

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 Thursday, July  
14, 2016.

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REHEARING VOLUME IV

- - -

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33 - PowerPoint presentation titled "Quarterly Highlights 1Q 2016 Earnings Call," dated April 27, 2016. I-235 --

33 - Cover Page and Slide 18 of PowerPoint presentation titled "Quarterly Highlights 1Q 2016 Earnings Call," dated April 27, 2016. 766 767

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Thursday Morning Session,  
July 14, 2016.

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EXAMINER ADDISON: Let's go on the  
record.

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

My name is Megan Addison and with me is  
Gregory Price and we are the attorney examiners  
assigned to preside over this hearing.

We will dispense taking appearances this  
morning.

Examiner Price.

EXAMINER PRICE: We have one piece of  
unfinished business. Yesterday, I believe  
Ms. Petrucci moved for the admission of OMAEG 33 and  
P3/EP SA. Did you move 14 or 15? Or did you not move  
either?

MS. PETRUCCI: I did not move for the

1 admission of P3/EP SA Exhibit 14. We only discussed  
2 OMAEG Exhibit 33, yes.

3 MR. LANG: Your Honor, if I may, I have a  
4 proposal on that?

5 EXAMINER PRICE: Okay.

6 MR. LANG: With regard to -- yes, because  
7 it was only OMAEG 33 that was moved. We had lodged  
8 an objection. In order to perhaps expedite us  
9 getting going on witnesses this morning, the  
10 companies are proposing they would withdraw their  
11 objection to slide 18 of that exhibit which is what  
12 was discussed at hearing yesterday. And would,  
13 therefore, could allow that slide to go in. The rest  
14 of the pages on the exhibit were not discussed and so  
15 we would still maintain our objection to the rest of  
16 the slide simply because it wasn't -- wasn't  
17 discussed, wasn't addressed by the witness.

18 EXAMINER PRICE: Ms. Petrucci.

19 MS. PETRUCCI: Would you be willing to  
20 put the cover page on as well?

21 MR. LANG: That makes sense, certainly.

22 MS. PETRUCCI: That's acceptable.

23 EXAMINER PRICE: Okay. We will grant  
24 admission of the cover page and slide 18. It's 18?

25 MR. LANG: Yes. Yes, your Honor.

1 EXAMINER PRICE: Thank you both.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 MS. PETRUCCI: Your Honor, do you want to  
4 have it labeled as a different one since originally  
5 the -- what had been marked was the full document?  
6 Do you want to make it Exhibit 33A?

7 EXAMINER PRICE: No. We will understand  
8 what we admitted. We'll keep notes.

9 MS. BOJKO: Well, your Honor, for clarity  
10 sake, I guess I'm not precluding the possibility that  
11 the whole document may be used later in this  
12 proceeding or, I mean, through a different witness  
13 so.

14 EXAMINER PRICE: I'm not precluding the  
15 possibility that we will admit it then, but she only  
16 moved 18 and the cover page and so that's all that's  
17 in right now.

18 MS. PETRUCCI: That's why I was  
19 suggesting maybe if we -- maybe we could relabel it  
20 to a P3/EPISA exhibit, the cover page and page 18.  
21 It's just a suggestion.

22 EXAMINER PRICE: Mr. Kutik.

23 MR. KUTIK: The problem with that is the  
24 witness examination referred to a specific exhibit  
25 number, so it makes no sense to have it a different

1 exhibit number at this point.

2 MS. PETRUCCI: Actually, I agree as well.

3 EXAMINER PRICE: We will keep it as OMAEG  
4 Exhibit 33. The Bench is fully aware at this point  
5 it's only the cover page and slide 18 has been  
6 admitted. If it is used with a different witness,  
7 then we'll move admission of the rest of the exhibit  
8 at that point.

9 MS. PETRUCCI: Thank you very much.

10 EXAMINER ADDISON: Is Sierra Club ready  
11 to proceed?

12 MR. FISK: We are as soon as the  
13 microphone comes on.

14 EXAMINER ADDISON: You may call your next  
15 witness as soon as it comes on.

16 MR. FISK: Thank you, your Honors.

17 Sierra Club would call Mr. Tyler Comings  
18 to the stand.

19 (Witness sworn.)

20 EXAMINER ADDISON: Thank you. You may be  
21 seated.

22 THE WITNESS: Thank you, your Honor.

23 - - -

24 TYLER COMINGS

25 being first duly sworn, as prescribed by law, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Fisk:

4 Q. Good morning, Mr. Comings.

5 A. Good morning. Good morning. There it  
6 is.

7 Q. Could you please state your name for the  
8 record.

9 A. Tyler Comings.

10 Q. And could you please state your business  
11 address for the record.

12 A. 45 Massachusetts Avenue, Suite 2,  
13 Cambridge, Massachusetts 02139.

14 MR. FISK: And, your Honors, I would ask  
15 to be marked as Sierra Club Exhibit 100, the public  
16 version of the rehearing testimony of Tyler Comings,  
17 and to be marked as Exhibit 101C, the confidential  
18 version of Mr. Comings rehearing testimony.

19 EXAMINER ADDISON: They will be so  
20 marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 Q. And, Mr. Comings, do you have your  
23 testimony with you today?

24 A. I do.

25 Q. Okay. And is what has been marked as

1 Exhibit 100 the public version of your rehearing  
2 testimony in this proceeding?

3 A. Yes.

4 Q. Okay. And is what has been marked as  
5 Exhibit 101C the confidential version of your  
6 testimony, rehearing testimony in this proceeding?

7 A. Yes.

8 Q. Okay. And do you have any corrections to  
9 your testimony?

10 A. I have one. On page 13, line 6.

11 Q. Okay. And what is the correction?

12 A. To strike the sentence starting with  
13 "This energy forecast," the entire sentence.

14 Q. So starting with "This energy forecast"  
15 in line 6 and going through "in this filing" in line  
16 9?

17 A. Yes.

18 MS. WILLIS: Could I have that page  
19 reference?

20 THE WITNESS: Page 13.

21 Q. (By Mr. Fisk) And do you have any other  
22 corrections?

23 A. No.

24 Q. Okay. And so with that correction, if I  
25 were to ask you today all the questions in your



1 rehearing testimony, would your answers be the same?

2 A. Yes.

3 MR. FISK: Your Honor, Sierra Club moves  
4 for the admission of Exhibit 100 and 101C and tenders  
5 Mr. Comings for cross-examination.

6 EXAMINER ADDISON: Thank you, Mr. Fisk.

7 We will defer ruling on the admission of  
8 those two exhibits upon the conclusion of  
9 cross-examination.

10 MR. KUTIK: Your Honor, at this time will  
11 the Bench entertain motions to strike?

12 EXAMINER ADDISION: We will, Mr. Kutik.

13 MR. KUTIK: Your Honor, my motions are in  
14 three groups. So the first group starts with page 8,  
15 line 15, through page 11, line 8. And that would  
16 include all of the figures and all of the exhibits  
17 referenced therein, those exhibits would be TFC 46,  
18 TFC 47. These are all on the same grounds.

19 Let me go through the rest of the  
20 testimony that's the subject of this motion to  
21 strike. And that would be line -- or page 18, line  
22 1, through page 19, line 3, again, including the  
23 figures and exhibits referenced therein.

24 Your Honor, these two excerpts that are  
25 the subject of the motion relate to documents that

1 are hearsay. Specifically, these documents are not  
2 documents that are produced by the companies so it's  
3 not a party admission. They are documents from ICF.  
4 They are not Mr. Rose's documents. So even if they  
5 were Mr. Rose's documents, that would still not  
6 qualify as an exception to hearsay as a party  
7 admission.

8 And so because it is a declaration by  
9 a -- an out-of-court -- out-of-court declarant  
10 offered for the truth, all of these -- all of the  
11 excerpts, all the citations to those documents, as  
12 well as the exhibits themselves, they are hearsay  
13 and, therefore, they should not be admitted and they  
14 should be stricken from this witness's testimony.

15 EXAMINER ADDISON: Thank you, Mr. Kutik.

16 Mr. Fisk.

17 MR. FISK: Are we going to do them one by  
18 one or get all of them on the table?

19 MR. KUTIK: With your indulgence, I think  
20 it makes sense to talk about them in the groups I had  
21 arranged, so this group is one.

22 EXAMINER ADDISON: I agree.

23 MR. FISK: Thank you, your Honors.

24 Well, Sierra Club certainly would oppose  
25 the motion to strike the testimony that Mr. Kutik has

1 identified. It certainly does cite to and rely on  
2 various forecasts from ICF. I believe these are  
3 obviously relevant. These are later forecasts from  
4 the consulting firm that Mr. Rose works for. They  
5 are directly -- they are on the same issues that  
6 Mr. Rose presented ICF forecasts on in terms of  
7 natural gas forecasts, capacity price forecasts.

8           The Bench has already previously admitted  
9 multiple ICF forecasts including the ICF August 2015  
10 forecast which was a -- a natural gas price forecast  
11 that was presented in testimony submitted by ICF  
12 witness in Michigan. That was already admitted  
13 through Mr. Comings's third supplemental testimony.  
14 And in that time it was determined that was  
15 appropriate to come into the record. The fact that  
16 it's a report authored by the same reporting firm  
17 that has been retained by FirstEnergy to provide  
18 testimony shows that it is not hearsay.

19           Mr. Kutik certainly will have all the  
20 opportunity he would like to cross-examine  
21 Mr. Comings on it, and the companies are free to  
22 present rebuttal testimony from Mr. Rose if they feel  
23 there is something improper about the use of ICF's  
24 own more-recent forecasts in this proceeding.

25           So, for all of those reasons, we would --

1 we would oppose the motion to strike and urge the  
2 Commission to deny.

3 EXAMINER ADDISON: Thank you.

4 Mr. Kutik.

5 MR. KUTIK: The fact that this is --  
6 these are references to ICF documents does not  
7 somehow make them something other than hearsay. They  
8 still are hearsay. The fact that I can cross-examine  
9 Mr. Comings on them doesn't make these documents not  
10 hearsay. The fact that I would have to bring  
11 Mr. Rose back for rebuttal doesn't mean that these  
12 documents are not hearsay. They are hearsay,  
13 therefore, they are inadmissible.

