully some of
11 those ratios will be lowered. So the shortfall, in
12 general terms, yes, but we're hoping that the 14 and
13 15 might drop a little bit.

14 MR. SAUER: Could I have that question
15 and answer reread, please?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 EXAMINER PRICE: Could I just ask a
19 follow-up. When you say "those ratios will be
20 lowered," you're saying hopefully Moody's will lower
21 the threshold at which they might downgrade from 14.5
22 to 12 to 13 or something; is that what you're saying?

23 THE WITNESS: It would be lowered. I
24 wouldn't guess on the numbers, but it would be lower.

25 EXAMINER PRICE: I wasn't trying to

1 estimate numbers --

2 THE WITNESS: Right.

3 EXAMINER PRICE: -- I was just saying
4 that threshold would come down.

5 THE WITNESS: Correct.

6 EXAMINER PRICE: Thank you.

7 Q. (By Ms. Petrucci) And if the staff's
8 proposed rider were to begin, let's say, in August of
9 2016, would it run consecutively for 36 months under
10 the proposal that you are presenting?

11 A. We didn't discuss when it would be
12 implemented, in August or September or when. But the
13 idea is it would run 36 consecutive months.

14 Q. And as proposed then, the rider would
15 provide a flat amount or consistent amount of dollars
16 each year when the funds are collected by the
17 distribution companies, correct?

18 A. The base amount would be \$131 million.

19 Q. And it will be collected over the 12
20 months regardless of which calendar year is involved?

21 A. Correct.

22 Q. Okay. And when the proposed rider
23 begins, would the distribution companies be beginning
24 any investments in modernizing the distribution grid?

25 A. I'm not sure when they would begin or

1 what state they are in now even. I don't -- I don't
2 know if they have begun yet or not or when they will
3 begin.

4 Q. And then looking again at page 7, on line
5 4, where you discuss the extension of the credit
6 report, you use the -- it says "after three years, it
7 could request." Who is the "it"?

8 MR. LANG: Your Honors, could we have the
9 question read back. I think she misspoke.

10 EXAMINER PRICE: I believe she meant
11 "credit support" not "credit report." And with that
12 clarification, you can go ahead and answer the
13 question.

14 MS. PETRUCCI: Yes, thank you.

15 A. The operating companies would be -- the
16 Ohio operating companies would be the "it" that could
17 request an extension. The support would be, again,
18 corporate wide. It would be -- we would use the same
19 ratios to -- we wouldn't necessarily use the same
20 ratios. We would use -- we would look at the entire
21 corporation based on the S&P model that one gets
22 downgraded, everyone gets downgraded.

23 So the operating companies would be the
24 ones that would obviously request -- make the
25 request, but we would have to use a similar type

1 review, but maybe not the same metrics.

2 I don't want to get caught up in using
3 just one, because, hopefully, we are going to see a
4 change. And maybe Moody's or S&P or somebody decides
5 that, hey, we don't need to have these stringent
6 ratios anymore because they've become a more
7 regulated company.

8 Q. So a new -- if an extension request is
9 presented or proposed, the new proceeding would be
10 conducted by the PUCO to determine what amount, what
11 metrics should be used for collection under the rider
12 from -- for the extension period?

13 A. The Commission can decide, you know,
14 obviously what it wants to do, but staff would
15 recommend at this time that we treat it as a unique
16 situation and kind of review it as a standalone
17 situation to see if it's still warranted, and not
18 necessarily go back to the same ratio and say that
19 ratio is not being met or that ratio is being met and
20 it's no longer necessary.

21 Because like I say, hopefully, that ratio
22 has dropped and Moody's has -- has said that, hey,
23 we're viewing this company differently and they don't
24 need that stringent requirement on them.

25 Q. And for the extension period, is that

1 automatically expected to be a two-year period or is
2 the time period also something to be reviewed in the
3 extension?

4 A. Staff would recommend the time period is
5 also reviewed.

6 Q. And is it the staff's proposal that the
7 extension period could not be longer than two years?

8 A. At this time we're restricting it to two
9 years. We feel that's adequate time to begin
10 addressing that, their situation.

11 Q. When you refer to "their situation," are
12 you referring to FirstEnergy Corp. and the shortfall?

13 A. Again, as I said before, it's the
14 operating companies and FirstEnergy Corp. because S&P
15 kind of looks at them as an umbrella. So yes, it's
16 FirstEnergy Corp. and the operating -- Ohio operating
17 companies.

18 Q. Also on page 7 you've presented two
19 conditions for the staff-proposed rider. Would staff
20 consider a recommendation that the companies make a
21 certain level of investment in grid modernization?

22 MR. LANG: Objection, your Honor.

23 EXAMINER PRICE: Grounds?

24 MR. LANG: At this point we've gone
25 beyond the scope of his testimony. He's not -- I

1 think those are going down the policy line of what
2 staff is recommending which is beyond what's in
3 Mr. Buckley's testimony.

4 EXAMINER PRICE: Well, he brought up the
5 condition. She is simply asking if he would accept
6 the third condition. Overruled.

7 You can answer if you know.

8 A. At this time we did not believe any
9 additional conditions were warranted, only the two
10 that are listed.

11 Q. If the Commission were to require a
12 certain level of investment in grid modernization as
13 a condition for the rider -- the proposed rider for
14 distribution modernization, do you agree that would
15 actually assure that the investment in the grid takes
16 place?

17 A. If the Commission were to require a
18 certain amount to be spent, I would hope that that
19 took place, but as we've talked before, dollars are
20 kind of fungible, so to say we are not going to mark
21 this dollar and say it's got to go to any certain
22 purpose, but if the Commission were to order that so
23 much should be invested in the grid, we would hope
24 that would take place.

25 MR. FISK: Could I get the question and

1 answer read back?

2 EXAMINER PRICE: You may.

3 MR. FISK: Thanks.

4 (Record read.)

5 MR. FISK: Thank you.

6 Q. (By Ms. Petrucci) So are you agreeing
7 that if the Commission required a certain level of
8 investment as a -- as a condition for the proposed
9 rider -- for the DMR rider -- let me start again.

10 If the Commission were to approve the DMR
11 rider and included a requirement that a certain level
12 of investment in grid modernization be required,
13 would that condition assure that the necessary
14 investment, regardless of which funds are used, would
15 take place?

16 MR. McNAMEE: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. McNAMEE: Two grounds. I think he's
19 already answered this. But beyond that, it's outside
20 the scope. He's not speaking to how the funds will be
21 used. He was speaking to the dollar amount that
22 would be required to address the financial shortfall
23 as we have been discussing.

24 EXAMINER PRICE: Sustained.

25 Q. (By Ms. Petrucci) If the Commission did

1 impose a condition that required a certain level of
2 investment in grid modernization in the course of
3 approving the staff's proposed DMR rider, would you
4 expect the companies to comply with that from time to
5 time?

6 MR. McNAMEE: Objection.

7 EXAMINER PRICE: Grounds?

8 MR. McNAMEE: Relevance. His belief as
9 to whether or not the company would comply with a
10 valid Commission order is of no moment in this case.

11 EXAMINER PRICE: I'll allow the question.

12 A. I think if I could say it this way, if
13 the Commission told the company -- if the Commission
14 told the operating companies to spend \$131 million on
15 grid modernization, I would believe that they would.

16 Q. If the Commission were to require such
17 investment at that level, would then the staff
18 proposed rider DMR still provide credit support to
19 FirstEnergy Corp.?

20 A. We're looking at --

21 EXAMINER PRICE: One second, please. I
22 allowed -- I allowed your last question over the
23 scope objections. But now you're adding a
24 hypothetical onto, you know, you are going one step
25 further now and saying, you know, assume our

1 hypothetical. Do you understand what I am saying?
2 It seems like we are getting farther beyond the scope
3 of what his testimony actually was.

4 MS. PETRUCCI: I think -- well, your
5 Honor, where I am -- I am trying to understand that
6 if there is an authorization of this proposed rider
7 and there's a certain amount of dollars allowed and
8 then if there was also a requirement that they have
9 to make the investments in grid modernization,
10 whether it necessarily results in the credit support
11 that the rider is supposedly for.

12 MR. LANG: And, your Honors, it has been
13 covered before and covered earlier. The level of
14 investment for grid modernization will be decided in
15 the grid modernization proceeding, so I'm not sure
16 why we are going down this road again with
17 hypotheticals that don't move the case forward.

18 MS. PETRUCCI: That actually supports my
19 question because with that separate proceeding, I
20 want -- I want to understand if the necessary credit
21 support that is being proposed by this rider could
22 take place given the way this is being presented.

23 EXAMINER PRICE: I'm not sure, I guess,
24 but we will allow this question and then we will go
25 from there.

1 You can answer if you understand the
2 question.

3 A. I believe the timing, that's one of the
4 reasons why we're looking at more than just one year
5 or a couple of years. The timing of how they can go
6 about raising funds to invest in the grid is the
7 important point here. Remaining investment grade
8 makes access to those funds much cheaper, and it
9 gives them more flexibility how they want to raise
10 those funds. So I don't think it would preclude them
11 from raising money to -- to invest in the grid.

12 Q. Earlier today you indicated that there
13 were different steps that could be taken to cover the
14 shortfall and you -- and I can help you remember that
15 you discussed cutting expenses and increasing
16 revenues. Do you recall that conversation?

17 A. I recall pieces of it, yes.

18 Q. And is decreasing risk also a possible
19 step that could be taken?

20 A. Yes. And one of the ways you can
21 decrease risk is to become a more regulated company.

22 Q. And there are other methods as well,
23 correct?

24 A. Yeah. That's just one of the methods.

25 Q. And apart from becoming more regulated,

1 another way to reduce risk could be to reduce the
2 size of the competitive business; isn't that correct?

3 A. That would reduce risk, yes.

4 Q. Turning back to page 7. With the second
5 condition you've listed there on lines 12 to 14, the
6 condition is triggered upon the announcement of a
7 change in ownership, correct?

8 A. Correct.

9 Q. Does this proposed condition create the
10 incentive for FirstEnergy Corp. or its subsidiaries
11 to wait until either after year three or year five
12 before announcing a change in ownership?

13 A. I think they have a financial
14 responsibility to report that to the SEC. I think
15 they have to file an 8-K when they have a substantial
16 change like that, so they can't really just wait and
17 not do that.

18 Q. And the reference to "its subsidiaries,"
19 which subsidiaries were intended?

20 MR. LANG: Your Honor, it's asked and
21 answered.

22 MS. PETRUCCI: I'm sorry, I don't recall
23 that was asked or answered.

24 EXAMINER PRICE: It was.

25 MS. PETRUCCI: Okay.

1 Q. (By Ms. Petrucci) FirstEnergy Corp. could
2 address the risk of a credit rating downgrade to
3 below investment grade by reducing the size of
4 FirstEnergy Corp.'s competitive business, correct?

5 MR. LANG: Objection, asked and answered.

6 MS. PETRUCCI: I didn't ask that quite
7 before. It was similar but not that question. I am
8 being more specific.

9 EXAMINER PRICE: I'll allow it.

10 THE WITNESS: Could I have the question
11 reread, please?

12 EXAMINER PRICE: You may.

13 (Record read.)

14 MR. LANG: Your Honor, I would also
15 object on speculation and beyond the scope of his
16 testimony.

17 EXAMINER PRICE: Well, he has discussed
18 that the companies need to take the -- FirstEnergy
19 Corp. needs to take additional steps to address the
20 financial situation, so he can answer this one.

21 A. By becoming more regulated, all other
22 things being equal, that would lower the risk. It's
23 the trouble I have with this question is all other
24 things being equal. It would depend on a lot of
25 different factors. You know, if -- if you -- if you

1 get rid of something that's of worth for something
2 that's for a price that's much lower than what it's
3 worth, then just becoming more regulated or changing
4 things doesn't really put you in a better spot to
5 sell things at a loss; or if it's announced that you
6 have to sell something, it can depress the price
7 also. So I -- all things being equal, yes. But
8 there's a lot of other things that could happen.

9 MS. BOJKO: Your Honor, may I have the
10 question reread?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 Q. (By Ms. Petrucci) So your answer is
14 "yes," correct?

15 A. All other things being equal, yes, but,
16 again, to try to force a sale or something at --
17 is -- introduces a new element into the equation.

18 MS. PETRUCCI: Thank you very much. I
19 have no further questions.

20 EXAMINER PRICE: Thank you.

21 Let's go off the record.

22 (Discussion off the record.)

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

25 Consumers' Counsel.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Sauer:

4 Q. Good afternoon, Mr. Buckley. My name is
5 Larry Sauer. I am on behalf of the Ohio Consumers'
6 Counsel.

7 EXAMINER PRICE: Mr. Sauer, please make
8 sure you speak up.

9 Q. (By Mr. Sauer) In your testimony,
10 Mr. Buckley, you discuss the term "allocate" in
11 Question and Answer 4. Would that term be synonymous
12 with "charge"? And I'll restate it if that would
13 help. Is it your -- is it the staff's recommendation
14 that customers will be charged \$131 million per year?

15 A. Yes.

16 Q. And under staff's proposal, DMR could
17 never be a credit to customers; is that correct?

18 A. Correct.

19 Q. And in order for the Ohio utilities to
20 collect the \$131 million per year, would that be in
21 conjunction with a cost-of-service study?

22 A. No.

23 Q. Would there be a revenue requirement
24 associated with that?

25 A. No.

1 Q. Would there be any requirement that there
2 be a prudent investment made in order to recover
3 \$131 million per year?

4 MR. McNAMEE: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. McNAMEE: Again, this witness is
7 merely speaking to the number. The process for
8 implementing that charge or the way it's allocated,
9 any of those kinds of things, are simply beyond the
10 scope of this witness's testimony.

11 EXAMINER PRICE: Sustained.

12 Q. (By Mr. Sauer) Earlier in the day you
13 noted that I believe staff took notice with the
14 guidance from Moody's and S&P that indicated there
15 had been a negative outlook reported for those -- for
16 FE Corp., correct?

17 A. Correct.

18 Q. And has staff had any discussions with
19 other jurisdictions regarding whether or not they've
20 taken notice of this Standard & Poor's and Moody's
21 guidance that's come out?

22 A. We have not. I have not. I don't know
23 if the other -- rest of the staff. I can't speak for
24 everybody, but I have not.

25 Q. The analysis that appears on page 4 at

1 the top of the page, that's a historical analysis,
2 correct?

3 A. It is.

4 Q. 2011 through 2015. And during that
5 period of time there's been no -- I'm sorry. During
6 that period of time, the ratio of cash from
7 operations to debt has been below your 14-and-a-half
8 percent target, correct?

9 MR. McNAMEE: Object.

10 EXAMINER PRICE: Grounds.

11 MR. McNAMEE: I believe this was directly
12 asked and answered.

13 EXAMINER PRICE: Sustained. It was.

14 Q. And to your knowledge, during this period
15 of time 2011 to 2015, has there been a downgrade to
16 FE Corp.'s investment grade rating?

17 MR. McNAMEE: Objection.

18 MR. LANG: Same objection.

19 MR. McNAMEE: Same objection.

20 EXAMINER PRICE: Sustained.

21 MR. McNAMEE: Or same grounds, rather.

22 Q. (By Mr. Sauer) This calculation that
23 appears at the top of page 4, did you perform that
24 same calculation for the EDUs, the Ohio EDU's?

25 MR. LANG: Your Honor, I would just

1 object. I don't know what he means by same
2 "calculation."

3 EXAMINER PRICE: Can you clarify?

4 Q. The cash from operations to debt
5 calculation that appears on the page -- on the top of
6 page 4 for CEI, TE, and Ohio Edison.

7 A. One of the things I talked about earlier,
8 we did a lot of different calculations and we looked
9 at a lot of different numbers. We may have. I'm not
10 sure we did for the exact same time period. But we
11 looked at a lot of different calculations and that
12 could have been one of them. I don't -- I just don't
13 remember specifically if it was for the same time
14 frame or not.

15 Q. To the extent you did it at all for any
16 time period, would their CFO preworking capital to
17 debt calculation have been above the 14.5 percent
18 recommendation of yours?

19 A. I believe at different times it varied
20 based on the time period and which company you are
21 speaking of. At some point in time, I think it was
22 for certain entities. I am not sure if all entities
23 were above that. When I am referring to "entities"
24 when I am answering this question, I am referring to
25 the Ohio regulated utilities. I'm not sure if they

1 always were above 14, if one company was above or
2 below, but at some point some of the companies were
3 above 14 percent.

4 Q. Okay. And on page 3, you do the
5 calculation where you came to the 22 percent
6 allocator, and I believe earlier today in a question
7 you said you looked at a lot of different -- you
8 looked at different options for calculating the
9 potential allocator; is that correct?

10 A. Correct.

11 Q. And do you recall if any of those other
12 methods for calculating that allocator would have
13 resulted in Ohio having a less than 22 percent
14 allocated share?

15 A. You could -- I mean, depending on how you
16 calculate it, you can allocate something that would
17 be less than that; you could allocate something that
18 would be much greater than that. We were looking for
19 determining what we thought was a fair way to
20 allocate it, not so much -- not the result that came
21 out. So we were looking at whether the revenues made
22 sense, whether other things made more sense to
23 allocate this, not really the number.

24 Q. Does allocating it based on revenues tie
25 more to, in your cash from operations to debt, go

1 more towards the numerator of that calculation than
2 the denominator portion of that calculation?

3 THE WITNESS: Can I have that question
4 reread, please?

5 EXAMINER PRICE: Yes, you may.

6 (Record read.)

7 Q. (By Mr. Sauer) I will try to clarify
8 that, Mr. Buckley. Using the revenues as your
9 allocator determination, does that impact more, in
10 your opinion, the cash flow preworking capital or the
11 total debt in your calculation at the top of page 4?

12 A. I don't understand that question. I'm
13 sorry.

14 Q. Do revenues flow through cash from
15 operations?

16 A. Yes.

17 Q. Do revenues have any impact on the total
18 debt a company has?

19 A. No.

20 Q. Okay. Mr. Buckley, are you generally
21 familiar with the FirstEnergy Allegheny merger that
22 took place in 2010?

23 MR. McNAMEE: Objection. Relevance.

24 EXAMINER PRICE: I think it's just a
25 foundational question.

1 MR. SAUER: It is.

2 EXAMINER PRICE: Let's see where this
3 goes. Overruled.

4 A. Do I know that they merged with
5 Allegheny? Yes.

6 Q. Yes. Do you recall some of the details
7 of that merger?

8 A. Not many, no.

9 Q. Would it be your understanding that in
10 exchange for Allegheny stock, Allegheny stockholders
11 received a certain percentage or number of
12 FirstEnergy shares?

13 A. I have no -- no recollection of the
14 details of that transaction.

15 Q. At the time that transaction was going
16 on, did you pay any particular attention to the
17 details of the transaction?

18 A. I did.

19 Q. If I gave -- put in front of you a
20 FirstEnergy Allegheny press release, would that maybe
21 help refresh your recollection?

22 MR. McNAMEE: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. McNAMEE: Same as before, we are not
25 getting towards anything that's relevant in this

1 case.

2 EXAMINER PRICE: Mr. Sauer, what's the
3 relevance of the Allegheny merger?

4 MR. SAUER: The relevance, they --
5 FirstEnergy assumed \$3.8 billion in debt of
6 Allegheny's in that transaction. And \$3.8 billion in
7 debt would have been reflected in this total debt
8 number that appears from December 31, 2011, through
9 2015. It changes the calculations and impacts the
10 numbers that are reflected here.

11 EXAMINER PRICE: And where is that -- how
12 is that relevant to this proceeding? You can't undo
13 the Allegheny merger.

14 MR. SAUER: You can't undo it, but it
15 doesn't have any impact on the Ohio utilities. They
16 aren't the reason the ratio here demonstrates there
17 to be a need for a cash infusion from their
18 customers. And it goes to whether the allocation
19 used was appropriate as well.

20 EXAMINER PRICE: Mr. McNamee?

21 MR. McNAMEE: History is what it is.
22 What we are trying to deal with here is the situation
23 that the utilities are in currently and that's what
24 this witness's testimony speaks to. He doesn't speak
25 to the history of anything.

1 EXAMINER PRICE: Mr. Lang.

2 MR. LANG: Your Honor, also to the scope
3 issue. Your Honor, has defined the scope as the
4 companies' proposal, alternative proposals. We have
5 an alternative proposal.

6 We certainly would agree with
7 Mr. McNamee. The historical numbers are the
8 historical numbers. Getting into the history from
9 five years ago or however many years ago as to what
10 happened in that time period isn't relevant to what
11 the staff is proposing with regard to their
12 distribution modernization rider and the support and
13 the purposes of that DMR.

14 MR. KURTZ: Can I make one comment, your
15 Honor?

16 EXAMINER PRICE: Yes, Mr. Kurtz.

17 MR. KURTZ: In the past however many
18 years there have been a hundred things that affect
19 the level of debt at the corporate level and equity.
20 It doesn't -- it doesn't go anywhere. I agree it's
21 not relevant.

22 EXAMINER PRICE: You don't want to get
23 into the Centerior merger?

24 MR. HAYS: Your Honor, if I may be heard?

25 EXAMINER PRICE: You may.

1 MR. HAYS: Thank you. If the Court would
2 take note -- turn to page 4, the chart on page 4, you
3 will see that all the ratios are done in the five
4 years following the Allegheny acquisition.

5 Similarly, if you turn back to page -- on
6 page 3, it's not so clear, but if you look on that
7 chart, it's '11, '12, '13, '14, '15.

8 If you then go in the testimony to
9 Standard & Poor's advice, page 5, lines 5 and 6,
10 maybe even starting above that, "Standard & Poor's...
11 issued a research update on April 28, 2016, stating
12 that, in general, FE's credit outlook will improve,
13 'if the company's business profile materially
14 improves by reducing the size of its higher-risk
15 competitive business." It's also in the Allegheny
16 transaction where they acquired the additional coal
17 and nuclear plants. It's certainly germane. It's
18 the five years they are using.

19 EXAMINER PRICE: You can't undo what
20 happened. The numbers are what they are.

21 MR. HAYS: I'm sorry, your Honor. I
22 really --

23 EXAMINER PRICE: Go ahead and finish.

24 MR. HAYS: No. I didn't mean to
25 interrupt.

1 EXAMINER PRICE: We can't undo what
2 happened in the past. As Mr. Kurtz pointed out, we
3 can go back and there are a million things, The Great
4 Recession, the cratering of electric prices, you know
5 MATS rule, we can't go back and revise history to
6 avoid being in the situation we are in. I don't
7 understand the relevance of this line of questioning.

8 Mr. McNamee's objection is sustained.

9 MR. SAUER: Thank you, your Honor.

10 MR. HAYS: For the record, your Honor, we
11 would note our objection for appeal purposes.

12 EXAMINER PRICE: Noted again. Thank you.

13 Q. (By Mr. Sauer) Mr. Buckley, could you
14 look at your Question and Answer 10, please. Are you
15 there?

16 A. Yes.

17 Q. You state that the "...Staff believes
18 that the customers of the Ohio Regulated Distribution
19 Utilities should not be the only constituents
20 providing credit support for the entire FE
21 Corporation"; is that correct?

22 A. Correct.

23 Q. And you go on to elaborate that it's
24 "Staff's belief that a shared contribution is
25 important to ensure all parties, including FE

1 employees, FE management, shareholders and others,
2 are invested in supporting FE as investment grade
3 entity," correct?

4 A. Correct.

5 Q. And have you received -- let me ask it
6 this way, have you noted, between the time period of
7 2011 through 2015, for example, FE employees, do you
8 know if they have endured a wage freeze at any point
9 during that period of time?

10 A. I don't know.

11 Q. And is that the type of contribution you
12 would expect or you were thinking of when you were,
13 in that question and answer, discussing employees as
14 someone who should share in the -- in the
15 responsibility?

16 A. I hesitate to speak to any one solution
17 for fear that would be viewed as that's what staff
18 was thinking. The employees could do a lot of
19 different things. One of the employees could think
20 of a great idea that could solve this problem.
21 There's a lot of things that the utility management
22 could do to take care of these -- this situation. I
23 wouldn't want to point to one thing and say that that
24 would be more important than any other thing.

25 Q. You note "FE management." Do you know

1 if, during 2011 to 2015, FE management endured a wage
2 cut or suspended management bonuses during that
3 period of time?

4 A. I don't know.

5 Q. Again, is that the type of management
6 contribution you were thinking in terms of
7 management's contribution to this?

8 A. I wasn't thinking of anything in
9 particular. I would leave that -- those options up
10 to their management and how they would want to
11 address those problems or that situation.

12 Q. Do you know, if between 2011 and 2015, FE
13 Corp. suspended or reduced dividends paid to
14 shareholders in that period?

15 A. I'm not 100-percent sure. I believe they
16 did. But I'm not 100-percent sure when that
17 happened.

18 Q. But that would be one way for
19 shareholders to share in the responsibilities of your
20 deficiency you noted in your calculation on the top
21 of page 4?

22 A. I answered a question earlier about
23 cutting expenses and that would be an expense that
24 could be cut.

25 Q. Okay. Now, is it possible that under

1 staff's proposal, the Ohio EDUs' customers could be
2 charged 131 million per year for three years, and at
3 the end of the three years the -- there are no other
4 contributions from other constituents, as you note in
5 Question and Answer 10, and the debt rating for FE
6 Corp. could still go down, correct?

7 MR. LANG: Objection, your Honor. I
8 believe this was asked in the morning.

9 EXAMINER PRICE: I agree. Sustained.

10 Q. (By Mr. Sauer) Let me ask you this, if
11 there's -- without formal commitment from other
12 constituents to contribute in this matter, you talk
13 in terms of the rider being subject to refund. Do
14 you recall that?

15 MR. LANG: Objection, your Honor, just
16 to -- I couldn't tell whether that was a compound
17 question or not. He started on one topic and went to
18 another. I wasn't sure if he was trying to tie those
19 together.

20 EXAMINER PRICE: Please rephrase,
21 Mr. Sauer.

22 MR. SAUER: All right. I'll do that.
23 I'll try.

24 Q. (By Mr. Sauer) At this time you have no
25 commitment from any of the other constituents that

1 you've listed in Question and Answer 10; is that
2 correct?

3 A. We have not had conversations with the
4 other constituents, no.

5 Q. So, at this point, if the staff's
6 proposal is approved, the \$131 million that staff
7 recommends over a three-year period, may be the only
8 contribution towards improving FE Corp.'s credit
9 rating, correct?

10 MR. LANG: Your Honor, I object again.
11 We had extensive discussion this morning and along
12 the lines of incentives. I believe this has been
13 asked and answered also.

14 EXAMINER PRICE: I certainly believe we
15 covered this topic, but I can't remember this
16 specific question being asked and answered. So we'll
17 allow it.

18 A. The incentive exists for the entire
19 FirstEnergy family to have the corporation remain
20 investment grade. We don't know where the support
21 will come from, but we know that the Ohio regulated
22 utilities will only offer so much support for that,
23 but that does not take away the incentive for the
24 other constituents to help FE remain investment
25 grade.

1 Q. Correct. But that could be the only
2 support that is received, correct?

3 A. Yes, but I don't think that's likely.

4 Q. And what do you base that on?

5 A. I base it on FirstEnergy wanting to
6 remain investment grade.

7 Q. And that was FirstEnergy Corp., correct?

8 A. Correct.

9 Q. And if, for some reason, at the end of
10 three years they don't remain investment grade, is it
11 your belief that Ohio consumers should be protected
12 in some way?