14 EXAMINER ADDISON: We will take this  
15 motion to strike under advisement.

16 Let's move on to the next group.

17 MR. KUTIK: Yes, your Honor, and there  
18 are three passages that are the subject of the next  
19 motion. The first starts on page 7, starting on line  
20 3, and going to line 9, so basically that question  
21 and answer. The next is page 16, line 11, the -- the  
22 sentence that begins with the word "Given," "Given  
23 how much" and ending on page 17, line 2.

24 And lastly, page 21, line 4, going to  
25 line 15. Let me amend that it should probably be

1 line 6 -- starting at line 6, after the word "No."  
2 To the end of line 15.

3 Your Honor, each of these excerpts merely  
4 repeats Mr. Comings's position from his earlier  
5 testimony about the correlation of natural gas prices  
6 and energy prices, his commentaries about ICF's  
7 forecasts. All of those specific points were points  
8 he made earlier, and it's therefore cumulative. We  
9 would move to strike on that basis.

10 EXAMINER ADDISON: Thank you, Mr. Kutik.  
11 Mr. Fisk.

12 MR. FISK: Can I take one second?

13 EXAMINER ADDISON: Certainly.

14 MR. FISK: Thank you, your Honor.  
15 Thank you, your Honor.

16 Sierra Club would oppose this motion to  
17 strike. We believe that this information is not  
18 cumulative. It's testimony from Mr. Comings  
19 regarding how the specific forecasts from mid 2014  
20 that the companies continue to rely on in this  
21 proceeding are outdated and they are relying on those  
22 forecasts with regards to their modified proposal  
23 which is the subject of this hearing.

24 The information is presented in the  
25 context of Mr. Comings's analysis of the likely

1 credits and charges under the modified proposal, so  
2 this is plainly relevant because all of his testimony  
3 goes towards whether the forecasts the companies are  
4 relying on and claiming in the modified proposal is  
5 somehow a benefit for customers is reasonable or not.

6 The -- in terms of the specific  
7 information presented and as to whether it is  
8 cumulative, what's being presented here is the most  
9 current information, and Mr. Comings is making the  
10 point that using the most current information, it is  
11 once again clear that actual market conditions are  
12 significantly different than what ICF had forecast  
13 back in mid 2014.

14 And when the Commission is deciding on  
15 the modified proposal in, you know, August or  
16 September or whenever, 2016, having the most current  
17 information about how far off the 2014 ICF forecast  
18 that the companies continue to rely on is directly  
19 relevant and important to the Commission being able  
20 to make a decision based on current information.

21 EXAMINER PRICE: Mr. Fisk, look at  
22 page 7, lines 3 to 9. Other than the word  
23 "modified," I mean, isn't that exactly testimony he  
24 did give previously?

25 MR. FISK: I believe that that -- the

1 testimony about the correlation --

2 EXAMINER PRICE: And about the outdated.  
3 I mean, he was arguing the last trip here that the  
4 ICF arguments are outdated and that was an issue you  
5 raised in your brief.

6 MR. FISK: But, I guess the point here  
7 and what -- why this is relevant and appropriate is  
8 that we are now faced with a new modified proposal  
9 that has a new mechanism for how you calculate  
10 credits and charges. There's numerous -- there used  
11 to be numerous different factors that -- that were  
12 variable in that calculation. Now, there are two,  
13 energy prices and capacity prices.

14 And the fact that those prices and the  
15 natural gas prices that feed into it continue to be  
16 outdated and will be even more outdated and even  
17 demonstrate to be even more unreasonable given actual  
18 market conditions that have happened, is directly  
19 relevant and is additive to his previous testimony,  
20 not simply cumulative, because it's looking at what  
21 are the conditions today, not what are the conditions  
22 back when Mr. Comings filed his third supplemental  
23 testimony quite a while ago.

24 MR. KUTIK: May I be heard?

25 EXAMINER ADDISON: You may.

1           MR. KUTIK: Well, as a matter of fact,  
2 this isn't the most up-to-date information as of  
3 today as we may explore in cross-examination, but  
4 even that particular point which Mr. Comings  
5 certainly does spend a lot of time on which will be  
6 another subject of a motion to strike, the excerpts  
7 that are the subject of this motion are tailored  
8 specifically to deal with statements, declarations,  
9 and points that Mr. Comings has already made.

10           Mr. Fisk, while giving an impassioned  
11 defense of the general point of Mr. Comings's  
12 testimony, did not point the Bench to a single new  
13 fact that Mr. Comings raises in any of these excerpts  
14 and that's the definition of cumulativeness and,  
15 therefore, they should be stricken.

16           MR. FISK: Your Honors.

17           EXAMINER ADDISON: Go ahead, Mr. Fisk.

18           MR. FISK: Yeah. Just by definition what  
19 is being presented here is a new fact because it is  
20 new information regarding current market conditions.  
21 It is not -- the current market conditions today are  
22 different than the market conditions when Mr. Comings  
23 presented in his last testimony and that is what this  
24 testimony today, the rehearing testimony, goes  
25 towards.



1                   EXAMINER PRICE: But that's not the point  
2 of this hearing today. The point of the hearing  
3 today is to give information that you couldn't  
4 reasonably -- or evidence you couldn't reasonably  
5 have given in the last hearing. The fact that market  
6 conditions have changed and the fact that projections  
7 are now different, you know, we could spend another  
8 three months on different projections again and by  
9 the time we get done the projections will once again  
10 be different. I mean, it's a rolling -- it's a  
11 rolling problem.

12                   MR. KUTIK: Which brings us to our third  
13 motion, your Honor.

14                   MR. FISK: Well, before we get to the  
15 third motion, respectfully.

16                   EXAMINER PRICE: I wasn't looking for a  
17 response.

18                   MS. WILLIS: I do believe, your Honor,  
19 this is one -- this is testimony that provides  
20 context. And I know in the past the Commission has  
21 allowed and the -- yourself included, attorney  
22 examiners have made rulings allowing background or  
23 support information that provides context to the  
24 readers, so I would believe it's also appropriate  
25 from that respect.

1 EXAMINER ADDISON: Would you care to  
2 respond to that point, Mr. Kutik?

3 MR. KUTIK: Your Honor, it's a point  
4 that's been made. It's already been made. The  
5 court -- the Commission has considered it, ruled upon  
6 it, and therefore, it's cumulative and not to be  
7 brought up again. They are trying to fight old  
8 battles.

9 EXAMINER ADDISON: Okay. At this time we  
10 will grant in part and deny in part the motion to  
11 strike. As to page 7, lines 3 through 9, we will  
12 grant the motion to strike.

13 As to page 16, starting on line 11, with  
14 the sentence starting with "Given how much" we will  
15 be denying the motion to strike.

16 And as to page 21, line 6, starting after  
17 the word "No" to line 15 ending in "Such an approach  
18 is unreasonable" we will be granting the motion to  
19 strike.

20 Mr. Kutik.

21 MR. KUTIK: Your Honor, may I approach?

22 EXAMINER ADDISON: You may.

23 MR. KUTIK: I would like to hand the  
24 Bench a copy of Mr. Comings's deposition testimony.  
25 My argument will depend a little bit on his prior

1 testimony.

2           Your Honor, this motion is quite  
3 extensive in terms of the scope that it reaches.  
4 There will be a number of excerpts. So with the  
5 Bench's indulgence, bear with me.

6           First, it begins on line -- on page 1,  
7 line 23, with the sentence that begins with the word  
8 "While the costs."

9           MR. FISK: I'm sorry, what was the  
10 reference?

11           MR. KUTIK: Page 1, line 23. The  
12 sentence that begins "While the costs" and continues  
13 through page 2 to the end of line 3.

14           We would also move to strike page 2,  
15 line 5, so I guess we continue on actually through  
16 page 3, line 4.

17           Moving on to page 4, we would move to  
18 strike line 5, the word at the end "The" and  
19 continuing to the end of the page on line 16.

20           Moving to page 5, we would move to strike  
21 line 3 after the word "No" through line -- excuse me,  
22 page 6, line 11.

23           We would also move to strike page 7,  
24 lines 1 and 2. And page 7, starting at line 7 with  
25 the words "The natural -- "The ICF natural gas price

1 forecast...."

2 EXAMINER ADDISON: Mr. Kutik, I believe a  
3 portion of that has --

4 MR. KUTIK: Oh, yes, your Honor. Okay.

5 Then we would move to strike starting at  
6 line 10 through page 16, line 3.

7 We would then start again on line 11 of  
8 page 16, through page 21, line 3. We would then --

9 EXAMINER ADDISON: I'm sorry, Mr. Kutik.  
10 Could I get that last line reference one more time?

11 MR. KUTIK: Line 3 on page 21.

12 EXAMINER ADDISON: Thank you.

13 MR. KUTIK: Then we would pick it up  
14 again on line 16 of page 21, through page 22, line 4,  
15 and page 22, line 13, through page 23, line 15.

16 Now, your Honor, let me then direct you  
17 to Mr. Comings's deposition and two excerpts of his  
18 deposition.

19 MS. WILLIS: Do you have copies for other  
20 parties?

21 MR. KUTIK: I have one.

22 MS. WILLIS: Thank you.

23 MR. KUTIK: The excerpts begin on  
24 page 33. And it starts on line 13 where I had asked  
25 him the following question; he gave the following

1 answer:

2 The Question: "The question I asked you,  
3 did you do a comparison between the effect of rider  
4 RRS as approved and Rider RRS as proposed by the  
5 company on rehearing? You didn't do that, did you?

6 "Answer: I'm -- I don't believe I used  
7 the -- I compared the NPV that was developed  
8 previously for Rider RRS, since that has not changed.

9 So I didn't do a direct comparison of the  
10 Rider RRS to the modified proposal. I've -- but I do  
11 refer to information that was provided under the  
12 Rider RRS, because that -- to the effect that that  
13 hasn't changed."

14 And then I asked him now on line -- on  
15 page 34, line 11, "Question: Again, I'm just looking  
16 for anything in your study, your testimony, that  
17 compares Rider RRS as approved versus Rider RRS as  
18 proposed by the company. There is not such a  
19 comparison, fair to say?"

20 "Answer: Okay. I think that's fair to  
21 say."

22 And that's the point of our motion, that  
23 this testimony does not prepare -- is not properly  
24 within the scope of this hearing. This hearing is to  
25 address the proposals -- or the proposal by the

1 company.

2 It certainly is fair game for anyone to  
3 talk about how the proposal has changed and what that  
4 proposal's effect is versus the modified proceed --  
5 the original proposal as approved. The Commission  
6 has already ruled on the merits of rider RRS and the  
7 benefits of rider RRS.

8 The -- the parties opposing rider RRS  
9 don't get a second bite of the apple to explain why  
10 rider RRS is inappropriate in their view. If they  
11 want to talk about the adverse effect or effects at  
12 all of rider RRS proposed, versus rider RRS as  
13 approved, that's fair game, but they didn't do that,  
14 and this is just a rehash of old arguments, certainly  
15 with updated information, but updates can go  
16 ad infinitum and is improper. The Commission has  
17 already ruled and therefore it's beyond the scope of  
18 this hearing.

19 EXAMINER ADDISON: Thank you, Mr. Kutik.  
20 Mr. Fisk.

21 MR. FISK: Thank you, your Honors.  
22 Certainly, once again, Sierra Club opposes the motion  
23 to strike. This -- the testimony being presented by  
24 Mr. Comings in his rehearing testimony is directly  
25 relevant to the question pending before the

1 Commission today which is should modified rider RRS  
2 proposal be approved. And that is the subject of  
3 this rehearing and that is what Mr. Comings's  
4 testimony goes to.

5 I would say that there's really three  
6 reasons why the motion to strike should be denied.  
7 The first is that the modified proposal uses a  
8 different mechanism for calculating the charges and  
9 credits under the rider. And that is what  
10 Mr. Comings used in his testimony which presents an  
11 analysis of the likely costs to customers of the  
12 modified rider RRS proposal and comes to a conclusion  
13 that those costs could be around \$1.6 million.

14 The previous proposal, the one approved  
15 by the Commission, had numerous variables that could  
16 change and, as a result, made it, you know, much more  
17 difficult to determine exactly, you know, what the  
18 potential costs and credits and charges could be  
19 under it.

20 Now, there are two variables which change  
21 energy prices and capacity prices. And that is what  
22 Mr. Comings's testimony looks at and he -- using the  
23 new way to calculate it, he was able to use that  
24 mechanism to calculate NPV and that is what he is  
25 presenting in his testimony.

1           EXAMINER PRICE: But his testimony is  
2 solely about the part of the calculation that hasn't  
3 changed. His testimony is not about the part of the  
4 calculation that has changed.

5           MR. FISK: But now that the calculation  
6 has changed and there is a new mechanism for doing  
7 the calculation, it is now -- it is now much -- now  
8 parties are able to make a much more certain  
9 conclusion as to what the NPV price impacts of the  
10 proposal would be on customers. And use -- and that  
11 question is directly relevant to whether or not this  
12 proposal is beneficial to customers.

13           And that cuts to the second point which  
14 is Mr. Comings's testimony goes directly towards  
15 Ms. Mikkelsen's rehearing testimony contending that  
16 the modified rider RRS proposal is less risky for  
17 customers and is better for customers, and presenting  
18 an NPV analysis, what Mr. Comings' testimony does, it  
19 shows that there is still substantial risk here  
20 despite Ms. Mikkelsen's testimony about this being a  
21 lower risk-option. There is still substantial risk  
22 here and now that we have the new mechanism, we are  
23 able to calculate well what that risk is.

24           EXAMINER PRICE: Again, those risks are  
25 all the risks that were unchanged. Her testimony was



1 there's no longer the risk that the costs will be  
2 higher. There is no longer the risk that the output  
3 of the plants will be lower than was projected.  
4 Those are the things that have changed. What hasn't  
5 changed is the market risk in terms of the revenues  
6 generated.

7 MR. FISK: Right. But the suggestion  
8 that -- what Mr. Comings's testimony shows is that  
9 those are the core risks. The energy and the  
10 capacity prices are the core risks here and we are  
11 now able to show what those risks are to customers.

12 EXAMINER PRICE: We certainly spent a lot  
13 of time on non-core risks at the original hearing  
14 then, didn't we?

15 MR. FISK: I mean, it enables us to  
16 actually be able to do that calculation and that is  
17 the information that we are presenting that is  
18 directly relevant to the subject of this hearing.

19 The third point is that the Commission  
20 will be deciding this proposal in basically the fall  
21 of 2016. And while the company would like to  
22 continue relying on stale information that is  
23 inconsistent with actual market conditions that is  
24 inconsistent with its consultant's own more recent  
25 forecasts, that is simply improper for the Commission

1 to do.

2           The Commission should be basing its  
3 decision on current information; that is what  
4 Mr. Comings is presenting. He is presenting updated  
5 forecasts from gas prices, capacity prices, natural  
6 energy prices from PJM, Energy Information  
7 Administration, and ICF. Some of that updated  
8 information has already been allowed into the record  
9 yesterday with Mr. Baron's testimony. The updated  
10 PJM capacity price auction results were allowed into  
11 the record.

12           EXAMINER PRICE: Mr. Fisk, isn't there a  
13 distinction between a fact, PJM has a new capacity  
14 price, versus an updated projection, which is just  
15 somebody's estimate of what's going to happen in the  
16 future subject to a bunch of variables?

17           You know, I get -- I understand, you  
18 know, there are some actual facts that have changed  
19 as time has moved on, capacity price, forward prices  
20 for the first couple of years, those are facts.  
21 These projections, you know , they are just expert's  
22 testimony as to what they think will happen in the  
23 future. They are not -- do you see the distinction I  
24 am making between the two? I think it is a  
25 worthwhile distinction.

1           MR. FISK: I believe that those facts go  
2 directly towards what is likely to be the cost, and  
3 if charges -- charges and credits under the -- under  
4 the modified proposal. The company chose not to  
5 present the information of how those facts could  
6 change it, but we are presenting the information  
7 which we think is important for the Commission  
8 decision, to consider in its decision.

9           And to the extent those are facts, one of  
10 the facts is that the companies' own expert's  
11 consulting firm is projecting much different prices  
12 than what the company is continuing to rely on here  
13 and that is a very relevant fact for the Commission  
14 to consider when it decides whether the projections  
15 that the companies are relying on should continue to  
16 be used.

17           And, you know, Mr. Kutik talks about,  
18 well, we could be updating things ad infinitum. They  
19 are the ones that opened the door here by proposing a  
20 new modified proposal. We are entitled to present  
21 the information about why that new modified proposal  
22 looking at it at the time of the decision, right now,  
23 is not beneficial to customers.

24           EXAMINER PRICE: But you are not  
25 presenting any evidence as to the modification. You

1 are presenting evidence as to what hasn't changed.

2 MR. FISK: We are presenting evidence as  
3 to the impacts of the modified proposal that the  
4 companies chose to make on customers which directly  
5 challenges and rebuts Ms. Mikkelsen's testimony  
6 claiming that this would be beneficial to customers.

7 MS. WILLIS: Your Honor, might I be  
8 heard?

9 EXAMINER PRICE: I think Ms. Bojko.

10 MS. BOJKO: Your Honor, I would just add,  
11 OMAEG strongly disagrees with the characterizations  
12 being made here about the risk and reduction of risk.  
13 We don't believe that the proposal reduces the risk  
14 in the way that the Bench just stated, and we also  
15 disagree there's been no evidence presented here  
16 to -- this week about those reductions in risk and  
17 the changes that were made to the projected cost side  
18 and projected output side which I think you were just  
19 alluding to.

20 So we just wanted to put that on the  
21 record that we don't agree with the characterizations  
22 that there has been a reduction in risk and that  
23 there's been no evidence produced with regard to the  
24 changes in the formula. Thank you.

25 EXAMINER ADDISON: Ms. Willis, did you

1 have something to add?

2 MS. WILLIS: Yes, your Honor. I want to  
3 be clear that as part -- that the -- we keep in mind  
4 the statutory test that we need to pass here and that  
5 is to show that the provision -- or the companies'  
6 proposal along with other provisions in the ESP  
7 will -- will be more favorable in the aggregate than  
8 a -- an MRO.

9 And part of that analysis, your Honor,  
10 goes to determining the quantifiable benefits.  
11 Ms. Mikkelsen relies upon the quantifiable benefits  
12 that were found to be present in the first part of  
13 this proceeding, the 41 days of hearing.

14 Part of the analysis, with updates, and  
15 showing how the numbers have changed go to the fact  
16 that the quantifiable benefits that the Commission  
17 settled upon may no longer be reasonable given what  
18 has occurred in the -- in -- with respect to the  
19 prices of capacity, what has occurred with respect to  
20 the prices in energy.

21 So it does go to whether or not there  
22 is -- they are going to pass the quantifiable -- or  
23 whether it is going to pass the ESP versus MRO  
24 analysis.

25 And I would also take issue with

1 Mr. Kutik trying to limit the scope of this  
2 proceeding to the companies' proposal. If we look at  
3 the Commission's entry which set up this rehearing,  
4 it's very clear that that is not the scope of this  
5 rehearing. And I quote from paragraph 15 of that  
6 entry where it says the "scope of the hearing will be  
7 limited to the provisions of and alternatives,"  
8 alternatives.

9 EXAMINER PRICE: Do you have an  
10 alternative or is your alternative zero?

11 MS. WILLIS: No, your Honor. I think  
12 there are a number of alternatives. We're still  
13 talking about -- and the Commission made this clear  
14 and the company still made this clear, an alternative  
15 out there is to pursue the PPA at FERC. That's still  
16 up in the air. And so any updated information about  
17 the PPA and the cost of the PPA can still be looked  
18 at because that's an alternative that's out there and  
19 that is certainly an alternative to the modified RRS  
20 proposal. It's not an alternative we would pursue,  
21 but it is an alternative.

22 So I think when we try to go to limit the  
23 scope to the company's proposal, I think that's  
24 inconsistent with what the Commission and your Honors  
25 found to be the scope of this proposal. I think

1 that's -- that's it.

2 MR. FISK: If I could just briefly  
3 clarify that certainly I agree that alternatives are  
4 at issue here as the Commission has ordered, but we  
5 believe even if you stick with just the scope of  
6 looking at the modified rider RRS proposal,  
7 Mr. Comings's testimony clearly comes in. It  
8 addresses the mechanism and how -- and then costs and  
9 benefits of that proposal.