13 A. There are so many factors that go into
14 how a company is rated and what -- what happens. To
15 base it just on that one metric, I don't think would
16 be fair to any of the constituents, so there's just
17 too many factors that could happen. I don't think
18 anybody anticipated the Brexit vote. That has an
19 impact on -- on companies.

20 I can't see into the future of what may
21 happen, so I wouldn't -- I wouldn't want to tie
22 whether they received that money or not received that
23 money to maintain investment grade. That's the goal
24 and I think that's -- there is an incentive there for
25 that to happen.

1 Q. But my question was, if they receive that
2 money, do you believe that Ohio consumers that pay
3 that money should be somewhat protected?

4 A. I don't understand the word "protected"
5 in your --

6 Q. You used "subject to refund" in Question
7 and Answer 13. Is that one way they could be
8 protected?

9 A. If -- if you're asking me if the
10 FirstEnergy Corp. is downgraded, should that also be
11 a condition -- condition of the refund? Is that the
12 question?

13 Q. No. What I am asking you is if the
14 Commission approves staff's proposed rider, should
15 consumers who pay that rider, pay it subject to
16 refund?

17 EXAMINER PRICE: And I guess what refund
18 for what? What's the contingency that will trigger
19 the refund is what the witness is struggling with.
20 And I certainly am struggling with it.

21 MR. SAUER: Okay. Fair enough. Let me
22 try to redo that.

23 Q. (By Mr. Sauer) For example, if, at the
24 end of the three-year period, what was trying to be
25 protected was FE Corp.'s investment grade and that

1 doesn't happen, should customers be entitled to a
2 refund?

3 A. There's a lot of factors that go into a
4 credit rating, and like I said earlier, a lot of them
5 may be beyond the control of management. I cited the
6 Brexit vote. I don't -- I don't want to tie it to
7 just that. I think you're putting a company in a box
8 and the idea is to give more flexibility and then to
9 solve a situation that they are currently in, and I
10 don't want to put them in a box and say, listen, this
11 is what's going to happen and if you don't succeed on
12 this date, there's going to be ramifications.

13 We felt the other conditions were -- were
14 very important for the State of Ohio, keeping the
15 corporate headquarters here, but we want to give the
16 companies as much flexibility as possible to become
17 stronger financially in the long term.

18 Q. What if this case is taken up on appeal
19 and staff's rider is determined to be unlawful?
20 Should customers be protected from that in the way
21 the collections would be done subject to refunds?

22 MR. McNAMEE: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. McNAMEE: I believe that asks for a
25 legal conclusion.

1 EXAMINER PRICE: Mr. Sauer?

2 MR. SAUER: Well, he is using the
3 potential for "subject to refund." I am just trying
4 to explore where the limit of that might be.

5 MR. McNAMEE: But I believe the answer to
6 the question involves the application of KECO or
7 non-application of KECO and that's just not a topic
8 that this witness can address.

9 EXAMINER PRICE: Sustained.

10 Q. If you look at page 5 and 6, you have --
11 especially page 6, you've got bullet-pointed items
12 that were included in your testimony as a result of
13 staff -- the companies' response to Staff Data
14 Request 35, correct?

15 A. Correct.

16 Q. And did you in any way quantify the costs
17 associated with, for example, bullet point 1, the
18 "constrained, limited, speculative access to capital
19 markets"?

20 A. In Staff Data Request 35, we asked the
21 company to quantify those. They were not able to and
22 we were not able to either.

23 Q. Okay. If you go down to bullet point 4,
24 "Collateral provisions would require additional cash
25 calls for the Utilities...." I know there was some

1 discussion of OMAEG 30. There's a page in there. Do
2 you have access to that, sir? I think it's page 18
3 of OMAEG 30.

4 A. I do.

5 Q. I'm sorry, OMAEG 33. Is that the
6 appropriate document? To your understanding of that
7 document, page 18 of that document, is that an
8 attempt, as you understand it, of FirstEnergy
9 quantifying what the collateral provisions may
10 require if there were additional cash calls to
11 utilities and FE Corp. if there is an investment
12 downgrade?

13 MR. LANG: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. LANG: To the extent that he is being
16 asked for his understanding of what's written on that
17 page, he has provided that to Ms. Petrucci, and he
18 has already demonstrated in the exchange with
19 Ms. Petrucci that his understanding of this page is
20 simply what he can read on the page.

21 It was not established he had any
22 independent understanding or that he has relied on it
23 for purposes of his testimony. And so simply going
24 back through it at this point would be cumulative and
25 redundant and, as was earlier noted, would be without

1 foundation.

2 EXAMINER PRICE: Mr. Buckley, has your
3 understanding of this page improved any in the last
4 three hours?

5 THE WITNESS: No, it has not.

6 EXAMINER PRICE: Objection sustained.

7 Q. (By Mr. Sauer) Mr. Buckley, have you
8 looked at, for FE, what the collateral provisions
9 might require if there was an investment downgrade
10 for FE and its Ohio subsidiaries with regard to
11 additional cash calls?

12 A. We did not attempt to quantify that.

13 Q. In your testimony earlier, did you say
14 you had looked at that before? Is that something you
15 looked at?

16 A. We have tried to -- we tried to establish
17 and we talked about it and tried to establish a
18 method, but we didn't feel comfortable with any of
19 the methods that we were coming up with.

20 Q. Did your methods that you looked at
21 demonstrate that the cash call provision --
22 provisions would -- or collateral provisions and cash
23 calls would be significantly more onerous for the
24 unregulated entities versus the regulated FirstEnergy
25 Corp. entities?

1 A. I struggle with the word "significant."
2 And I don't fully understand the question.

3 Q. Are the -- in the event there would be an
4 investment rating downgrade, what -- what would bring
5 about the reason for cash calls?

6 A. I think they are written in the bond
7 indentures, I believe.

8 Q. And is it written in a way that if there
9 is an investment downgrade there would actually have
10 to be a cash outlay by FirstEnergy Corp.?

11 A. I did not go back and pull all those --
12 those -- those provisions and I did not read them at
13 length.

14 EXAMINER PRICE: Can you answer the
15 question just generally? Is it generally the case
16 for a company that if they get downgraded, they may
17 have to produce additional cash as part of their
18 collateral?

19 THE WITNESS: That -- that could be
20 written in indentures, yes.

21 EXAMINER PRICE: Thank you.

22 Q. And is that what you were trying to do in
23 your analysis as well, identify what the cash outlays
24 or the cash collateral requirements might be of FE
25 Corp. and the Ohio utilities if there was an

1 investment downgrade?

2 A. We looked at a lot of different methods.
3 Some of them were very crude. Some of them were a
4 little bit more technical than others. We did not
5 get to the point where we pulled specific investment
6 instruments to look at whether they were written in
7 there or not. So to -- we didn't feel comfortable
8 with the methods we used to quantify that, so we
9 didn't include that. And I didn't want to include it
10 in my testimony because I was never comfortable with
11 a number.

12 Q. And the companies didn't provide you any
13 numbers.

14 A. When we asked for it, they did not
15 provide that, no.

16 Q. And the staff's proposal has nothing to
17 do directly with the continued operation of
18 Davis-Besse or Sammis or any other generating unit in
19 FE's generating fleet; is that correct?

20 A. That's correct.

21 Q. And your proposal has nothing to do with
22 promoting electric reliability or fuel diversity
23 within the PJM market, correct?

24 A. I don't know. I don't know.

25 Q. And the staff's proposal isn't intended

1 in any way to spare consumers any costs of
2 transmission investment should any generating unit
3 within FE's generating fleet retire?

4 MR. McNAMEE: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. McNAMEE: Your Honor, the world is
7 full of things that the staff's proposal in this case
8 is not related to. The purpose of this hearing, I
9 think, is to explore staff's alternative proposal,
10 not what it is not. So I would object based on
11 relevance.

12 EXAMINER PRICE: Overruled.

13 A. No.

14 Q. And staff's proposal is not based upon
15 enhancing economic development or preserving local
16 property taxes in FirstEnergy's service territory,
17 correct?

18 A. I'm not sure that's correct. One of the
19 conditions is that the corporate headquarters remain
20 in Ohio, and I think that would lend to both income
21 tax for the State of Ohio and property taxes for the
22 State of Ohio.

23 Q. Any other way that you are aware of that
24 it relates to economic development or enhancing local
25 property taxes?

1 A. I mean, if you look at the number of
2 employees that FirstEnergy employs, and the
3 multiplier effect on what they spend money on, it --
4 it has an impact on -- on the State of Ohio.

5 Q. Would you agree that staff's proposal is
6 intended to ensure financial integrity, primarily for
7 FE Corp., and secondarily for FirstEnergy
8 distribution utilities?

9 MR. LANG: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. LANG: To the extent that the purpose
12 is to use "financial integrity" as a technical
13 meaning, it hasn't been defined for the witness.

14 EXAMINER PRICE: Can you restate the
15 question, Mr. Sauer?

16 MR. SAUER: I'll try.

17 Q. (By Mr. Sauer) Would you agree your
18 proposal is intended to improve creditworthiness for
19 FirstEnergy Corp. primarily, and secondarily for
20 FirstEnergy distribution, Ohio distribution
21 utilities?

22 A. As I've stated earlier, the S&P model, if
23 the Corp. is downgraded, the subsidiaries are also
24 downgraded, so I wouldn't put one over the other.

25 Q. Does Moody's do the same?

1 A. They do not.

2 Q. Mr. Buckley, does the staff recommend, as
3 part of its proposal, there be an audit or some other
4 independent verification of utilization of the funds
5 collected through the proposed rider?

6 MR. McNAMEE: Object.

7 EXAMINER PRICE: Grounds?

8 MR. McNAMEE: As we've gone through
9 before, the -- this witness is here to speak to the
10 number of the recommendation. In terms of its
11 implementation, those matters are beyond the scope of
12 this witness's testimony.

13 EXAMINER PRICE: Sustained.

14 Q. (By Mr. Sauer) Mr. Buckley, would you
15 agree that FirstEnergy Corp.'s financial integrity is
16 related to its overall credit ratings?

17 MR. LANG: Objection, again, your Honor.

18 EXAMINER PRICE: Can I have the question
19 back?

20 (Record read.)

21 MR. LANG: I don't know what it means,
22 your Honor.

23 EXAMINER PRICE: Please rephrase. I am
24 not sure what it means either, Mr. Sauer.

25 Q. (By Mr. Sauer) Mr. Buckley, do you have

1 an understanding in your mind what "financial
2 integrity" means?

3 A. I don't know the statutory definition of
4 it. I would not necessarily use the term "financial
5 integrity" and tie it directly to a credit rating. I
6 think a credit rating is what it is. You are either
7 investment grade or you're not investment grade. And
8 there's different levels of investment grade -- not
9 being investment grade. So I wouldn't say that it's
10 the financial integrity is -- is tied to the bond
11 rating necessarily and vice versa either.

12 Q. Yeah. What would it be tied to if not
13 investment grade?

14 A. What would -- what's "it"?

15 Q. Financial integrity in your mind. In
16 your opinion, what would financial integrity be tied
17 to if it's not tied to the investment grade?

18 MR. LANG: Objection.

19 MR. McNAMEE: Objection.

20 MR. LANG: Objection on relevance. It's
21 not tied to his testimony.

22 MR. McNAMEE: And I have a different
23 objection, I guess. It's not at all clear from the
24 question whether we are dealing with "financial
25 integrity" as that term is used in, I forget which

1 statute, or Mr. Buckley's independent view of
2 "financial integrity," which does not seem to be tied
3 to that statute at all.

4 EXAMINER PRICE: I am going to sustain
5 the objection on both grounds. Thank you.

6 Q. (By Mr. Sauer) Based on your analysis,
7 what do you view as the greatest financial risk to FE
8 Corp.'s financial -- ability to maintain its
9 investment grade?

10 A. I don't know whether I would rank them as
11 one more likely or more severe. What is the greatest
12 risk? You've never looked at it that way. I
13 don't -- I've never said -- thought of what's most
14 likely to happen.

15 Q. If you don't rank them, what are some of
16 the -- what would you consider to be the areas of --
17 greatest areas of concern?

18 A. Again, I don't want to state -- start
19 stating them because I think that could be implied
20 that I'm ranking them that way. There are areas of
21 concern, both macro and micro, that the companies
22 face every day. I've never really thought about
23 what's most likely to happen. There are a lot of
24 factors that are happening in the world right now
25 that could affect their financial integrity that

1 could happen without management or their employees or
2 any of the constituents having much control over it.

3 Q. Are there some that you view management
4 does have control over that you view as critical to
5 their ability to maintain their credit ratings?

6 A. Again, I don't want to put them in a box
7 and say that they should do one thing or address one
8 situation over another situation. They have control
9 over a lot of things that happen to the company.
10 They have a lot of options. Hopefully some of those
11 options will be beneficial.

12 Q. You had talked earlier, I think with
13 Ms. Petrucci, that Moody's might lower, I think you
14 called it "hurdle" the 14 percent to some lower
15 level. Do you have any indication from Moody's that
16 they've -- will be doing that or would be willing to
17 do that?

18 A. I have read it someplace, and the only
19 thing I hesitate, I don't know whether I read it in
20 S&P's or Moody's. But one of them has spoken to the
21 fact that their hurdles could be lowered if the
22 company becomes a more regulated entity.

23 Q. And as you've discussed today, becoming a
24 regulated -- more regulated -- did you say more
25 regulated "utility" or "entity"?

1 A. "Entity."

2 Q. -- entity is viewed by staff's proposal
3 being approved and the company putting investment
4 into modernizing their distribution system, correct?

5 A. Correct.

6 Q. And in modernizing their distribution
7 system, staff's proposal gives them access to the
8 capital market and they can access more debt; is that
9 correct?