10 MR. HAYS: Your Honor, if I may be heard  
11 for one moment?

12 EXAMINER ADDISON: Certainly, Mr. Hays.

13 MR. HAYS: I don't want to repeat what  
14 others have said, but I would say there are other  
15 alternatives out there as the OCC has indicated. One  
16 of those is the staff's proposal which talked -- and  
17 included Moody's, which talked about the change in  
18 energy prices and the change of the risk -- and you  
19 can read that testimony yesterday -- the change in  
20 the risk of the generating units.

21 It was a matter of discussion yesterday.  
22 It is clearly at the center of this case, that is  
23 that right now they are facing a creditworthiness  
24 problem because of problems that the generating  
25 companies caused by shifts in the market. It's in

1 Exhibit 1, Exhibit 2, Exhibit 3, and in the actual  
2 testimony of the staff witness. This is clearly an  
3 issue in this case. And with that said, thank you.

4 EXAMINER ADDISON: Thank you.

5 Mr. Kutik.

6 MR. KUTIK: Your Honor, I think the first  
7 two arguments that were posed by counsel for Sierra  
8 Club, frankly, make no sense in supporting or  
9 supporting the testimony that we've made the subject  
10 of the third part of our motion to compel and this is  
11 why.

12 He talks about, well, yes, there's been a  
13 change in the calculation; and yes, there are things  
14 that are less risky in the new calculation. But  
15 that's not the subject of the motion to strike. The  
16 motion to strike is really relating to the third  
17 point that he's making which is he believes that and  
18 will always believe that somehow if you don't have  
19 the absolute, up-to-date-today information, it must  
20 be stale and the Commission can't use it.

21 We've already litigated that question.

22 Mr. Rose came in and explained to the Commission how  
23 gas prices go up, gas prices goes down, they are very  
24 volatile, future prices today aren't going to be what  
25 they are going to be tomorrow for a particular time.



1 And it is reasonable to use a reliable method --  
2 methodology of forecasting, which numerous entities  
3 have done, to come up with a reasonable estimate of  
4 what the impact would be.

5 Mr. Comings used the same costs that were  
6 used previously. The only thing different is he  
7 updated the price information going into the revenue  
8 part of the calculation. That has nothing to do with  
9 the means of the calculation. All it is is updating  
10 the projections. We've been there, we've done that,  
11 and it's beyond the scope of the hearing because it  
12 has nothing to do with the changes brought about by  
13 the modification of the calculation that the  
14 companies' proposed or, in fact, any alternative.

15 EXAMINER PRICE: Let me ask you the  
16 question that I posed to Mr. Fisk. Isn't it fair to  
17 allow the parties to update actual facts where prices  
18 like the capacity price -- not a projection, because  
19 as you pointed out, Mr. Rose has a methodology, if  
20 it's reliable, it's reliable; if it's not, it's not.  
21 But isn't it fair to allow the parties to update  
22 actual facts, capacity price, new forward prices,  
23 that are actual facts, they aren't a projection based  
24 upon some sort of methodology?

25 MR. KUTIK: I don't see a distinction

1 between the two, your Honor. You have already ruled  
2 on the question of the reasonableness of the RRS  
3 mechanism and the projections from that.

4 MR. FISK: Your Honor, if I may briefly?

5 EXAMINER ADDISON: You may.

6 MR. FISK: What the reality is, is that  
7 the rider RRS mechanism has changed. The way that  
8 they are going to calculate credits and charges under  
9 the rider RRS has changed. They're using AEP Dayton  
10 Hub prices when the projection did not totally use  
11 that. The averaging is different.

12 So -- and Mr. Tyler -- Mr. Comings's  
13 testimony uses the fact that the mechanism has  
14 changed in a number of ways to be able to provide the  
15 forecast.

16 As to Mr. Kutik's claim that, you know,  
17 Sierra Club always just wants to use the most  
18 up-to-date information. Well, you know, we do think  
19 it's reasonable the Commission would evaluate a  
20 proposal that the company is claiming is good for  
21 customers based on what we know today, not based on  
22 information from mid 2014.

23 And the simple reality here is that  
24 regardless of the question of whether Mr. Rose's  
25 forecasts and methodology in 2014 was reasonable, ICF

1 itself has new forecasts, you know, much more recent  
2 that show much lower prices that directly show that  
3 using their own numbers, customers would pay  
4 significant amounts of money under this proposal.

5 And FirstEnergy would love for everybody  
6 to ignore that fact. But that's a fact. That's  
7 reality. And having the Commission ignore that fact  
8 would be highly unreasonable and would lead to  
9 decision-making that isn't based on what everybody  
10 knows is occurring and what ICF's own forecast shows  
11 is occurring.

12 That's what Mr. Comings's testimony goes  
13 towards. That's why it's relevant and that's why we  
14 believe the motion to strike should be denied.

15 EXAMINER PRICE: I can see why you can  
16 use ICF forecasts to -- if Mr. Rose were here. I  
17 could see why you could use updated forecasts to  
18 cross-examine Mr. Rose and impeach him.

19 I don't understand why you believe that  
20 FirstEnergy -- it gets back to the first motion to  
21 compel -- first motion to strike. I don't understand  
22 why you believe FirstEnergy owns ICF forecasts. They  
23 can't cross-examine the ICF witnesses here as to how  
24 they developed the 2016 forecasts.

25 You haven't produced them. You could

1 have subpoenaed them. You could have tried to bring  
2 them in, but you haven't. So how is he supposed to  
3 address what he may perceive as flaws? They may have  
4 hired ICF, they may believe ICF is reasonable, but  
5 they don't own ICF, ICF is not their subsidiary.  
6 They are not -- they are an independent entity.

7 MR. KUTIK: And, your Honor, as was  
8 established with Mr. Rose's testimony, different  
9 forecasts are different for different purposes. We  
10 don't know all the purposes, all the assumptions that  
11 were done in different forecasts.

12 So to lay one set of numbers against  
13 another set of numbers without understanding the  
14 purpose behind those numbers is unfair to us because  
15 we don't have the opportunity to fully explore that  
16 and explain the differences. That's why it's unfair  
17 and that's why hearsay evidence of this type gets  
18 stricken.

19 MR. FISK: Well, I mean, Mr. Kutik is  
20 free to try to explore that issue in cross of  
21 Mr. Comings and is also free to put on a rebuttal  
22 witness on this. The Commission has already let in  
23 other ICF forecasts and that issue has been decided  
24 as to when it's appropriate to bring in new  
25 forecasts.

1           And this -- I would just come back to  
2           it's not only ICF's forecast that changes it's EIA  
3           forecasts, PJM forecasts have changed. Those are  
4           forecasts that the companies continue to rely on and  
5           that's their -- that's their choice to rely on those  
6           from 2014. It doesn't mean that the Commission  
7           should do it and doesn't mean that the parties should  
8           be limited when the companies come in and say we have  
9           a modified proposal that we believe is best -- is  
10          good for customers and that we claim will still  
11          provide a net credit to customers.

12                 We are entitled to explore the bases for  
13          that claim that this is still good for customers,  
14          that this is less risky and this will provide a net  
15          credit. That is what Mr. Comings's testimony does;  
16          using today's information. It is clear that those  
17          claims by Ms. Mikkelsen in her rehearing testimony  
18          are incorrect and are unreasonable. And that is why  
19          it is appropriate to allow -- that is why it is  
20          appropriate to allow the testimony.

21                 And in addition, in terms of the market  
22          energy price, the way that it is being used in the  
23          new proposal is different than what was originally  
24          proposed under the rider RRS that has been approved,  
25          and that factors into Mr. Comings's testimony.

1           MR. KUTIK: May I have the last word,  
2 your Honor?

3           EXAMINER ADDISON: You may.

4           MR. KUTIK: Again, all they are trying to  
5 do is update. There is nothing in what we've asked  
6 to be struck that relates to any change in the  
7 calculation. What it does is it seeks to not  
8 relitigate what we have already litigated, which is  
9 the reasonableness of rider RRS and the calculations  
10 that are going -- and the effect on customers and the  
11 positives as the Commission has already found.

12           There's nothing in Mr. Comings's  
13 testimony that we have put as part of our motion that  
14 relates to the manner of the calculation and the  
15 effect of the calculation. That's what this  
16 Commission is here to decide; what the Bench is here  
17 to hear and the Commission is here to decide as part  
18 of the entry.

19           We are not here to revisit rider RRS.  
20 And what they are asking for you to do is to revisit  
21 the wisdom of rider RRS with so-called updated  
22 information which picks a time of their choosing, not  
23 a time that is reasonable in any way; but even that  
24 is a subject we've already discussed and you've  
25 decided.

1 EXAMINER ADDISON: Okay. At this time we  
2 will be granting the third motion to strike presented  
3 by Mr. Kutik in its entirety, and please correct me  
4 if I cite to the extensive motion to strike  
5 incorrectly, Mr. Kutik, at any point.

6 Just to clarify, starting on page 1,  
7 lines 23 through page 3, lines 4, will be struck.

8 Moving to page 4

9 MR. KUTIK: Well, your Honor, I believe  
10 we also had moved lines 5 through 10. And actually  
11 through -- I am sorry, did you grant through page 3,  
12 line 4?

13 EXAMINER ADDISON: Yes. I believe those  
14 consolidated together.

15 MR. KUTIK: Thank you, your Honor.

16 EXAMINER ADDISON: I apologize for the  
17 confusion.

18 MR. KUTIK: No.

19 MR. FISK: I'm sorry, now I'm confused.

20 EXAMINER ADDISON: I can cite that again.  
21 Page 1, line 23, starting with the word  
22 "While" through page 3, line 4 is struck.

23 Moving on to page 4, line 5, beginning  
24 with the word "the" to page 4, line 16.

25 Moving on then to page 5, line 3,

1 beginning after the word "no" through page 6,  
2 line 11.