10 A. It allows them more flexibility and
11 better terms in accessing capital.

12 Q. Capital being debt or equity then; is
13 that what you're saying?

14 A. Correct.

15 Q. Not necessarily debt.

16 A. Not necessarily debt.

17 MR. SAUER: Your Honor, may I have a
18 couple of minutes?

19 EXAMINER PRICE: You may. Let's go off
20 the record.

21 (Discussion off the record.)

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

23 Mr. Sauer.

24 MR. SAUER: Thank you, your Honor.

25 Q. (By Mr. Sauer) Just a couple of

1 questions, Mr. Buckley. First, are you generally
2 aware that the company has a SmartGrid program in
3 place. They have a pilot program, correct?

4 A. I don't really follow their support grid
5 program at all. I don't really know anything about
6 it.

7 Q. And did you understand that coming out of
8 this case, they are going to expand their SmartGrid
9 program and they have a rider mechanism in place to
10 collect SmartGrid investment?

11 A. Again, I don't look at SmartGrid. I have
12 never had discussions about it; I have never attended
13 a meeting about SmartGrid. I don't know really
14 anything about the SmartGrid activities of any of the
15 companies in our state.

16 Q. And the staff's proposed rider for
17 distribution modernization is intended for a similar
18 purpose, correct?

19 MR. McNAMEE: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. McNAMEE: This witness is only,
22 again, speaking to the numbers, not to any aspect of
23 implementation of the rider.

24 EXAMINER PRICE: Sustained.

25 MR. SAUER: I have no further questions,

1 your Honor.

2 EXAMINER PRICE: Thank you.

3 Ms. Bojko.

4 MS. BOJKO: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Bojko:

8 Q. Good afternoon, Mr. Buckley.

9 A. Hello.

10 Q. I have some follow-up and clarification
11 questions. I thought you stated earlier that you do
12 regularly participate in earnings calls for the Ohio
13 utilities; is that correct?

14 A. Par --

15 Q. Sorry, can I -- or read transcripts with
16 regard to the --

17 A. As far as participating, we listen in on.
18 We don't actually ask questions.

19 Q. Thank you for that clarification. So you
20 either listen in on earnings calls or you read the
21 transcripts from earnings calls; is that fair?

22 A. Correct.

23 Q. And so did you -- did you listen in on or
24 read the transcript for the April 27, 2016, earnings
25 call regarding the FirstEnergy Ohio utilities?

1 MR. LANG: Objection, your Honor. Asked
2 and answered.

3 EXAMINER PRICE: I asked this question
4 earlier.

5 MS. BOJKO: Did he say "yes"?

6 EXAMINER PRICE: I think he said he
7 wasn't sure. He said no specific recollection of it;
8 is that correct?

9 THE WITNESS: Yes.

10 Q. Throughout today you've used the term
11 "they become more regulated." Is the "they" you are
12 referring to the Ohio utilities or the FirstEnergy
13 Corp.?

14 A. The FirstEnergy Corp.

15 Q. Okay. And has FirstEnergy Corp. sold
16 their competitive business or their generating assets
17 to your knowledge?

18 A. I don't have any knowledge of that.

19 Q. Do you have any knowledge of an
20 announcement of the sale of unregulated generating
21 assets?

22 A. I don't have a recollection -- I don't
23 have a recollection of anything recently.

24 Q. Okay. So you don't recall or were not
25 made aware of whether or not they made such an

1 announcement in the most recent earnings call for the
2 FirstEnergy Corp.; is that correct?

3 A. I don't remember one, no.

4 Q. So when you say "they become more
5 regulated," you're merely referring to the cash
6 infusion from Ohio ratepayers into the electric
7 distribution companies through the staff's proposed
8 rider, correct?

9 A. What I am referring to is the investment
10 in regulated plant at the Ohio regulated operating
11 companies.

12 Q. Okay. You're not making any suggestions
13 with regard to the entire FirstEnergy Corp. and
14 whether they become more regulated as a whole,
15 FirstEnergy Corp., meaning they sell off their
16 competitive business, correct?

17 A. I am not making any recommendations on
18 whether they sell or retain any of their businesses
19 or assets.

20 Q. Or when you use the "as they become more
21 regulated," you are not trying to imply that they are
22 going to, in fact, sell off their unregulated
23 competitive business or assets.

24 A. That is not something we contemplated at
25 all.

1 Q. Okay. And earlier today you were talking
2 about FirstEnergy Corp.'s employees and the
3 management of the company. You do understand that
4 FirstEnergy employees and/or FirstEnergy management
5 make business decisions related to operations with
6 regard to FirstEnergy Corp.'s regulated businesses,
7 correct?

8 A. Correct.

9 Q. And you -- and it would also be your
10 understanding that FirstEnergy Corp.'s employees or
11 their management make business decisions with regard
12 to the operations of the unregulated subsidiaries,
13 correct?

14 A. Some employees do, yes, correct.

15 Q. And there's been some talk today about
16 the AMI rider which I understand you say you are not
17 familiar with. Is it your understanding that the
18 staff's proposal is in addition to the delivery
19 capital rider that's currently in place for the
20 FirstEnergy operating companies?

21 MR. LANG: Your Honor, I would just
22 object, just so the record is clear, I don't believe
23 there was reference to the AMI rider earlier in this
24 proceeding, and so I would say it's mischaracterizing
25 his testimony to say -- he has not said earlier today

1 that he is unfamiliar with the AMI rider.

2 EXAMINER PRICE: Are you familiar with
3 the AMI rider?

4 THE WITNESS: No.

5 MR. LANG: I believe she can rephrase the
6 question to ask.

7 MS. BOJKO: Sure. I would be happy to.
8 When the witness was talking about a rider in the
9 SmartGrid modernization case, I assumed he was
10 talking about the AMI rider, but I'll rephrase.

11 EXAMINER PRICE: I don't think you need
12 the preface. Just ask him if the -- if it's in
13 addition to the DCR.

14 Q. (By Ms. Bojko) Okay. Do you know, sir,
15 is this in addition to the DCR rider, the staff's
16 proposed rider?

17 A. It's in addition to any of the current
18 riders.

19 Q. And could you turn to page 3 of your
20 testimony, please. Just for clarity purposes, page 3
21 of your testimony, with regard to the operating
22 revenues, those are in millions, is that correct,
23 those dollars are reflected in millions?

24 A. Correct.

25 Q. And it's your understanding that

1 FirstEnergy Corp. has 12 regulated subsidiaries?

2 A. Subject to check, yes.

3 Q. And would it -- would you -- are you
4 aware that 10 of those regulated subsidiaries are
5 state utilities that either do a distribution or
6 distribution transmission function?

7 A. Subject to check, again, yes.

8 Q. And the revenue listed in the first line,
9 FirstEnergy -- I am assuming that "FE," as we've
10 discussed today, is FirstEnergy Corp. So FirstEnergy
11 Corp. energy operating revenue, do you see that line?

12 A. I do.

13 Q. This includes revenues from all of
14 FirstEnergy Corp.'s subsidiaries; is that correct?

15 A. Correct.

16 Q. So that would include regulated and
17 unregulated subsidiaries, correct?

18 A. Correct.

19 Q. And under your methodology set forth in
20 this chart as to how you arrived at the 22 percent
21 allocation figure, if an unregulated affiliate was
22 doing poorly and had low operating revenues, that
23 affiliate's credit support assignment under your
24 methodology would be less; is that correct?

25 A. We're not assigning it to different

1 entities. The only thing -- the only group that
2 we're assigning it to is the Ohio regulated
3 customers. In a way that that percentage would
4 affect the other affiliates, that percentage would
5 change. It could be greater, but we're not trying to
6 establish a percentage that other entities will
7 contribute.

8 Q. Okay. Under your methodology -- let's
9 stay with the Ohio utilities then. Under your
10 methodology, if the Ohio utilities had low or lower
11 operating revenues than what's reflected here, their
12 credit support assignment under your methodology
13 would be lower; is that correct?

14 A. It would be less, yes.

15 Q. Turn to page 5 of your testimony, please.
16 I believe that you stated, and I do apologize, I was
17 out of the room, I believe you stated that your first
18 criteria or condition of this rider would provide
19 economic development for FirstEnergy utilities; is
20 that correct?

21 THE WITNESS: Could I please have the
22 question reread?

23 EXAMINER PRICE: Please.

24 (Record read.)

25 Q. Sorry. I need to strike that. I'm

1 sorry. I was referring to the wrong part of your
2 testimony. I apologize.

3 It's on page 7 of your testimony. One of
4 the conditions for the rider on page 7, which is the
5 retention of the headquarters in Akron, you stated
6 that that provides economic development for Ohio; is
7 that correct?

8 A. "Development" is a word that I'm
9 struggling with, but it provides jobs. With a
10 multiplier effect of, you know, money being spent, it
11 really helps invigorate the Akron area and the State
12 of Ohio in general.

13 Q. So you're discussing the economic
14 development effects of the actual corporate
15 headquarters located in Akron with that response; is
16 that correct?

17 A. The headquarters and the employees.

18 Q. Did you do an analysis regarding the
19 effects?

20 A. We did not attempt to quantify the effect
21 of having the corporate headquarters in Akron, no.

22 Q. And did you also -- did you do any
23 analysis of whether an increase in customers' bills
24 to pay for the proposed rider, what effects that
25 would have on customers' businesses and their

1 economic development decisions?

2 A. We really struggled with -- with
3 balancing the burden of cus -- placed on customers
4 and the benefits of FirstEnergy remaining in Akron.
5 We're definitely aware of small business owners,
6 households, large business owners, and the effect of
7 electricity on -- on their ability to provide for
8 their families. So we are trying to really balance
9 what the customers should bear and what the
10 customers -- or the companies should bear.

11 Q. So the answer to the question is no, you
12 did not do any economic development analysis
13 regarding the effect of the increase on electric
14 bills on customers' businesses and their business
15 decisions to reinvest in the State of Ohio?

16 A. We did not do any detailed analysis or
17 attempt to quantify that.

18 Q. But in response to my prior question, you
19 would agree with me there is an effect on businesses,
20 particularly those that consume large quantities of
21 electricity, on any increases to their electric costs
22 and the price that they put into their products, as
23 well as the competitiveness of their businesses with
24 competing businesses outside the State of Ohio?

25 MR. LANG: Objection.

1 EXAMINER PRICE: Grounds?

2 MR. LANG: Beyond the scope of his
3 testimony.

4 EXAMINER PRICE: Sustained. Mr. Sauer
5 raised the question of economic development. All
6 Mr. Buckley did was indicate yes, he thought there
7 was some economic development benefits, to
8 Mr. Sauer's cross-examination. It is not part of his
9 testimony at all. Sustained.

10 Q. (By Ms. Bojko) Okay. With the Bench's
11 instruction then, is it fair to assume you are not
12 offering an opinion with regard to the economic
13 development benefits or effects on your proposal to
14 the State of Ohio?

15 EXAMINER PRICE: That's not what my
16 ruling was. I simply said it is outside the scope of
17 his direct testimony. He answered a question from
18 Mr. Sauer and now you are expanding upon it, asking
19 if he did an analysis. All he did was answer a
20 question honestly from Mr. Sauer.

21 MS. BOJKO: So can I ask him, he is not
22 offering an analysis through his testimony on what
23 the economic development effects are to Condition
24 No. 1, with regard to the effect on customers of
25 increasing electric prices in the State of Ohio from

1 the staff's proposal.

2 EXAMINER PRICE: I don't believe he has
3 done an analysis. He hasn't said he has done an
4 analysis.

5 Did you do an analysis?

6 THE WITNESS: We didn't do a specific
7 analysis on the increases in any expenses on those
8 customers.

9 Q. (By Ms. Bojko) And you're not testifying
10 with regard to that issue then, correct?

11 A. Correct.

12 MR. LANG: Your Honor, asked and
13 answered. Perhaps we can move on. His testimony is
14 his testimony. He can be asked for, you know, four
15 more hours this afternoon on things he hasn't
16 testified about. Maybe we can -- we can limit it to
17 his -- to his actual testimony.

18 MS. BOJKO: Your Honor, with all due
19 respect, I mean that was my last question, but we
20 have a right to explore his testimony. Staff is a
21 little trickier, as you know, because we don't have
22 the opportunity to depose staff or assert discovery
23 on them. So I think it's very much within his
24 testimony to ask what he is providing recommendations
25 on to the Commission and what he is not, particularly

1 when he speaks to an issue.

2 EXAMINER PRICE: I understand that, but I
3 am simply saying Mr. Sauer's opening -- is not
4 opening the door for your further questions about an
5 issue that was not in his direct. Mr. Sauer simply
6 asked whether there are an economic development
7 benefits; he said yes, there are benefits to keeping
8 the headquarters in Akron; they will be very
9 important. He never discussed it before Mr. Sauer
10 breached the idea of economic development. You're
11 just bootstrapping onto Mr. Sauer's cross to enter
12 into a new topic. That's all that's going on here.

13 Q. (By Ms. Bojko) Okay. Maybe I am a little
14 bit confused on what your testimony is. Is one of
15 your conditions cited on page 5 that you believe
16 there is long-term financial health and benefits with
17 regard to the distribution utilities remaining in the
18 State of Ohio?

19 A. I think that's on page 7.

20 Q. Well, there's also -- okay. On page 7
21 then. There is some on 5, too, but okay. Speaking
22 of page 7, that's your testimony?

23 MR. McNAMEE: Objection. He's already
24 said this.

25 EXAMINER PRICE: Sustained.

1 Q. (By Ms. Bojko) Okay. Also on page 7 you
2 talk about a second condition, and it's my
3 understanding from your testimony today that the
4 phrase "or its subsidiaries" means Ohio operating
5 companies. So in this second condition you are not
6 referring to any other subsidiary of FirstEnergy
7 Corp. except the Ohio operating companies; is that
8 correct?