3 Page 7, lines 1 and 2. Page 7 beginning  
4 with line 10 to page 16, line 3.

5 Mr. Kutik, can you verify on page 20  
6 where the next portion?

7 MR. KUTIK: Well, your Honor, our  
8 motion -- next motion was on line 16 starting with  
9 line 11.

10 MR. FISK: Did you mean page 16?

11 MR. KUTIK: Page 16.

12 EXAMINER PRICE: Then page 21, line 1?

13 MR. KUTIK: To page 21, line 3, yes.

14 MR. FISK: I'm sorry. On page 16,  
15 line 11, it starts with "Given how much...."

16 MR. KUTIK: Yes.

17 MS. WILLIS: I thought that was denied.

18 EXAMINER PRICE: Well, that was a  
19 previous motion the first round.

20 MR. FISK: Well, the first round was --

21 MR. KUTIK: So that portion is stricken?

22 EXAMINER ADDISON: Yes. I apologize for  
23 that.

24 MS. BOJKO: I'm sorry, 16, line 1 through  
25 21.



1 EXAMINER ADDISON: Through page 21,  
2 line 3. Is everyone clear up to this point?

3 Moving on. Remaining on page 21, line 16  
4 continuing on to page 22, line 4. And I believe the  
5 last one is page 22, line 13 with the sentence  
6 beginning "This scenario" all the way to page 23,  
7 line 15.

8 EXAMINER PRICE: Mr. Kutik, in light of  
9 this ruling, is your first motion moot entirely?

10 MR. KUTIK: Yes.

11 MS. BOJKO: Your Honor, point of  
12 clarification?

13 EXAMINER ADDISON: Of course.

14 MS. BOJKO: It's my understanding you are  
15 granting a motion to compel, not only with respect to  
16 the update of energy forecasts, but you're also  
17 granting the motion to compel with respect to the  
18 actual known capacity prices that have occurred; is  
19 that my understanding? There were some questions  
20 from the Bench.

21 EXAMINER ADDISON: Did you mean motion to  
22 strike, Ms. Bojko?

23 MS. BOJKO: I'm sorry?

24 EXAMINER ADDISON: Did you mean motion to  
25 strike? You said motion to compel.

1 MS. BOJKO: Oh, I'm sorry.

2 MR. FISK: We would love to compel.

3 MS. BOJKO: Motion to strike with regard  
4 to the known, not projected, but actual known  
5 capacity prices?

6 EXAMINER PRICE: Yes.

7 EXAMINER ADDISON: Yes.

8 MS. BOJKO: Just for the record, OMAEG  
9 would like to state its objection to the granting of  
10 the motion to compel in its whole, but particularly  
11 with regard to actual known capacity prices that  
12 occurred in the PJM market and are known and are no  
13 longer forecasted per the companies' --

14 EXAMINER PRICE: I tried to give Mr. Fisk  
15 the lifeline. He didn't take it.

16 MR. FISK: What?

17 EXAMINER PRICE: I tried to give you the  
18 lifeline of known capacity prices; you didn't agree  
19 there was a distinction.

20 MS. BOJKO: I would have jumped in to  
21 jump on that lifeline.

22 EXAMINER ADDISON: Do any other parties  
23 wish to make the same objection on the record?

24 EXAMINER PRICE: And just back to  
25 Ms. Bojko's point that she earlier sought

1 clarification. We are not addressing the cost side  
2 in this motion. If you've got evidence you want to  
3 put on with respect to the cost side, that's not part  
4 of this motion.

5 MS. BOJKO: Thank you. That's why I  
6 wanted to make the statement because of your comments  
7 on the record.

8 EXAMINER PRICE: I understand.

9 MR. FISK: Your Honors, I would like to  
10 make a proffer of Mr. Comings's testimony for  
11 purposes of appeal. Respectfully, the Sierra Club  
12 disagrees with the motion to strike and the granting  
13 of the motion to strike.

14 MR. KUTIK: Mr. Fisk, maybe I can -- I  
15 assume that his testimony would be the proffer.

16 MR. FISK: That what?

17 MR. KUTIK: The thing you filed would be  
18 the proffer.

19 MR. FISK: Yes. I just want to reserve  
20 objections we've made and reserve the right to use  
21 his testimony as a proffer.

22 EXAMINER ADDISON: It's noted on the  
23 record.

24 MR. FISK: Thank you.

25 MR. HAYS: NOAC and the individual

1 communities would join in that, your Honor.

2 MS. WILLIS: And please note on the  
3 record, OCC takes issue with the ruling and I guess  
4 we will be addressing this in our motion -- in our  
5 presentation of Mr. Wilson. We will address and  
6 expect to have the opportunity to make our argument  
7 before the Bench on those -- on that testimony and  
8 any motion to strike.

9 EXAMINER ADDISON: Of course. Thank you,  
10 Ms. Willis.

11 That concludes -- I want to be sure it  
12 concludes all the motions to strike, Mr. Kutik?

13 MR. KUTIK: Yes, it does, your Honor.

14 EXAMINER ADDISON: Thank you.

15 Mr. Hays, any questions?

16 MR. HAYS: I think he's a friendly  
17 witness, your Honor, no.

18 EXAMINER ADDISON: Providing the  
19 courtesy.

20 Mr. Pritchard?

21 MR. PRITCHARD: No questions, your Honor.

22 EXAMINER ADDISON: Ms. Bojko?

23 MS. BOJKO: No questions. Thank you.

24 EXAMINER ADDISON: Ms. Petrucci?

25 MS. PETRUCCI: No questions.

1 EXAMINER ADDISON: Ms. Willis?  
2 MS. WILLIS: No questions.  
3 EXAMINER ADDISON: Ms. Glover?  
4 MS. GLOVER: No questions.  
5 EXAMINER ADDISON: Mr. Boehm?  
6 MR. K. BOEHM: No questions.  
7 EXAMINER ADDISON: Mr. Kutik?  
8 MR. KUTIK: No questions, your Honor.  
9 Mr. McNamee?  
10 MR. McNAMEE: No questions, your Honor.  
11 EXAMINER ADDISON: Examiner Price?  
12 EXAMINER PRICE: No questions.  
13 EXAMINER ADDISON: I have no questions.  
14 You are excused, Mr. Comings. Thank you very much.  
15 THE WITNESS: Thank you, your Honor.  
16 EXAMINER ADDISON: Mr. Fisk?  
17 MR. FISK: We renew our motion to admit  
18 what is left of Exhibit Sierra Club 100 and Sierra  
19 Club 101C.  
20 EXAMINER ADDISON: Thank you. And  
21 subject to the motions to strike, are there any  
22 objections to the admissions of these two exhibits?  
23 Hearing none, they will be admitted.  
24 (EXHIBITS ADMITTED INTO EVIDENCE.)  
25 MR. KUTIK: May we go off the record,

1 your Honor?

2 EXAMINER ADDISON: Let's go off the  
3 record.

4 (Discussion off the record.)

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

7 Dynegy may call its next witness.

8 MR. SETTINERI: Thank you, your Honor.

9 At this time we would call Dean Ellis to the stand.

10 (Witness sworn.)

11 EXAMINER ADDISON: Thank you. You may be  
12 seated.

13 MR. SETTINERI: Your Honors, at this time  
14 we would like to mark an exhibit. It would be Dynegy  
15 Exhibit No. 2. That exhibit will be the rehearing  
16 testimony of Dean Ellis. May I approach, your Honor?

17 EXAMINER ADDISON: You may, and it will  
18 be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 - - -

21 DEAN ELLIS

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

24 DIRECT EXAMINATION

25 By Mr. Settineri:

1 Q. Good morning, Mr. Ellis.

2 A. Good morning.

3 Q. Could you please state your name and  
4 business address for the record, please.

5 A. Dean Ellis, 601 Travis Street, Houston,  
6 Texas.

7 Q. And do you have before you what's been  
8 marked as Dynegey Exhibit No. 2?

9 A. Yes, I do.

10 Q. And could you identify that for the  
11 record, please.

12 A. That is my rehearing testimony.

13 Q. All right. Was that prepared by you or  
14 under your direction?

15 A. Yes, it was.

16 Q. And do you have any changes or revisions  
17 to your testimony at this time?

18 A. I do. I have one change on page 8,  
19 line 18, "8,920 megawatts" should be  
20 "9,120 megawatts" which was corrected in a  
21 supplemental filing by the companies.

22 Q. Do you have any other corrections to --  
23 revisions to your testimony, today?

24 A. I do not.

25 Q. If I was to ask you the questions in your

1 testimony today, would your answers, as you have  
2 revised, be the same?

3 A. Yes.

4 MR. SETTINERI: Thank you.

5 At this time, your Honor, the witness is  
6 available for cross-examination.

7 EXAMINER ADDISON: Thank you,  
8 Mr. Settineri.

9 Before we begin, any motions to strike?

10 MR. ALEXANDER: Yes, your Honor, one. We  
11 would move to strike page 8, line 14 through page 9,  
12 line 12. This Question and Answer relate to the  
13 companies' reference to 3,200 megawatts which was  
14 withdrawn by Ms. Mikkelsen, and so this reference is  
15 no longer relevant.

16 MR. SETTINERI: Your Honor, Ms. Mikkelsen  
17 did withdraw a question -- or certain portions of her  
18 testimony, but the reason why this testimony needs to  
19 remain is the Commission found that the application  
20 for rehearing in this matter included her prefiled  
21 testimony. Therefore, that still remains active in  
22 the Commission's eyes as part of the application for  
23 rehearing. And for that reason, this testimony is  
24 very relevant.

25 MR. ALEXANDER: And, your Honor, two



1 points. One -- I will give Mr. Settineri a chance to  
2 address this if he likes -- I missed a reference,  
3 it's also page 5, line 8, beginning with "The  
4 Companies" through line 10 ending after the footnote.

5 And so, with that clarification, to  
6 address the substance of Mr. Settineri's argument,  
7 the testimony in these proceedings, as the Bench is  
8 well aware, is not what has been prefiled and said,  
9 it is what is sponsored by the witness on the stand  
10 and subject to cross-examination. So the fact that  
11 it was in prefiled testimony does not make it part of  
12 the record in this proceeding.

13 And then with regard to the application  
14 for rehearing, that's a separate document from  
15 Ms. Mikkelsen's testimony, and the withdrawn portion  
16 of Ms. Mikkelsen's testimony is simply no longer  
17 relevant.

18 MR. SETTINERI: Your Honor, if I may?

19 EXAMINER ADDISON: Before I let you  
20 respond, Mr. Settineri.

21 Mr. Alexander, I just wanted to clarify  
22 the motion to strike. Are you requesting -- you  
23 mentioned it begins on line 14. Did you mean to say  
24 it begins on line 12, on page 8, I'm sorry.