9 A. Correct.

10 Q. And it's your understanding, even with
11 this condition, that if FirstEnergy Corp. decided to
12 sell its competitive business, the rider would still
13 continue.

14 A. Correct.

15 MS. PETRUCCI: Can I have that last
16 question reread, please.

17 EXAMINER PRICE: Question and answer or
18 just the question?

19 MS. PETRUCCI: I know what the answer
20 was.

21 EXAMINER PRICE: Okay. Yes, please.

22 (Record read.)

23 MS. PETRUCCI: Thank you.

24 Q. (By Ms. Bojko) Can we go to page 5 of
25 your testimony, please?

1 A. Yes.

2 Q. On the last paragraph on page 5, you
3 discussed a little bit today about the responsibility
4 of -- oh, you didn't -- I'll rephrase. That staff
5 believes that customers of the Ohio utilities should
6 not be the only constituents providing credit support
7 to the entire FirstEnergy Corp. Do you see that?

8 A. I do.

9 Q. And this includes the unregulated
10 entities as well; is that correct?

11 A. It could.

12 Q. And it's your understanding that the
13 unregulated entities would not have captive customers
14 that would be forced to pay some kind of credit
15 support; is that correct?

16 MR. LANG: Objection, your Honor,
17 argumentative.

18 EXAMINER PRICE: Overruled.

19 A. The fact that they are not regulated
20 would mean that they don't have captive customers.

21 Q. And on the bottom of page 6 you talk
22 about a bridge for FirstEnergy. Do you see that?

23 A. I do.

24 Q. FirstEnergy Corp., excuse me. And the
25 bridge that you are referring to for FirstEnergy

1 Corp. is a point in time or a period of time; is that
2 fair?

3 A. Yes.

4 Q. And what is this period of time -- is the
5 period of time related to becoming more regulated as
6 you referenced previously?

7 A. The point in time is supposed to be --
8 give the company -- and when I say "company,"
9 FirstEnergy Corp., the ability to address their
10 credit situation. How they do that is -- is going to
11 be ultimately up to their management.

12 One of the benefits of investing in the
13 regulated companies is that they become more
14 regulated and more assets are regulated. That will
15 not fix the problem solely, I don't believe. So the
16 rest of that is going to be up to FirstEnergy Corp.
17 to -- to undertake.

18 Q. And would selling a failing subsidiary be
19 a solution that you reference as a long-term
20 solution?

21 A. That would all depend on the terms and
22 conditions of the sale. I don't know -- you can't
23 just sell something for a loss and expect to improve
24 your financial situation.

25 Q. And "long term," do you have a time

1 period for the term "long term"?

2 A. I would say 5 to 10 years would be --
3 would be more of a long -- a longer-term look.

4 Q. But you're not suggesting that the credit
5 support viewed as a bridge for FirstEnergy Corp.
6 would last 5 to 10 years, are you?

7 A. No. I think my testimony -- I think my
8 testimony talks about three years.

9 Q. Earlier today you used the words "money"
10 -- "the monies or cash are fungible." Do you recall
11 that?

12 A. I recall using the word "fungible," yes.

13 Q. So are you recognizing that if cash is
14 provided by the utilities, meaning the Ohio operating
15 utilities' ratepayers to the companies, the money
16 could flow to the parent or be used to support or
17 prop up FirstEnergy Corp. and its subsidiaries?

18 MR. LANG: Objection, your Honor.

19 MR. McNAMEE: Objection.

20 MR. LANG: Asked and answered.

21 MR. McNAMEE: Ditto.

22 MR. LANG: Covered this ground with a
23 couple of previous questions.

24 EXAMINER PRICE: Sustained.

25 Q. It's not part of staff's proposal to

1 require the \$131 million annually to be spent within
2 the companies, the Ohio companies; is that correct?

3 A. Again, the money is not going to be
4 marked to say that it's going to be spent in one
5 place or another. We're hoping that a portion of it
6 will be spent on or a great majority of it will be
7 spent on modernizing the grid. But we don't know
8 exactly which dollars are going to go where at what
9 time.

10 Q. You had some discussions earlier today
11 about collateral. Do you recall those?

12 A. I recall using the term "collateral,"
13 yes.

14 Q. And you were shown a document that was
15 dated March 31, 2016, and that's OMAEG Exhibit 33.
16 And then you were also shown a document dated
17 February 16, 2016, and that was -- I believe that was
18 the fact -- the FirstEnergy FactBook. And you made a
19 comment that you've seen a lot of numbers. And I'm
20 wondering if you've seen a lot of numbers, in your
21 opinion, due to a point in time that you may have
22 seen? Would a collateral number change due to a
23 point in time?

24 A. It could.

25 Q. And so if you could turn to Attachment 2

1 of your testimony, and it's page 4.

2 A. Yes.

3 Q. And at the last paragraph of this page it
4 says "As of September 30, 2015, FirstEnergy's
5 combined exposure under the collateral provisions
6 under a 'material adverse event' was \$387 million."
7 Do you see that?

8 A. I do see that.

9 Q. And then the next statement is
10 "Specifically, up to \$252 million may be triggered
11 from one credit rating agency's downgrade of
12 FirstEnergy Solutions and AE Supply...."

13 A. That's what it says, correct.

14 Q. So those numbers are even different than
15 numbers that were shown -- showing to you about
16 collateral requirements in 2016, correct?

17 MR. LANG: Just object to the question,
18 your Honor, with regard to the lack of clarity as to
19 other questions -- other numbers he's seen in 2016.

20 EXAMINER PRICE: Which numbers were you
21 referring to?

22 MS. BOJKO: Sure. He was shown numbers
23 of collateral requirements from FES and AE Supply of
24 \$341 million. He was shown numbers -- that was in
25 the earnings call, financial presentation. And then

1 he was shown numbers in the FirstEnergy FactBook.
2 And he made a comment, after being shown some of
3 those numbers, that he's seen a lot of different
4 numbers, and I was asking if those are the different
5 numbers he was referring to.

6 A. Those would be part of a bigger set.

7 Q. Thank you.

8 But most recently, since it was attached
9 to your testimony, you would have referred to and
10 relied on, for purposes of your testimony,
11 Attachment 2, page 4; is that fair?

12 A. We definitely looked at this attachment,
13 yes.

14 Q. And is it your understanding that
15 FirstEnergy Corp. provides parental guarantees on
16 behalf of its subsidiaries?

17 A. I don't know to the extent that they
18 provide parental support. I think there's definitely
19 an advantage to being part of a -- a corporation, but
20 I don't know to the extent that they provide
21 financial support to each subsidiary or not.

22 Q. And, sir, it's your understanding that
23 Moody's separately rates a utility's debt instrument;
24 is that correct?

25 A. They look at companies' more -- as more

1 stand-alone than S&P, but not entirely, you know.
2 They are part of a family, so that is a part of the
3 rating structure, but S&P definitely looks at it with
4 more -- as more of an umbrella than Moody's does.

5 Q. I am just talking about Moody's right now
6 and Moody's separately rates each debt instrument; is
7 that true?

8 A. Each corporation or subsidiary, yes.

9 Q. Okay. But they also look at specific
10 debt instruments and rate those too, correct?

11 A. Correct.

12 Q. Okay. And under Moody's, where the
13 individual utilities are separately rated, which you
14 just explained to me, if Moody's downgrades one of
15 the subsidiaries, isn't it true this doesn't
16 necessarily downgrade the parent company?

17 MR. LANG: Objection, your Honor. Asked
18 and answered.

19 MS. BOJKO: Your Honor, this question has
20 not been asked.

21 MR. LANG: I think this has been
22 discussed a couple of times.

23 MS. BOJKO: No. The reverse has been
24 asked. It has not been asked of whether the
25 subsidiary downgrade affects the parent. The reverse

1 has been asked.

2 EXAMINER PRICE: We are spending more
3 time arguing about it than it will take him to
4 answer, so I will allow it.

5 THE WITNESS: Can I please have the
6 question read back?

7 EXAMINER PRICE: You may.

8 (Record read.)

9 A. Not necessarily, no.

10 Q. And to your knowledge the companies, the
11 Ohio utility companies, currently have a stable
12 outlook for Moody's; is that correct?

13 A. They do.

14 Q. And they did before April 28, 2016,
15 correct?

16 A. They did.

17 Q. And when Moody's revised the outlook on
18 FirstEnergy Solutions and FirstEnergy Corp., they
19 took a calculated move to not downgrade the Ohio
20 utilities, correct?

21 MR. LANG: Objection, your Honor. She's
22 asking him to speculate as to Moody's purpose and
23 design and its rating system in terms of, you know,
24 how they were calculating things, which I don't
25 believe this witness can respond to other than in the

1 morning he said that's the -- kind of special
2 information that Moody's has available to it, and
3 that he does not.

4 MS. BOJKO: Your Honor, may I respond?

5 EXAMINER PRICE: You may.

6 MS. BOJKO: I am using the witness's
7 words. I have in quotes, "they took a calculated
8 move." I am asking him if they took a calculated
9 move to not downgrade the Ohio utilities. Those are
10 his words, not mine.

11 EXAMINER PRICE: I understand you were
12 either paraphrasing him or quoting him. I remember
13 him using the words. Overruled.

14 A. I don't know how calculated the move was,
15 but they chose not to downgrade or put on watch the
16 other subsidiaries.

17 Q. Ohio subsidiaries.

18 A. Ohio -- I'm sorry, Ohio regulated
19 subsidiaries.

20 Q. Thank you for that clarification.

21 So I now -- you were asked a whole bunch
22 of questions about long-term solutions. I don't want
23 to talk about that.

24 I want to talk about after April 28, when
25 Moody's revised the outlook on FirstEnergy Corp. from

1 stable to negative. After that point in time, to
2 your knowledge has FirstEnergy Corp. reduced its
3 capital spending?

4 A. I don't know.

5 Q. After April 28, 2016, to your knowledge
6 has FirstEnergy Corp. reduced its operating expenses?

7 A. I don't know.

8 Q. After April 28, 2016, has FirstEnergy
9 Corp. reduced its advertising expenses?

10 A. I don't know.

11 EXAMINER PRICE: Can I ask a question for
12 clarification?

13 MS. BOJKO: Sure.

14 EXAMINER PRICE: When you say -- when you
15 are using "FirstEnergy Corp. reducing advertising
16 expenses," are you saying whether the corporate --
17 the holding company -- just the holding company or
18 are you saying if you accumulated all of the
19 advertising expenses for all the subsidiaries,
20 whether that cumulative figure went down?

21 MS. BOJKO: Well, your Honor, as you are
22 well aware that FirstEnergy's corporate structure
23 is -- after the FirstEnergy Corp. there is a thing
24 call "FirstEnergy Services Company." So it's not
25 necessarily designated to each of the operating

1 companies which I think is what your question just
2 was to me.

3 EXAMINER PRICE: I am just asking whether
4 you are asking specifically just about the corporate
5 headquarters -- or just the corporate entity or if
6 you are asking about the cumulative advertising
7 spending of all of -- of all of it, the company and
8 all of its subsidiaries.

9 MS. BOJKO: It could be both. It could
10 be the FirstEnergy Corp. specifically, it could be
11 FirstEnergy Services Company, or it could be the
12 operating companies.

13 EXAMINER PRICE: Okay.

14 MR. LANG: And which is it, your Honor?

15 EXAMINER PRICE: I guess he can answer to
16 whichever question he wants.

17 MR. LANG: So that the witness knows.

18 MS. BOJKO: I mean, we could go through
19 each one, your Honor, if you would like.

20 EXAMINER PRICE: I was just asking what
21 you were asking.

22 MS. BOJKO: The problem with the question
23 is FirstEnergy Corp. puts a lot of its business
24 operations into the FirstEnergy Services Company, so
25 that's -- that's the issue. They report on a

1 consolidated basis, so the answer should be the same.

2 EXAMINER PRICE: And the witness appears
3 to understand the question. If he understands it,
4 it's good enough for me. Please proceed. There is
5 no question pending.

6 Q. I'm sorry. To your -- to your -- to your
7 knowledge has FirstEnergy Corp. implemented a hiring
8 freeze?

9 A. I think the easiest way to answer all of
10 these questions that you've posed so far, and what I
11 am anticipating you posing is there has not been any
12 financial statements released since that date, so we
13 don't know any financial moves that they have taken.
14 And there's been no announcements of employee or
15 management changes that I've seen. And I don't
16 anticipate seeing those until there's a pronouncement
17 at the SEC, or SEC financial statements have been
18 filed.

19 Q. And to your knowledge there hasn't been
20 any announcements of any hiring freezes or salary
21 freezes with regard to FirstEnergy Service Company's
22 employees, correct?

23 A. Not that I've seen.

24 Q. And to your knowledge, after April 28,
25 2016, has FirstEnergy Corp. issued equity?

1 A. They have not -- they have not made any
2 large issuances. I am not sure how their drip
3 program works and when those -- that program
4 basically releases equity. But there haven't been
5 any announcements of major equity issuances.

6 Q. And also, throughout your testimony today
7 you've used the word "incentive" for them to make
8 improvements and are you -- when referring to "them,"
9 are you referring to FirstEnergy Corp.?

10 A. Yes.

11 Q. It's your understanding that there is no
12 rider RRS collection in place today, correct?

13 A. I am not familiar with rider RRS at all.

14 Q. Okay. And you're similarly not familiar
15 with the companies' PPA proposal?

16 A. I am not.

17 Q. You were asked if during 2011 to 2015
18 FirstEnergy Corp. was investment grade. Are they
19 investment grade today in 2016?

20 A. Yes.

21 Q. And the Ohio utilities today are also
22 investment grade, correct?

23 A. I'm having difficulty hearing you.

24 Q. Oh, I'm sorry.

25 A. There's other talk going on that I can't

1 really hear over.