25 MR. ALEXANDER: Yes, your Honor.

1 EXAMINER ADDISON: It includes line -- it  
2 begins on line 12?

3 MR. ALEXANDER: The question doesn't have  
4 reference to the 3,200 megawatts, it can stay in, but  
5 then the answer does, so we could --

6 EXAMINER PRICE: The "No" part doesn't.

7 MR. ALEXANDER: We could keep the  
8 question and the word "No" and delete the remainder.

9 EXAMINER ADDISON: So beginning on line  
10 14 with "The companies."

11 MR. ALEXANDER: Yes, your Honor.

12 EXAMINER ADDISON: Thank you.

13 MR. SETTINERI: Your Honor, what I would  
14 like to do, if I may, first start with the argument  
15 as to whether the motions to strike should be granted  
16 conceptually, because then I would like an  
17 opportunity to go through and look at the actual text  
18 because there is portions here that don't relate in  
19 that answer, the answer on page 8 running into 9, I  
20 believe that our -- that information can remain  
21 because it's responsive to the question.

22 The Question is "Would opening rider RRS  
23 to competitive procurement impair economic  
24 development and transmission reliability in Ohio?"

25 The Answer starts with "No." And there

1 is other information there. But on page 9 there is a  
2 continuation, as I noted previously, "Dynergy owns,"  
3 and the sentence prior at line 2, "Moreover, economic  
4 development and transmission reliability...."

5 So I -- I guess to make it simple for  
6 starters, page 8 to page 9, if the motion was to be  
7 granted, it should only be limited to what the  
8 argument is which is on the 3,200 megawatts. So that  
9 answer would then read "Answer: No."

10 "Moreover, economic development and  
11 transmission reliability will be assured by other  
12 sources of generation in Ohio and in the ATSI zone."  
13 So the rest of the answer should stand because all of  
14 that is responsive to the question which is asked  
15 about opening rider RRS to competitive procurement.

16 As to the remaining language which  
17 relates to the 3,200, there's -- the Commission, when  
18 it denied the interlocutory appeal, found that the  
19 application for rehearing included not only the  
20 application for rehearing document, it also said  
21 includes the memorandum in support and includes her  
22 prefiled direct testimony. That was in the  
23 Commission's interlocutory entry on that  
24 interlocutory appeal.

25 So because of that, that's -- in the

1 Commission's eyes, that is what is before the  
2 Commission. They've withdrawn pieces from her  
3 testimony, but there's been no formal filing made or  
4 approved by the Commission or accepted by the  
5 Commission that's off the table. So until that's off  
6 the table, in the Commission's eyes, this testimony  
7 is certainly relevant, and the Commission can easily  
8 weigh this evidence. The fact that in the event the  
9 Commission says yes, this is off the table; it  
10 doesn't need to address this evidence at all.

11 EXAMINER PRICE: But even if the  
12 Commission -- I think you are being very technical.  
13 But even if the Commission were inclined to  
14 reinstitute what was in the first version of the  
15 prefiled testimony, Mr. Alexander is right, that's  
16 not evidence and there would be no record on -- to  
17 base it on because the record is coming out of this  
18 proceeding -- this hearing.

19 MR. SETTINERI: But what the Commission  
20 has said is their application for rehearing  
21 included --

22 EXAMINER PRICE: I know what the  
23 Commission said.

24 MR. SETTINERI: Now, I am beating a dead  
25 horse but maybe, but I am quite linear in my

1 thinking, but with that said, the Commission has  
2 found three documents to constitute that rehearing  
3 application and that is what the Commission is  
4 looking at in regards to this rehearing.

5           There's been -- and so as long as that is  
6 on the table, perhaps hyper-technical, this testimony  
7 on that proposal is still relevant and we shouldn't  
8 take it -- we should be allowed to admit it because  
9 the Commission has considered the document that they  
10 filed as part of their application for rehearing  
11 which is the subject of this hearing, so we should be  
12 permitted to put in that evidence to address that  
13 prefiled document that is still active in the eyes of  
14 the Commission.

15           It hasn't been admitted into the record  
16 as evidence, but in the Commission's eyes that is  
17 part of the proposal that was submitted to them in  
18 this application on rehearing. We don't agree with  
19 that, but perhaps technical, but that was an issue  
20 that's been created by that order on the  
21 interlocutory appeal. So with that said, we believe  
22 this testimony can stay in. It will not affect the  
23 record in any way.

24           EXAMINER PRICE: I think it runs the risk  
25 of muddying the record because you are talking about

1 something that's not happening.

2 MR. SETTINERI: Still in play with the  
3 Commission. It could happen and so we should be  
4 permitted to have evidence in the record to address  
5 that potential, as technical as it may be, we are  
6 allowed to protect ourselves. If it is granted,  
7 obviously then the answer should be "No" starting  
8 then with "Moreover" on line 2 and the rest should  
9 remain in.

10 But we believe strongly that because of  
11 that interlocutory appeal, the Commission's decision  
12 that that prefiled document is part of the  
13 application of rehearing, we should be allowed to  
14 enter this evidence into the record subject to  
15 cross-examination to the extent the companies deem it  
16 necessary.

17 EXAMINER ADDISON: Mr. Alexander,  
18 response?

19 MR. ALEXANDER: I'm fine with ending the  
20 motion to the strike prior to the word "Moreover,"  
21 your Honor. I think that makes sense, and with that  
22 I think the Bench understands the grounds of the  
23 motion, so nothing more to add.

24 EXAMINER ADDISON: At this time we will  
25 grant the motion to strike in part, beginning on

1 page 5, lines 8, starting with the sentence "The  
2 companies" and ending on line 10, after a reference  
3 to the footnote and that includes the footnote  
4 itself.

5 Then moving on to page 8, we will be  
6 striking, beginning on line 14, beginning with "The  
7 companies" and ending on page 9, line 2, with "units  
8 in Ohio."

9 Does that conclude your motions to  
10 strike, Mr. Alexander?

11 MR. ALEXANDER: Yes, your Honor.

12 EXAMINER ADDISON: Thank you.

13 MR. ALEXANDER: Good morning, Mr. Ellis.

14 EXAMINER ADDISON: Mr. Alexander, sorry,  
15 I'm going to -- you're jumping the gun a little bit.  
16 Mr. Pritchard?

17 MR. PRITCHARD: No questions, your Honor.

18 EXAMINER ADDISON: Ms. Bojko?

19 MS. BOJKO: No questions, your Honor.

20 EXAMINER ADDISON: Mr. Sauer?

21 MR. SAUER: No questions, your Honor.

22 EXAMINER ADDISON: Ms. Glover?

23 MS. GLOVER: No questions.

24 EXAMINER ADDISON: Mr. Boehm?

25 MR. K. BOEHM: No questions.

1 EXAMINER ADDISON: Mr. Alexander, you're  
2 up.

3 MR. ALEXANDER: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Alexander:

7 Q. Mr. Ellis, can you please turn to page 3,  
8 line 18 of your testimony where you reference  
9 Dynegy's generation in the ATSI region.

10 A. Yes.

11 Q. Now, when you say that "7 percent of  
12 Dynegy's generation is located in the ATSI zone," you  
13 mean that percent of Dynegy's Ohio generation is  
14 located in the ATSI zone, correct?

15 A. That's correct.

16 Q. And Dynegy actually owns 400 megawatts in  
17 the ATSI zone, correct?

18 A. Yes.

19 Q. Dynegy does not own any nuclear assets,  
20 correct?

21 A. That's correct.

22 Q. Page 5, line 21, you reference "grid  
23 modernization efforts." Do you see that?

24 A. Yes.

25 MR. SETTINERI: Excuse me. What page



1 reference? I'm sorry.

2 MR. ALEXANDER: Page 5, line 21.

3 MR. SETTINERI: Thank you.

4 Q. (By Mr. Alexander) Now, Mr. Ellis, you  
5 would agree that grid modernization efforts are  
6 dependent upon the ability of the companies to fund  
7 those efforts, correct?

8 A. I believe that the companies's ability to  
9 invest in grid modernization would obviously be  
10 contingent upon the companies' ability to fund those  
11 efforts, yes.

12 Q. And the ability of the companies to fund  
13 grid modernization is partially dependent on the  
14 credit rating of the companies, correct?

15 A. It could potentially be.

16 Q. And you are aware that in response to  
17 stipulations filed in this proceeding, the companies  
18 have filed a grid modernization case with the  
19 Commission.

20 A. I'm generally aware of it, yes.

21 Q. And you have not reviewed those grid  
22 modernization cases in detail, correct?

23 A. Not in detail, no.

24 Q. But you're aware the companies have  
25 presented three grid modernization scenarios?

1           A.    That's correct; under the plan there were  
2 three scenarios.

3           Q.    And you are aware the companies' proposed  
4 scenarios had investment ranges from 3 to 5 billion  
5 dollars, but you don't remember the exact numbers in  
6 each scenario?

7           A.    I reread the companies' grid  
8 modernization plan and I couldn't find any reference  
9 to the costs.

10          Q.    Please turn to page 10, line -- strike  
11 that.

12                    Please turn to page 7, line 10 of your  
13 testimony.

14          A.    Yes.

15          Q.    Now, your written testimony does not  
16 include a firm offer to provide a financial product  
17 with the lower risk to customers, correct?

18          A.    Correct. Our testimony does not provide  
19 for a firm offer.

20          Q.    And you are not aware of any financial  
21 institution which currently offers a product similar  
22 to modified rider RRS, correct?

23          A.    Off the top of my head, I'm generally not  
24 aware of a product; although, at the same time, it  
25 wouldn't be unusual in certain respects such as the

1 term.

2 MR. ALEXANDER: Your Honor, I move to  
3 strike everything after the word "although."

4 EXAMINER ADDISON: Mr. Settineri.

5 MR. SETTINERI: Could I have that  
6 question and answer reread, your Honor.

7 EXAMINER ADDISON: You may.

8 MR. SETTINERI: Thanks.

9 (Record read.)

10 MR. SETTINERI: Your Honor, the question  
11 asked about products similar to modified rider RRS,  
12 so his whole answer would be going to clarifying the  
13 similar portion of the question, so it wasn't a  
14 targeted question to RRS; it was similar. His answer  
15 gave that last part -- that last part that  
16 Mr. Alexander seeks to strike simply was clarifying  
17 his answer going to the question.

18 EXAMINER ADDISON: Thank you.

19 At this time I am going to deny the  
20 motion to strike. I'll allow Mr. Ellis to have his  
21 one bite of the apple. But, Mr. Ellis, if you could  
22 just listen to Mr. Alexander's questions very closely  
23 and make sure your response is limited to his  
24 question going forward. Thank you.