2 Q. I'm sorry. Would you like me to repeat
3 my question?

4 A. Please.

5 Q. Oh, I asked if the Ohio utilities today
6 are investment grade.

7 A. Yes.

8 Q. On Attachment 1 of your testimony, if you
9 could turn there, please. Are you there, sir?

10 A. I am.

11 Q. Okay. Does Attachment 1 show the earned
12 rate of return for the Ohio utilities?

13 A. No. I don't -- no.

14 Q. That's not what "Profitability Ratios"
15 is?

16 A. It's the return on equity, not rate of
17 return.

18 Q. Okay. Thank you for that -- earned
19 return?

20 A. Yes.

21 Q. Okay. Thank you for that clarification.

22 MS. BOJKO: Your Honor, if I could have
23 one minute, I want to make sure I don't repeat, but I
24 don't miss anything.

25 EXAMINER PRICE: You may.

1 Q. Mr. Buckley, you were asked many
2 questions today about a FirstEnergy presentation or
3 FirstEnergy FactBook. Is it your understanding that
4 if FirstEnergy publishes a fact book or earnings call
5 presentation, that they have to, under the SEC rules,
6 publish information that is true to the best of their
7 knowledge?

8 MR. LANG: Your Honor, I object as beyond
9 the scope of testimony, and relevance and foundation.

10 EXAMINER PRICE: Well, she is trying to
11 lay -- she is striving hard to lay the foundation
12 that everybody else has failed to lay.

13 You can go ahead and answer the question.

14 If he knows.

15 A. I'm not sure what the SEC rules would
16 require and what their legal requirements are. I do
17 know that companies do not like to run afoul of the
18 SEC, so there's definitely an incentive there to --
19 to not try to trick, for a better word, investors.
20 So they would -- definitely there would be an
21 incentive for them to provide the best knowledge they
22 have.

23 Sometimes they issue projections that
24 don't actually -- or guidance, I guess, that don't
25 actually turn out exactly the way they thought. And

1 typically the market reacts when that happens.

2 Q. So the answer to my question is yes, you
3 believe they would produce the most accurate and
4 up-to-date information that they could when it's
5 released to the public?

6 MR. LANG: Objection, asked and answered.
7 He said with regard to this. He said he didn't know.

8 MS. BOJKO: I don't --

9 EXAMINER PRICE: I think he said
10 something different. You can answer the question,
11 Mr. Buckley.

12 A. There's definitely an incentive for them
13 to provide the most accurate information that's
14 available, and in a timely manner.

15 Q. And financial analysts and investors
16 would rely on this information, correct?

17 MR. LANG: Objection, your Honor. It's
18 information he said -- he's only generally familiar
19 from -- from reviewing it on occasion. He said he
20 hasn't relied upon it and he certainly hasn't relied
21 upon it for his testimony. So now asking him to
22 speculate as to how other people might rely upon it
23 is far beyond the bounds of why he is here to testify
24 today.

25 EXAMINER PRICE: I'll sustain that

1 objection.

2 MS. BOJKO: Your Honor, just for the
3 record, I object to the characterization that he said
4 he doesn't rely on these in his normal job duties. I
5 think, in fact, he did say he relies on information
6 of this sort. I agree with counsel, not on the
7 testimony necessarily, but he did, in fact, say that
8 he relied on these types of documents in the normal
9 course of his business.

10 EXAMINER PRICE: The record will reflect
11 whatever he said. It's in the transcript.

12 Q. (By Ms. Bojko) Well, let's -- let's turn
13 to your testimony, sir. On page 2, footnote 1, you
14 did state that financial analysts, like yourself,
15 rely on information provided by the credit rating
16 agencies; is that correct?

17 A. That's what my -- that's what the
18 footnote states, yes.

19 Q. And it's your understanding, through the
20 Moody's report attached to your testimony as
21 Attachment 2, that Moody's has relied on statements
22 from FirstEnergy's earnings calls and other
23 presentations in order to make their investment and
24 credit ratings; is that correct?

25 A. I'm not -- I'm not sure how much they use

1 earnings calls in those type of situations. And I'm
2 not sure how much interaction Moody's has with
3 FirstEnergy. They definitely make use of financial
4 statements and SEC type of documents. But when they
5 listen to earnings calls and stuff like that, I don't
6 know.

7 Q. Well, to get their information regarding
8 proposals in front of the Ohio Commission such as the
9 PPA that's referenced many times throughout this
10 document, they would have gotten that information
11 from either a presentation released by FirstEnergy,
12 talking to FirstEnergy, or an earnings call that
13 FirstEnergy makes these statements; is that correct?

14 MR. McNAMEE: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. McNAMEE: Calls for the witness to
17 speculate about where Moody's gets its information
18 and this witness would have no way of knowing where
19 Moodies gets its information beyond the SEC documents
20 that he's referred to.

21 MS. BOJKO: Your Honor, may I respond in?

22 EXAMINER PRICE: You may.

23 MS. BOJKO: He says he relies on Moody's
24 and he says financial analysts rely on Moody's, and
25 we have quotes and statements within Moody's. I have

1 a right to explore what he's relying on and where
2 that information comes from and its basis.

3 EXAMINER PRICE: He can state his
4 understanding of what Moody's does. He is an expert.

5 A. I'm not -- I'm not sure if Moody's --
6 which one of those information sources that you've
7 listed in your question they get their information
8 from or -- I would suspect they get it from a
9 combination of all those -- of all those sources.

10 Q. Mr. Buckley, you are not testifying to
11 the creation of the rider, correct, that's
12 Mr. Choueiki?

13 EXAMINER PRICE: Doctor.

14 A. Correct.

15 Q. Oh, sorry. Doctor. Excuse me,
16 Dr. Choueiki.

17 And, sir, you are not testifying to the
18 legality of providing credit support to the parent
19 via the staff's proposed rider, correct?

20 A. I am not an attorney, so I don't want to
21 make any legal pronouncements.

22 MS. BOJKO: Thank you. That's all I
23 have. Thank you, your Honors.

24 EXAMINER PRICE: Thank you.

25 Mr. Hays.

1 MR. HAYS: Thank you, your Honors.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Hays:

5 Q. I don't believe we have ever met. I'm
6 Tom Hays and it's nice to meet you.

7 A. Nice to meet you. I wish it was under
8 better circumstances.

9 Q. We've had a long day, I am tired from
10 just listening, so I'm just going to take a moment
11 and let you know who I represent, because I think you
12 see a lot of these other folks a lot.

13 I represent the Northwest Ohio
14 Aggregation Coalition and 11 -- and also 11 -- the 11
15 communities that run those aggregation programs, and
16 they range from Toledo --

17 EXAMINER PRICE: Mr. Hays, time presses.
18 Let's -- he'll pick it up later.

19 Q. (By Mr. Hays) And nine others. I wanted
20 to just ask a few questions. I believe I had a much
21 bigger tablet.

22 There have been a lot of references today
23 to rating services and authorities or publications
24 that would be used by people in your -- in the
25 investment community or experts like yourself.

1 You've identified Moody's and Standard & Poor's. Are
2 there other specific ones that you -- you read or
3 that you go to for this information?

4 A. We go to a lot of different ones. One of
5 the other ratings agencies is Fitch, and, together,
6 the three of them are the predominant rating agencies
7 in the market. They probably make up 90 percent of
8 the entities that issue opinions on -- on credit for
9 the companies in the U.S.

10 We also look at, as I said earlier,
11 equity analysts' reports. There's a wide variety of
12 equity analysts that follow the company. So we try
13 to stay on top of most of what's written about
14 FirstEnergy that is public.

15 Q. Would those equity analysts be people
16 like Citi or who are we talking about when we say
17 "equity analysts"?

18 A. Morningstar would be one. There's a
19 bunch of them, but Morningstar would be one example.

20 Q. Would you give me just maybe one or two
21 other examples of the better known ones?

22 A. Fidelity, Barclay's, those are some of
23 the better known ones, I guess.

24 Q. Okay. Would you agree with me that
25 broadly speaking that the \$131 million a year for

1 three years, or 393 million in total, is a cash
2 infusion into the regulated -- Ohio utilities which
3 is meant to help the parent company?

4 A. It's an increase in revenue to the Ohio
5 regulated companies and, again, we see benefits to
6 both the Ohio regulated companies and the parent in
7 providing this assistance.

8 Q. Okay. And in that sense it is an
9 infusion of cash into the companies, am I correct,
10 from the viewpoint of a ratepayer, it's an infusion
11 of their money into the companies?

12 A. But when we -- when we say "infusion of
13 cash," that -- that kind of talks more of a -- of a
14 cash flow statement impact, which there is an impact
15 there. I would use the term "revenue." I think
16 that's more accurate in this situation.

17 Q. Would you agree -- agree with me that
18 shareholders are the ones, through the Board of
19 Directors and proxy statement, they are both through
20 proxy statement, are the ones who approve mergers and
21 acquisition for FirstEnergy Corp.?

22 A. Yes. Mergers and acquisitions typically
23 are approved by the Board of Directors.

24 Q. Would you agree with me that if this
25 credit issue is resolved, that it will be a positive

1 for the stock price?

2 A. I cannot make that statement. There are
3 so many things that go into equity price. Again,
4 macroeconomic factors sometimes play a much bigger
5 role than -- than what goes on in the day-to-day
6 operations of the company. It's one of the factors
7 that could play a role in the equity price, but it's
8 not the only one, and at different times different
9 things are more dominant.

10 After the Brexit vote, all -- pretty much
11 all equities nationwide suffered except for a select
12 few, and I don't think the management had really
13 any -- any ability to change that vote. And I don't
14 think any cash or revenue enhancement from the staff
15 that the staff is recommending right now would have
16 changed that equity drop either.

17 So I'm not sure, it's -- it's not like
18 it's a one-time thing where they are going to get
19 this -- this revenue is going to change their equity
20 price overnight. I'm not sure that's accurate.

21 Q. If the overall plan that you've talked
22 about, your hopes that the corporation would take
23 other actions plus the action that staff is
24 recommending, would you agree that it would be a
25 positive for the company to have its credit ratings

1 stabilized?

2 A. I think it would be positive to all the
3 constituents in FirstEnergy. I think it would be
4 positive for the shareholders, the customers, the
5 employees, the city of Akron, State of Ohio.

6 Q. Okay. Could you name for me specifics,
7 but let's take somebody in the City of Toledo, it's
8 very common there that you have somebody living at
9 twice the poverty level on Social Security. What are
10 they getting? What are they getting out of this?
11 They are going to pay more in their electric bill.
12 What are they getting back?

13 A. Just say so we're clear, I went to high
14 school in Toledo, I am very familiar with --

15 Q. Cool.

16 A. -- the economic problems of Toledo.

17 Q. Yes.

18 A. One of the big things we're concerned
19 about is this investment downgrade would lead to
20 higher rates long term. We are offering this bridge
21 to try to solve this problem so that we don't have a
22 problem going on long term that financing costs
23 remain -- can remain low; that FirstEnergy, after the
24 three years, this rider will fall off and go away,
25 and everyone will invest in making FirstEnergy a

1 stronger company; and, therefore, long-term rates
2 will not -- rates compared to other goods and
3 services will be lower.

4 Q. If -- if you were to collect the money
5 from all the Sally Smiths, and I wish I still lived
6 in Toledo, I would say Tom Hays from Toledo, all the
7 Jim Joneses in Toledo, and you collected \$393 million
8 from them, could they not purchase stock; therefore,
9 benefit from this, if it works?

10 MR. McNAMEE: Objection.

11 EXAMINER PRICE: Grounds?

12 MR. McNAMEE: I think we've gone way
13 beyond anything that's in his testimony. We're
14 talking about people -- individuals buying stock and
15 at some point in time. This is -- this is not what
16 the witness is testifying to. He is testifying to
17 simply the dollar value that would be necessary for a
18 credit score.

19 EXAMINER PRICE: If somebody bought
20 \$393 million of stock, it would boost the price.
21 Nonetheless, you are correct, it is outside the scope
22 of his testimony. Sustained.

23 MR. HAYS: I believe he talks about
24 actions the company could take, your Honor, they
25 could take other ones. We have had people ask him

1 about stock. If they could sell stock. And I am
2 asking if they could sell -- that question was
3 perfectly permissible. All I want to know is if the
4 company could not raise this money through stock, so
5 that the people who are paying this, the ratepayers,
6 get back the same benefits as the other shareholders.
7 And I'm done with this question, your Honor. It's
8 not some long series of questions.

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

11 A. You're asking could the company issue
12 equity to help the situation?

13 Q. Yes.

14 A. Like most things, that's not a simple
15 solution. You want to issue equity from a position
16 of strength. It's definitely one option that they
17 could use. And I -- I think I'll leave my response
18 at that.

19 Q. I think my -- that was a partial answer,
20 because I was asking from the viewpoint of a rate
21 holder, from the viewpoint of all the Jim Joneses and
22 Sally Smiths, wouldn't it be better to take their
23 money and get equity in exchange for that money?

24 MR. LANG: Your Honor, at this point he
25 is arguing with the witness over a question that you

1 properly sustained the first time around. I think
2 it's time to move on.

3 EXAMINER PRICE: I'll sustain your most
4 recent objection.

5 MR. LANG: Thank you, your Honor.

6 MR. HAYS: Thank you, your Honor.

7 Q. (By Mr. Hays) Did you look -- did you
8 look at -- well, let me give a little precursor to
9 this. Would you agree with me that the primary
10 issue -- the primary credit downgrade you have been
11 focusing on has been S&P's because it falls from the
12 parent down to all of the subsidiaries?

13 A. I think we are looking at Standard &
14 Poor's, and Moody's. In fact, we used Moody's
15 metric. But we have definitely looked at both of
16 them extensively.

17 Q. Okay. But it is the Standard & Poor's
18 one that if there is a downgrade at FirstEnergy
19 Corp., would also, in your opinion, give a downgrade
20 to the Ohio distribution utilities.