25 Q. (By Mr. Alexander) Mr. Ellis, you are not

1 aware of any long-term arrangement similar to  
2 modified rider RRS being publicly traded on any index  
3 or trading floor, correct?

4 A. I'm personally not aware of any, no.

5 Q. And staying on page 7, now focusing on  
6 line 14 where you reference a proposal which could  
7 hypothetically be made using actual costs instead of  
8 proposals similar to modified rider RRS. Do you see  
9 that?

10 A. Yes.

11 Q. Now, in this sentence you are referencing  
12 a hypothetical possibility, rather than an actual  
13 offer which has been made in this proceeding,  
14 correct?

15 A. That's correct.

16 Q. And similarly at line 18, page 7,  
17 line 18, you reference the possibility of a financial  
18 institution offering to provide the transaction at  
19 90 percent or lower of the projected costs. Do you  
20 see that?

21 A. Yes.

22 Q. Now, you are not aware of any financial  
23 institution which has made such an offer in response  
24 to the companies' modified rider RRS proposal,  
25 correct?

1           A.    I'm personally not aware of any, no.

2           Q.    So this sentence again is referencing a  
3 hypothetical possibility rather than an actual offer.

4           A.    It is a possibility, that's correct.

5           Q.    Now, please go back up to page 7,  
6 line 14, and your independent power producer  
7 hypothetical.

8           A.    Yes.

9           Q.    Now, under that hypothetical, there would  
10 be the possibility that actual costs could vary from  
11 those projected by the independent power producer,  
12 correct?

13          A.    I'm sorry.  Could you repeat the  
14 question?

15          Q.    Certainly.  Under your hypothetical on  
16 page 7, line 14, there could be the possibility that  
17 actual costs could vary from those projected by the  
18 independent power producer, correct?

19          A.    Mr. Alexander, I don't believe I  
20 reference a "vary" in the actual costs.  I just say  
21 we could "use actual costs," if I understand your  
22 question correctly.

23          Q.    I don't believe you did.  In your  
24 independent power producer hypothetical, there's the  
25 chance that the actual costs incurred by the

1 independent power producer could vary from those  
2 projected by the independent power producer at the  
3 time it made its offer, correct?

4 MR. SETTINERI: Just object to the extent  
5 that he is claiming the hypothetical includes  
6 projected costs.

7 EXAMINER ADDISON: Mr. Alexander?

8 MR. ALEXANDER: Your Honor, the  
9 hypothetical does include projected costs. A similar  
10 construct is a reference to actual costs which has a  
11 projected cost at the beginning and actual costs as  
12 the rider goes on; by definition that has to include  
13 projected costs at inception and actual costs as you  
14 progress, so I don't know how it could work any other  
15 way.

16 EXAMINER ADDISON: Maybe you could take a  
17 step back and kind of work up to that question.

18 MR. ALEXANDER: Certainly.

19 Q. (By Mr. Alexander) Mr. Ellis, do you  
20 recall being deposed in this proceeding?

21 A. Yes.

22 Q. And do you recall swearing to tell the  
23 truth in that deposition?

24 A. Yes.

25 Q. Could you please turn to page 30 of your

1 deposition, starting at line 1.

2 MR. SETTINERI: Your Honor, before we do  
3 that, shouldn't there be a question to the witness  
4 before we jump and start using the deposition  
5 transcript on cross?

6 MR. ALEXANDER: There was a question. We  
7 are going to that question.

8 MR. SETTINERI: I believe I objected and  
9 I think it may have been sustained with some guidance  
10 from the Bench.

11 EXAMINER ADDISON: Thank you,  
12 Mr. Settineri.

13 MR. SETTINERI: So I would expect a new  
14 question before we ask him to open his deposition  
15 transcript.

16 EXAMINER ADDISON: Go ahead and pose the  
17 question again, Mr. Alexander, and if you feel that  
18 there's a reason to bring out his deposition, we'll  
19 allow it at that time.

20 Q. (By Mr. Alexander) Mr. Ellis, in your  
21 hypothetical at page 7, line 14, you assumed that  
22 there was the possibility that hypothetical -- in  
23 your hypothetical that actual costs could vary from  
24 those projected by an independent power producer,  
25 correct?

1           A.    Yes.

2           Q.    (By Mr. Alexander) Could I ask that  
3 question and answer be reread, please.

4                   EXAMINER ADDISON:   You may.

5                   (Record read.)

6           Q.    Now, under modified rider RRS, the costs  
7 are currently known with certainty, correct?

8           A.    My understanding of modified RRS is that  
9 it will be based on the projected costs which will be  
10 fixed.

11           Q.    Now again, going back to your  
12 hypothetical, there would be the possibility that the  
13 units submitted by the independent power producer did  
14 not clear in the capacity auction, correct?

15           A.    Could you repeat the question,  
16 Mr. Alexander?

17           Q.    Going back to your hypothetical, page 7,  
18 line 14, there would be the possibility that the  
19 units submitted by the independent power producer did  
20 not clear in the capacity auction, correct?

21           A.    Under our hypothetical, we didn't take  
22 into account whether or not those units cleared a  
23 capacity auction.

24           Q.    Well, you do say at page 7, line 15, your  
25 hypothetical uses "actual revenues," correct?



1           A.    Correct.

2           Q.    And actual revenues include capacity  
3 revenues, correct?

4           A.    If the unit were to receive capacity  
5 revenues.

6           Q.    Okay.  So your -- in your hypothetical,  
7 there is the chance that the unit may not clear in  
8 the capacity auction and that would then impact  
9 actual revenues, correct?

10          A.    Correct.

11          Q.    And under modified rider RRS, there is no  
12 risk of units failing to clear in capacity auctions,  
13 correct?

14          A.    My understanding of modified rider RRS is  
15 that it is simply based upon the projected costs of  
16 the unit and not tied to the revenues of the units,  
17 so clearing a capacity market would not affect  
18 modified -- or rider RRS.

19               MR. ALEXANDER:  Nothing further, your  
20 Honor.

21               Thank you, Mr. Ellis.

22               EXAMINER ADDISON:  Thank you,  
23 Mr. Alexander.

24               Mr. McNamee?

25               MR. McNAMEE:  No questions, thank you.

1 EXAMINER ADDISON: Thank you.

2 Mr. Settineri, redirect?

3 MR. SETTINERI: May I have a very brief  
4 moment?

5 EXAMINER ADDISON: You may. Let's go off  
6 the record.

7 (Discussion off the record.)

8 EXAMINER ADDISON: Let's go back on the  
9 record.

10 Mr. Settineri.

11 MR. SETTINERI: Your Honor, we have no  
12 redirect for Mr. Ellis.

13 EXAMINER ADDISON: Thank you.

14 Mr. Ellis, we have no questions. You are  
15 excused. Thank you very much.

16 THE WITNESS: Thank you.

17 MR. SETTINERI: Your Honor, at this time  
18 we would move into the record Dynegy Exhibit 2, as  
19 modified by the Bench's decision on the motion to  
20 strike.

21 EXAMINER ADDISON: Thank you,  
22 Mr. Settineri.

23 Are there any objections to the admission  
24 of Dynegy Exhibit No. 2? Subject to the motions to  
25 strike?

1                   Hearing none, it will be admitted.

2                   (EXHIBIT ADMITTED INTO EVIDENCE.)

3                   EXAMINER ADDISON: Let's go off the  
4 record for a moment.

5                   (Discussion off the record.)

6                   EXAMINER ADDISON: All right. Let's go  
7 ahead and go back on the record.

8                   RESA may call its next witness.

9                   MR. SETTINERI: Thank you, your Honor.  
10 At this time we would call Brenda Crockett-McNew to  
11 the stand.

12                   (Witness sworn.)

13                   EXAMINER ADDISON: Thank you. You may be  
14 seated.

15                   THE WITNESS: Thank you.

16                   MR. SETTINERI: Thank you. Your Honors,  
17 at this time we would like to mark as RESA Exhibit 7,  
18 the direct rehearing testimony of Brenda  
19 Crockett-McNew.

20                   EXAMINER ADDISON: It will be so marked.

21                   (EXHIBIT MARKED FOR IDENTIFICATION.)

22                   MR. SETTINERI: May I approach, your  
23 Honor?

24                   EXAMINER ADDISON: You may.

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BRENDA CROCKETT-McNEW

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

DIRECT EXAMINATION

By Mr. Settineri:

Q. Good morning, Ms. Crockett-McNew.

A. Good morning.

Q. Could you please state your name and business address for the record, please?

A. It's Brenda Crockett-McNew at Champion Energy Services. Address is 1500 Rankin Road, Suite 200, Houston, Texas.

Q. And do you have before you what's been marked as RESA Exhibit 7?

A. Yes.

Q. And can you identify that for the record, please?

A. That is my direct rehearing testimony.

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

A. Yes, it was.

Q. And do you have any changes or corrections to your testimony today?

A. I do.

Q. And if I may interrupt, if you could

1 carefully read those into the record for the court  
2 reporter.

3 A. Yes, I will. On page 3, line 11, after  
4 "1986" insert "from 1989 to 1995." And then  
5 continuing on in that line if you will delete "Enron"  
6 and replace it with "Natural Gas Clearing House  
7 (Dynergy)." And after that -- after the word "and" if  
8 you would insert "ultimately."

9 Then continuing on to line 12 before the  
10 "1997," if you would insert from "1995 to 1997, I  
11 took a position with Enron as manager of natural gas  
12 trading and then returned to Dynergy in June of" --  
13 and then from there would delete "I took a position  
14 with Dynergy."

15 EXAMINER ADDISON: Ms. Crockett-McNew,  
16 would you just mind reading the sentence as it --

17 THE WITNESS: Yes, I will, to make it  
18 easier, certainly.

19 The -- my answer -- the question was  
20 training experience prior to Champion.

21 "I started in the energy industry nearly  
22 30 years ago, as an accountant with Enron Corp. in  
23 1986. From 1989 to 1995, I moved into natural gas  
24 marketing with Natural Gas Clearing House (Dynergy)  
25 and ultimately became involved in -- ultimately

1 became involved with purchasing and negotiating  
2 natural gas pipeline supplies and rates. From 1995  
3 to 1997, I took a position with Enron as manager of  
4 natural gas trading. And then returned to Dynegy, in  
5 June of 1997, managing its natural gas trading and  
6 assets in the Rocky Mountain region and then the  
7 entire western region."