21 A. Standard & Poor's is much more clear
22 about the relationship between the parent and the
23 subs than Moody's is.

24 Q. Could I ask you to turn to page 5 of your
25 testimony, lines 3 through 7. And just ask you to

1 read them.

2 A. Yes. "Yes, Standard & Poor's Financial
3 Services LLC (S&P) issued a research update on April
4 28, 2016, stating that, in general, FE's credit
5 outlook will improve, if the company's business risk
6 profile materially improves by reducing the size of
7 its higher residual competitive business."

8 Q. Do you take it from the phrase "reducing
9 the size of its higher risk competitive business"
10 that what they are talking about is spinning off or
11 selling the generating assets?

12 A. My take from that is the percentage of
13 assets that are regulated versus unregulated, the
14 percentage that is regulated increases.

15 Q. That's an interesting reading of that.
16 Does it not say "reducing the size of its higher
17 competitive businesses"?

18 MR. LANG: Objection, your Honor.

19 EXAMINER PRICE: Grounds?

20 MR. LANG: His testimony is what his
21 testimony is. He has reread his testimony so now
22 it's in the record twice and he is now arguing with
23 him over what his answer was, so it's both
24 argumentative and asked and answered.

25 EXAMINER PRICE: I'll allow this question

1 and then we'll move on. You can answer.

2 THE WITNESS: Can I have the question
3 reread, please?

4 EXAMINER PRICE: You may.

5 (Record read.)

6 A. It -- it states higher risk competitive
7 -- "reducing the size of its higher risk competitive
8 businesses." I read that as a percentage of assets
9 of one compared to the other. I don't -- again, I
10 think you've discussed previously just selling an
11 asset to change the risk profile does not make the
12 company necessarily any healthier or unhealthier. It
13 depends what the terms and conditions are. We do
14 know an investment in the regulated plant will change
15 the risk profile of the company in total.

16 Q. Would you agree with me that Standard &
17 Poor's is familiar with the electric market and with
18 the current value of electric generating assets, and
19 understands perfectly well that its advice is based
20 on its current market analysis of what the sale of
21 those kind of assets would be and what it would mean
22 to FirstEnergy?

23 MR. LANG: Objection, your Honor.

24 EXAMINER PRICE: Grounds?

25 MR. LANG: Asking him to speculate what

1 S&P's statement means. The witness has given his
2 understanding of what that statement means and,
3 again, he is arguing with the witness over his
4 understanding.

5 EXAMINER PRICE: Sustained.

6 Q. (By Mr. Hays) Does Standard & Poor's, in
7 your opinion, is it one of the leading analysts of
8 the electric market for generating units, electric
9 distribution units, and so forth?

10 A. Standard & Poor's is a -- in this
11 situation is a bond-rating agency. S&P's also has an
12 equity side. I would not say they are one of the
13 leading companies in valuing a generating plant. I
14 don't think that's accurate.

15 Q. There was a term used earlier today, and
16 I must tell you I am not 100-percent familiar with
17 it. It was something like rate hedge, you had
18 previously examined rate hedges? Could you explain
19 to me what a "rate hedge" is?

20 A. I don't believe I used that term.

21 MR. HAYS: Does anybody remember, it was
22 like "rating hedge." It was talking about looking at
23 just at the separating out the EDUs from the whole
24 corporation in terms of credit risk?

25 MR. KURTZ: What is ring fence.

1 MR. HAYS: Ring fence. I'm sorry. It is
2 sometimes to hear this direction too. Ring fence.

3 Q. Yes, could you explain to me what ring
4 fences are?

5 A. Ring fencing is a way to partially
6 insulate a utility or an entity from actions of other
7 members of the corporate family. One of the most
8 classic situations was Portland General was owned, at
9 one time, by Enron. And Enron had financial
10 difficulties. And Portland General was not part of
11 that bankruptcy proceeding.

12 Q. Okay. Have you examined what you could
13 with ring fencing to help the Ohio EDUs?

14 MR. McNAMEE: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. McNAMEE: Asked and answered.

17 MR. LANG: Asked and answered.

18 EXAMINER PRICE: Sustained. That's where
19 you first heard the term. He was asked the question,
20 and he said yes, we did.

21 MR. McNAMEE: It's how it came up.

22 Q. (By Mr. Hays) Are you familiar with
23 securitization under the Ohio Revised Code?

24 A. I am familiar with it. I have not been
25 involved in those cases. So I don't have a depth of

1 knowledge about it, but I have heard the term.

2 MR. HAYS: Tom --

3 Q. I was going to ask your counsel, would
4 Mr. Choueiki be a better witness for these questions
5 about securitization?

6 MR. LANG: Which questions?

7 MR. HAYS: I don't know which -- well,
8 here is the question. Could --

9 MR. McNAMEE: Ask him. I'll probably
10 object.

11 MR. HAYS: I am sorry. I didn't mean to
12 talk over you.

13 Q. Could securitization be used by the Ohio
14 EDUs to fund the grid modernization program?

15 EXAMINER PRICE: I think you will have to
16 ask that question more specifically. How are you
17 proposing that securitization would be used to fund
18 the grid modernization program.

19 MR. HAYS: I was going to ask him how it
20 could be used on a grid modernization program.

21 EXAMINER PRICE: I think your question is
22 vague. I think you have to be more specific.

23 MR. HAYS: May I take a moment?

24 EXAMINER PRICE: You may.

25 Q. (By Mr. Hays) Did you, in your looking at

1 what could be done to protect the EDU -- Ohio EDUs,
2 examine how securitization could be used in any way?

3 EXAMINER PRICE: I think that's still
4 very vague. I think you need to ask -- if you want
5 to ask him how they could use securitization, you
6 have to give him some guidance as to what you are
7 thinking. It's a very broad term.

8 MR. McNAMEE: It's a very broad term and
9 I think to answer it, it assumes a fact not in
10 evidence. I don't know that they have any assets
11 that could be securitized.

12 EXAMINER PRICE: That's why I am asking
13 him to be more specific as to what regulatory assets
14 he's talking about securitizing in order to fund the
15 program.

16 MR. McNAMEE: They have done it, but I
17 think they have done it with everything they could.

18 EXAMINER PRICE: Don't testify.

19 MR. McNAMEE: Oops, sorry.

20 EXAMINER PRICE: Go ahead, Mr. Hays.

21 Q. (By Mr. Hays) Have you examined whether
22 or not the company could undergo -- let's just ask
23 you to assume that you didn't put forward this
24 proposal, but you were looking at what happens if
25 there is a parent downgrade and could the ratepayers

1 stand behind the loan with the 1 -- the loans and
2 capital needs of the company at the time they come
3 up, because the electric bill money is sure to come
4 in?

5 A. If the question is asking could the
6 ratepayers act as an investor in the company, I don't
7 know that that's an appropriate thing to do to the
8 ratepayers. I think the ratepayers should decide
9 what they want to invest in. I don't think they
10 should be forced to invest in the company in any way.
11 That's -- that's their choice if they want to invest
12 in a racehorse, you know. They should be able to do
13 that if they so choose.

14 Q. Well, I guess I would say to you that we
15 are here in opposition of this because we don't want
16 to invest the 151 million that you are suggesting we
17 invest -- 131 million per year.

18 EXAMINER PRICE: You would rather take
19 the liability for \$6 billion?

20 MR. HAYS: Your Honor --

21 MR. LANG: Your Honor, if counsel could
22 be instructed to ask questions and not testify.

23 Thank you, your Honor.

24 EXAMINER PRICE: Let's go on to the next
25 question. Let's move on.

1 MR. HAYS: If you can give me one minute,
2 I think I have maybe only one thing left. I want to
3 just check.

4 EXAMINER PRICE: Sure.

5 MR. HAYS: That's it. Thank you very
6 much. Glad to hear you are a Toledo guy.

7 THE WITNESS: Thank you.

8 EXAMINER PRICE: Thank you.

9 Mr. Kurtz, did we ever ask you if you had
10 any questions for this witness?

11 MR. KURTZ: I think I was maybe first and
12 I said I don't have any questions.

13 EXAMINER PRICE: So long ago, I lost
14 track. That covers all the intervenors?

15 Mr. Lang.

16 MR. LANG: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Lang:

20 Q. Good evening, Mr. Buckley.

21 A. Good evening.

22 Q. The -- I had a few more questions about
23 your table on page 4. The first one is a
24 clarifying --

25 MR. McNAMEE: Let me ask first if the

1 witness needs a break?

2 THE WITNESS: No. I'm okay.

3 MR. McNAMEE: All right. Pardon the
4 interruption.

5 EXAMINER PRICE: He wants to go home.
6 That's the break he is looking for.

7 MR. McNAMEE: I want to stay.

8 Q. (By Mr. Lang) The column that is headed
9 "September 30, 2015," is that data for nine months or
10 12 months? Do you know?

11 A. I believe that's for nine months.

12 Q. You would agree looking at that, at the
13 table at the top of page 4, that years -- that the
14 three most recent years, 2013, 2014, and 2015 are
15 when the CFO to debt metric diverged the most from
16 the 14.5 percent target, correct?

17 A. Obviously, 2012 and 2015 are identical,
18 but they are less than what it is in 2011.

19 Q. Thank you. That's fair.

20 And with regard to the cash flow that's
21 shown in 2015, do you know what -- do you know what
22 the impact of ATSI capacity prices starting June 1,
23 2015, would have on that number?

24 A. I do not.

25 Q. Would you agree that cash flow from

1 operations does not reflect gross cash flows?

2 A. I think that statement's true.

3 Q. And do you agree that cash flows -- cash
4 flow from operations reflects cash inflows that are
5 net of outflows?

6 A. Correct. It's a cash flow number, not
7 a -- and that's created some confusion within the
8 staff also.

9 Q. Now, the table on page 3 shows how you
10 calculated an allocation factor for the companies.
11 The -- the energy operating revenue that you relied
12 upon, that would be a gross revenue number; is that
13 correct?

14 A. That's a revenue number that we pulled
15 from an income statement, so, yes, it's -- it's a
16 gross revenue number.

17 Q. And could we quickly look at your
18 Attachment 1. And your Attachment 1 would be the
19 income statement you just referred to; is that
20 correct?

21 A. Attachment 1 is a -- is kind of a
22 hodgepodge. It includes balance sheet, income
23 statement, and cash flow numbers. It's not one
24 statement. It's just called "Financial Highlights."
25 So it includes some lines from all the financial

1 statements.

2 Q. And thank you for that -- thank you for
3 that correction.

4 Under the "Income Statement Highlights"
5 section, that's where you, for each of the operating
6 utilities and for FE Corp., that's where you obtain
7 the energy operating revenue number that's in your
8 table on page 3; is that correct?

9 A. Correct.

10 Q. And then the energy operating revenue,
11 less operating expense, is what's -- is the bottom
12 line on the income statement -- the income statement
13 highlights here which is the reported net operating
14 income; is that correct?

15 A. That's correct.

16 Q. And is it fair to say that reported net
17 operating income and cash flow from operations will
18 both net to the extent that they both reflect the
19 costs of operations, both the inflows and the
20 outflows?

21 A. Correct.

22 Q. Would it then also be fair to say that
23 the Commission could use a -- that net number, such
24 as reported net operating income, in order to do
25 this -- this allocation exercise that you show on

1 page 3 of your testimony?

2 A. Well, as I stated earlier, there is a lot
3 of different ways they could allocate it. It could
4 be based on a lot of different factors. That's one.
5 That's not the one we used. We thought the one we
6 used was more appropriate, but you could definitely
7 use net income and that would not be -- that -- it's
8 something you could definitely use as an allocator.

9 Q. And you refer to "net income." There's
10 two separate lines under "Income Statement
11 Highlights" here. There is net income and reported
12 net operating income. Is it fair to say that the
13 Commission could reasonably use either one of those,
14 the net income or reported net operating income?

15 A. That wouldn't be my recommendation, but
16 it could be -- they could use those as allocators.

17 Q. Would you agree that using reported net
18 operating income for an allocation factor would show
19 the companies' contributions to FirstEnergy Corp.'s
20 cash flow from operations?

21 A. I believe it would. Again, I still don't
22 believe that would be the best way to determine how
23 much the operating companies -- the Ohio operating
24 companies should contribute. But you could
25 definitely do it that way.

1 Q. Now, on pages 3 and 4, when you calculate
2 what you call the "average annual revenue needed,"
3 that's a -- that's a revenue number, correct?

4 A. Correct.

5 Q. And it's not a -- it's not a pretax
6 revenue number, correct?

7 A. The number has not been grossed up for
8 taxes if that's the question.

9 Q. That was my next question. Wouldn't you
10 agree that in order to have the companies' see
11 131 million in revenue for a particular year, that
12 would have to be grossed up to a pretax revenue
13 number?

14 A. Because we've used cash flow statements,
15 I think that we would use the actual tax rate that
16 the companies' paying, not a -- an income statement
17 type of gross-up factor, but more of a cash flow
18 gross-up factor. So any losses could be brought
19 forward because it's a cash number that we are
20 talking about.

21 Q. Are you familiar with the -- the filings
22 that the companies have made related to their
23 delivery capital recovery rider, the rider DCR that
24 they make on a, I believe it's a quarterly basis?

25 A. I'm not. I have not looked at those in

1 detail at all.

2 Q. The -- when you -- when you said that you
3 believe the companies would use the actual tax rate
4 to gross up, are you speaking of the composite tax
5 rate that would be specific to each utility?

6 A. Correct.

7 Q. In -- in calculating the average annual
8 revenue needed on page 3 and 4 of your testimony, do
9 you agree it would not be appropriate to include, in
10 your averaging, a year in which the companies' CFO to
11 debt was at investment grade?

12 EXAMINER PRICE: Can I have that question
13 back again?

14 MR. LANG: Let me rephrase that because I
15 think -- yeah.

16 EXAMINER PRICE: Okay.

17 MR. LANG: -- as I was reading it, I
18 think it's not correct.

19 Q. Would it be -- do you agree it would not
20 be appropriate to include, in your average, a year in
21 which FirstEnergy Corp.'s CFO to debt was at
22 investment grade?

23 A. If you're suggesting that we remove 2011
24 from the average, no, I think five years was what we
25 selected because I -- I think that was at some point

1 earlier, post-merger, and five years was -- was what
2 we thought was a better representation of the
3 company.

4 Q. Would you agree that the Commission, in
5 its discretion, may use a four-year average instead
6 of a five-year average for purposes of calculating
7 the revenue requirement for the distribution
8 modernization rider?

9 A. That would not be my recommendation. The
10 Commission can decide to do what they -- what they
11 deem is appropriate.

12 Q. And so you would also agree that if the
13 Commission deemed it appropriate to use a three-year
14 average, they could do that also, correct?

15 MR. FISK: I would object to the extent
16 it calls for a legal conclusion.

17 EXAMINER PRICE: Overruled.

18 A. I suppose the Commission could do what --
19 I mean, they are the ultimate rulers on this
20 situation, so they could do what they think is
21 reasonable.

22 Q. In terms of the CFO to debt concerns that
23 you show in your table at the top of page 4, would
24 you agree that a three-year average would more
25 closely track the CFO to debt issues that are

1 reflected in that table?

2 MR. WHITT: Objection. It's beyond the
3 scope of his testimony. He's testified and continues
4 to recommend a five-year average, not a three-year
5 average; although, he has stated the Commission could
6 follow his recommendation or not.

7 EXAMINER PRICE: Mr. Lang?

8 MR. LANG: And, your Honor, I am asking
9 him specifically about the numbers in his table at
10 the top of page 5 -- I am sorry, page 4, and whether
11 those numbers more closely track the purpose of his
12 testimony that he has identified which is this CFO to
13 debt concern. I think it's very specific to his --
14 his testimony. I'm testing his opinion as to whether
15 to use a five-year versus a three-year average.

16 EXAMINER PRICE: I don't think it's
17 improper or outside the scope to question whether he
18 uses 3, 5, 4, or 20 years. They are all legitimate
19 questions. I'll allow the question.

20 A. We selected five years because we thought
21 it was the most appropriate thing to use. You know,
22 absent five years, probably the best thing to do
23 would be to look at forecasted numbers. And we asked
24 for those and they were not provided. So what we had
25 to fall back on was five years. We -- we thought

1 that was the best thing to use at the time.

2 Q. Do you agree that the companies, the
3 distribution utilities, do not invest in
4 transmission?

5 A. The Ohio regulated companies, I don't
6 believe, invest in -- I'm not sure if they have any
7 transmission investments. I can't say that for
8 certain, but that's not their primary line of
9 business. That is another company.

10 MR. LANG: Your Honor, can I have one
11 minute?

12 EXAMINER PRICE: You may. We are off the
13 record.

14 (Discussion off the record.)

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

17 Mr. Lang.

18 MR. LANG: Thank you, your Honor. No
19 further questions.

20 EXAMINER PRICE: Before we go on to
21 redirect, I just have one question. And if you could
22 put one finger on page 4 and another finger on
23 Attachment 3.

24 MS. BOJKO: I'm sorry, I didn't hear you.

25 EXAMINER PRICE: I asked him to turn to

1 his testimony and put one finger on page 4 and one
2 finger on Attachment 3.

3 THE WITNESS: Yes.

4 EXAMINER PRICE: Attachment 3 indicates
5 that FirstEnergy's corporate outlook had been
6 reduced -- revised to negative and stable; is that
7 correct?

8 THE WITNESS: Correct.

9 EXAMINER PRICE: Previously -- now, turn
10 back to page 4. Previously in your testimony you
11 received questions that looking at the five years on
12 page 4, the companies had never been downgraded in
13 that five-year time period; is that correct.

14 THE WITNESS: Correct.

15 EXAMINER PRICE: Had the companies, over
16 that course of that five years, previously ever been
17 downgraded from stable to negative?

18 THE WITNESS: I don't believe so.

19 MS. BOJKO: Your Honor, may I have your
20 question and answer, not just last one, the one
21 before?

22 EXAMINER PRICE: Yes. Read the preceding
23 question.

24 (Record read.)

25 THE WITNESS: I don't think they have.

1 EXAMINER PRICE: Thank you. I promised
2 to be brief and I am.

3 Mr. McNamee, redirect -- yeah, redirect?

4 MR. McNAMEE: Your Honor, I earnestly
5 hope not. If I could have a moment with the witness.

6 EXAMINER PRICE: Take a quick break.
7 Let's go off the record.

8 (Discussion off the record.)

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

11 Mr. McNamee.

12 MR. McNAMEE: No redirect, your Honor.

13 At this time, staff would move for the
14 admission of what's been very aptly marked Staff
15 Exhibit 13.

16 EXAMINER PRICE: Ms. Addison, do you have
17 any questions?

18 EXAMINER ADDISON: Just very briefly.
19 Mr. Buckley, in the event the Commission were to
20 modify staff's proposal and then identify another
21 metric, other than operating revenue that Mr. Lang
22 questioned you about earlier, is staff proposing any
23 minimum or maximum threshold for the percentage
24 allocated to the operating utilities?

25 THE WITNESS: No. We didn't look at it

1 that way. We weren't trying to come up with -- I am
2 sorry. We weren't trying to come up with a number.
3 We just thought revenues was the most appropriate way
4 to make that allocation and the numbers happened to
5 be 22. So we didn't look at it saying, well, we want
6 it to lie between a certain percentage or not.

7 EXAMINER ADDISON: Thank you. That's all
8 I have.

9 EXAMINER PRICE: Thank you. Mr. Buckley,
10 you are excused.

11 THE WITNESS: Thank you.

12 EXAMINER PRICE: We will take up the
13 admission of Staff Exhibit 13. Any objections?

14 MR. LANG: No, your Honor.

15 EXAMINER PRICE: Staff Exhibit 13 will be
16 admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

19 (Discussion off the record.)

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

22 At this time we will adjourn for the
23 hearing. We will resume again tomorrow at 9 o'clock,
24 at which point we will take Mr. Comings first and
25 follow the schedule after that.

1 Ms. Petrucci.

2 MS. PETRUCCI: Your Honor, I was going to
3 try to move for the admission of OMAEG Exhibit 33.
4 Do you want to do in the morning?

5 EXAMINER PRICE: I'm sorry. I was
6 adjourning prematurely. Any objections to OMAEG 33?

7 MR. LANG: Yes, your Honor.

8 EXAMINER PRICE: Grounds?

9 MR. LANG: Same grounds stated earlier in
10 the hearing as foundation when it was originally
11 marked with Company Witness Mikkelsen, there was no
12 foundation laid. Again, same with that. Both the
13 document and the specific page that were referenced,
14 lack of foundation.

15 EXAMINER PRICE: Ms. Petrucci.

16 MS. PETRUCCI: Your Honor, Mr. Buckley
17 did identify the document and has reviewed the
18 document, authenticated the document, it's fully
19 relevant to his testimony specifically with regard to
20 the page 6 in his testimony with respect to the
21 contribution that others have to support the
22 FirstEnergy Corp. and avoid the fall below investment
23 grade which could involve the collateral provisions
24 and additional cash calls.

25 EXAMINER PRICE: I don't think he was

1 able to answer any questions -- the whole point was
2 he couldn't actually answer anything about the actual
3 exhibit. I don't dispute that he said he has seen it
4 before and he didn't question its authenticity. He
5 just couldn't answer any questions with respect to
6 it.

7 MS. PETRUCCI: He also indicated,
8 however, that these numbers were part of a bigger set
9 of numbers that were reviewed. That was later --
10 later in his testimony. And it demonstrates the
11 exact type of situation that the companies,
12 themselves, identified as possibly occurring in Staff
13 Data Request No. 35 which is part of what he listed
14 on page 6 of his testimony.

15 EXAMINER PRICE: Anybody else?

16 MR. WHITT: Your Honor, in addition, I
17 think, you know, the tenant of the rules about
18 admissibility, authenticity, and so forth are
19 intended to weed out information that's unreliable.
20 And to the extent the Commission is going to strictly
21 construe evidence rules, you know, another competing
22 principle.

23 And something to keep in mind is whether
24 the proffered information is any reason to believe
25 it's unreliable, and I don't think anybody has

1 suggested that the document that has been proffered
2 is anything other than what it purports to be which
3 are materials provided by the company as part of
4 these analyst calls that it regularly engages in.

5 Nobody expects the witnesses to vouch
6 that whatever information the company put in there is
7 necessarily accurate. The question is merely is the
8 document purport -- is the document what it purports
9 to be and I believe that has been established.

10 EXAMINER PRICE: Ms. Bojko?

11 MS. BOJKO: I would add that Mr. Buckley
12 did, in fact, say that he reviewed the document at
13 one point in time. It was merely used to refresh his
14 recollection. He also used the same exact
15 information in just a different time period in his
16 testimony with -- in his Attachment, the Moody's, it
17 is something that financial analysts regularly review
18 to make investment decisions as well as to make an
19 analysis of the companies' financials. He did agree
20 to that and he did say it is a part of a larger group
21 of numbers that he has relied upon and does in the
22 normal course of his business. They review these
23 types of documents all the time.

24 EXAMINER PRICE: Again, I don't think --
25 the issue is not whether he may have reviewed it. I

1 think the issue is he didn't have any familiarity
2 with it. He was able to testify that he had relied
3 upon the actual Moody's numbers. This one he was
4 very uncertain about any questions that were asked
5 about it.

6 Mr. Lang, you can finish up.

7 MR. LANG: Yeah, your Honor, I agree
8 this -- too close to the mic. His -- the only thing
9 he was able to do was look at the words on the page
10 and agree as to what the words on the page are.

11 For foundation, he needs to be able to
12 have some understanding of the document and the basis
13 of the document. None of that was demonstrated.
14 Ms. Bojko said it was used to refresh his memory to
15 some point, refresh his recollection.

16 Under the Rules of Evidence, a document
17 that is used to refresh recollection does not come
18 into evidence. So if she is using that as a basis,
19 that would not apply. So we rest on the foundation
20 objection, your Honor.

21 EXAMINER PRICE: We'll defer ruling until
22 tomorrow morning.

23 We also had, previously, a request to
24 take administrative notice of it. We will reconsider
25 that ruling if somebody can find a case, out of the

1 50 states, 99 district courts, and nine circuit
2 courts of appeal, where a company -- where a court
3 has taken judicial notice of a company's
4 forward-looking statements like the FactBook or the
5 earnings call. If you can find authority, we are
6 willing to reconsider our ruling.

7 MS. WILLIS: Even one case?

8 EXAMINER PRICE: I'll take any one.

9 MR. WHITT: Are we to understand the
10 evidence rules are going to be strictly applied in
11 all instances going forward?

12 EXAMINER PRICE: I think that most people
13 in this room have a pretty good feel for the Bench's
14 adherence to the evidence rules. I think people
15 would agree we adhere pretty strictly around here.
16 We try to construe exceptions broadly and we are
17 going to continue that policy.

18 MS. BOJKO: Just so I am clear for the
19 ruling on what you are seeking from us because it's
20 not hearsay; it's an admission of a party opponent.
21 You are stating that there was no foundation laid and
22 that's what we are trying to --

23 EXAMINER PRICE: No, no. Mr. Hays asked
24 that we take administrative notice of it. I simply
25 said if you can find a previous case, some authority

1 out of 50 states and all the federal courts, where a
2 court has taken judicial notice of these types of
3 investor calls or fact books, then I would be willing
4 to reconsider a ruling. I am just asking for an
5 actual precedent instead of.

6 MS. BOJKO: Can it be admitted versus
7 judicial notice?

8 EXAMINER PRICE: No. We are considering
9 admission overnight.

10 MS. BOJKO: Oh, okay.

11 EXAMINER PRICE: I said we would
12 deferring ruling on admission of the document until
13 tomorrow morning. Mr. Hays asked we take judicial
14 notice of the same. I said we would reconsider if
15 someone could actually produce a precedent that a
16 court had done it.

17 MR. LANG: And, your Honor, on the
18 judicial notice point, I would say that to the extent
19 the Court is inclined to do that tomorrow, it might
20 be worthwhile to determine what you would be taking
21 judicial notice of. Both of these documents, there
22 is one slide that was referenced, there is a lot
23 of -- you know, certainly our position is there is
24 nothing relevant in these documents, but beyond that
25 one slide that they believe is relevant, I am pretty

1 sure there was nothing in here that the Court would
2 be interested in taking judicial notice of.

3 EXAMINER PRICE: We will consider that
4 too.

5 MR. SAUER: Your Honor, is your concern
6 that there is forward-looking data in here or is it
7 just the documents themselves? FirstEnergy FactBook,
8 is that --

9 EXAMINER PRICE: No. I just was trying
10 to give you an opportunity to persuade me that our
11 previous rulings are wrong and indicate it. You
12 know, if you can find a precedent where a court has
13 taken judicial notice of a document like this, we
14 would be willing to reconsider the ruling. I was
15 just trying to give you a second chance. Now I'm
16 regretting it so.

17 MR. LANG: Would your Honor be
18 withdrawing that opportunity?

19 EXAMINER PRICE: Regretfully, no.

20 MR. HAYS: Another Hays exception.

21 EXAMINER PRICE: So, okay, now at this
22 point, we are adjourned for the evening. We will
23 reconvene at 9 o'clock. Thank you.

24 (Thereupon, at 5:52 p.m., the hearing was
25 adjourned.)

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, July 13,
2016, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

Carolyn M. Burke, Registered
Professional Reporter.

(KSG-6220)

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Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 07/13/16 - Volume III electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.