8 EXAMINER ADDISON: Thank you.

9 THE WITNESS: Certainly.

10 Q. (By Mr. Settineri) Do you have any other  
11 corrections to your testimony today?

12 A. I do. On the same page, number -- on  
13 page 3, line 19, if we would insert after the word  
14 "No" comma "not in person."

15 Q. Any other corrections?

16 A. One last -- one last minor one. On  
17 page 5, line 4, if you would insert after the word  
18 "at" with the word "their" and then delete thereafter  
19 "own." So it would read "would make that selection  
20 at their own risk."

21 Q. Any other corrections or revisions to  
22 your testimony?

23 A. That is all.

24 Q. If I was to ask you the questions in your  
25 testimony today, would your answers, as you have

1 revised, be the same?

2 A. Yes.

3 MR. SETTINERI: Thank you.

4 At this time, your Honor, the witness is  
5 available for cross-examination.

6 EXAMINER ADDISON: Thank you,  
7 Mr. Settineri.

8 Are there any motions to strike to  
9 consider before cross-examination?

10 MS. DUNN: No, your Honor.

11 EXAMINER ADDISON: Thank you.

12 Mr. Hays?

13 MR. HAYS: No questions, your Honor.

14 EXAMINER ADDISON: Mr. Pritchard?

15 MR. PRITCHARD: No questions, your Honor.

16 EXAMINER ADDISON: Ms. Bojko?

17 MS. BOJKO: No questions, your Honor.

18 EXAMINER ADDISON: Mr. Fisk?

19 MR. FISK: No questions.

20 EXAMINER ADDISON: Ms. Willis?

21 MS. WILLIS: No questions.

22 EXAMINER ADDISON: Ms. Glover?

23 MS. GLOVER: No questions.

24 EXAMINER ADDISON: Mr. Boehm?

25 MR. K. BOEHM: No questions.

1 EXAMINER ADDISON: Ms. Dunn?

2 MS. DUNN: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Dunn:

6 Q. Good morning, Ms. Crockett-McNew.

7 A. Good morning.

8 Q. My name is Carrie Dunn, and I represent  
9 the companies in this case. In preparing your  
10 written testimony, you relied, in part, on portions  
11 of the pieces of testimony filed by RESA witness  
12 Stephen Bennett, correct?

13 A. I reviewed his testimony, yes.

14 Q. Other than -- I would like you to turn to  
15 Exhibit -- or excuse me, Attachment BCM-1 to your  
16 rehearing testimony.

17 A. Yes.

18 Q. Other than the discovery response that is  
19 attached to your testimony, you did not review any  
20 other responses to discovery that the companies  
21 provided in this case, correct?

22 A. This is the only piece that I reviewed of  
23 the direct rehearing testimony, yes.

24 Q. And you have also not signed a  
25 certificate that would entitle you to confidential or



1 competitively-sensitive information in this case,  
2 correct?

3 A. That's correct.

4 Q. And in your experience, your work  
5 experience, you have not ever designed rates for an  
6 electric or gas utility, correct?

7 A. That's correct.

8 Q. And you also have not developed pricing  
9 models for CRES products, correct?

10 A. That's correct.

11 Q. You define a "hedge" as an offset to a  
12 price or product that gives you a known outcome,  
13 correct?

14 A. Yes.

15 Q. And you are aware of a product that  
16 certain CRES providers may provide in Ohio which is a  
17 percentage off the price to compare, correct?

18 A. That's correct.

19 Q. And under your definition we just  
20 discussed of a "hedge," you do not consider that type  
21 of product a hedge because the price to compare  
22 fluctuates, correct?

23 A. Yes.

24 Q. However, for a customer, that may be what  
25 they deem a hedge, correct?

1           A.    I can't speak for every customer.

2           Q.    So would the answer to my question be  
3 "yes"?

4           A.    I can't speak for every customer.

5           Q.    If you could -- we are going to go ahead.

6           MS. DUNN:  Mike, do you need a copy of  
7 her deposition?

8           MR. SETTINERI:  Thanks for asking.

9           MR. LANG:  May we approach?

10          EXAMINER ADDISON:  You may.

11          Q.    (By Ms. Dunn) Ms. Crockett-McNew, I have  
12 handed you a copy of your deposition from June 30 of  
13 2016.  Do you have that in front of you?

14          A.    Yes.

15          Q.    And if you could please turn to page 24  
16 of your deposition.

17          A.    Yes.

18          Q.    Line 4, please.

19          A.    Yes.

20          Q.    "Question:  And certain CRES providers in  
21 Ohio may offer as part of their pricing a percentage  
22 off price to compare products.  Have you heard of  
23 that?"

24          MR. SETTINERI:  I am sorry to interrupt.  
25 I missed that page reference.

1 MS. DUNN: Oh, I'm sorry. Page 24,  
2 line 4.

3 MR. SETTINERI: I'm sorry, and if you  
4 want to go ahead and repeat your --

5 MS. DUNN: Sure.

6 MR. SETTINERI: -- I don't want to  
7 interrupt your --

8 Q. Line 4, "Question: And certain CRES  
9 providers in Ohio may offer as part of their pricing  
10 a percentage off price to compare products. Have you  
11 heard of that?"

12 "Answer: Yes."

13 "Question: And would you consider that  
14 type of product a hedge under your definition?"

15 "Answer: So, according to my definition,  
16 not necessarily, because that price to compare  
17 fluctuates. But for a customer, that may be what  
18 they deem as a hedge." Did I read that correctly?

19 A. Yes.

20 Q. Thank you.

21 MR. SETTINERI: Your Honors, I would, at  
22 this time, also object as that being improper  
23 impeachment to the extent it leaves off the next  
24 Question and Answer. The question states "Would it  
25 be possible, then, that a customer would --

1 proceed -- strike that. I'll stop there.

2 EXAMINER ADDISON: Thank you. We will  
3 let the record just speak for itself. Let's move on  
4 from this.

5 Q. And, Ms. Crockett-McNew, you don't know  
6 whether a customer would consider the companies'  
7 proposal, in the rehearing testimony that  
8 Ms. Mikkelsen presented, a hedge, correct?

9 A. That's for the individual customer to  
10 decide.

11 Q. And my next question would be because you  
12 can't speak for a customer, correct?

13 A. Right.

14 Q. And if you turn to your testimony on  
15 page 4, line 17, when you state that the companies'  
16 proposal offers no hedge to -- to those customers,  
17 that is the view of RESA, correct?

18 A. That's correct.

19 Q. And that's because you do not know what  
20 customers may or may not think, correct?

21 A. That's correct.

22 Q. Under the companies' proposal, customers  
23 still have the option to shop for CRES, correct?

24 A. That's correct.

25 Q. If you could please turn to page 5,

1 line 8 of your testimony, you reference a "standard  
2 service offer," correct?

3 A. Yes.

4 Q. And under the companies' proposals,  
5 customers can still choose to stay on the companies'  
6 Standard Service Offer, correct?

7 A. Yes.

8 Q. And under the companies' proposal, CRES  
9 providers still can provide CRES service to the  
10 companies' customers, correct?

11 A. That's correct.

12 Q. And the company's proposal does not  
13 prevent CRES providers from providing CRES, correct?

14 A. I'm sorry, can you repeat that question?

15 Q. Sure. The companies' proposal does not  
16 prevent CRES providers from providing CRES, correct?

17 A. I'm sorry, I don't understand your  
18 definition of "CRES."

19 Q. Oh, competitive retail electric service.

20 A. Okay. So, yes, that's correct.

21 Q. And when I used the term "CRES" in my  
22 prior questions, I also meant "competitive retail  
23 electric service," okay?

24 A. Okay. Versus supplier, that's -- sorry.

25 Q. And some CRES providers provide customers

1 other products than electric generation, such as  
2 time-of-use rates or energy savings communications,  
3 correct?

4 A. That's correct.

5 Q. To your knowledge, RESA has not  
6 calculated any projections of the costs or credits  
7 under the companies' proposal, correct?

8 A. That's correct.

9 Q. If you could turn to page 6 of your  
10 testimony --

11 MR. HAYS: Your Honor, may I have that  
12 last question and answer reread, please?

13 EXAMINER ADDISON: You may.

14 (Record read.)

15 MR. HAYS: Thank you very much.

16 EXAMINER ADDISON: Please proceed,

17 Ms. Dunn.

18 Q. On page 6 of your testimony, you discuss  
19 grid modernization improvements, correct?

20 A. That's correct.

21 Q. And generally charges to customers for  
22 grid modernization improvements are not avoidable or  
23 nonbypassable, correct?

24 A. That's generally -- yes, correct, yes.

25 Q. And on page 6 of your testimony, line 17,

1 you reference three scenarios from the companies'  
2 grid modernization plan, correct?

3 A. That's correct.

4 Q. And you do not know how much the  
5 companies estimated each scenario would cost,  
6 correct?

7 A. That's correct.

8 Q. And you do not know how the costs and/or  
9 credits from the companies' proposal would compare to  
10 the costs of the companies' grid modernization  
11 business plan, correct?

12 A. That's correct.

13 Q. And on page 7 to 8 of your testimony,  
14 question 17, you discuss certain distribution  
15 improvement riders that Duke and AEP have, correct?

16 A. Yes.

17 Q. And you are not aware of the companies  
18 having a similar rider, correct?

19 A. I'm not -- not exactly like theirs,  
20 that's correct.

21 Q. When you were drafting your written  
22 testimony, you had not ever heard of the companies'  
23 rider DCR, correct?

24 A. That's correct.

25 MS. DUNN: No further questions, your

1 Honor.

2 EXAMINER ADDISON: Thank you, Ms. Dunn.

3 Mr. McNamee?

4 MR. McNAMEE: No questions, thank you.

5 EXAMINER ADDISON: Thank you.

6 Mr. Settineri, redirect?

7 MR. SETTINERI: If I may have a few

8 minutes, your Honor.

9 EXAMINER ADDISON: You may.

10 Let's go off the record.

11 (Discussion off the record.)

12 EXAMINER ADDISON: Let's go back on the

13 report.

14 Redirect, Mr. Settineri?

15 MR. SETTINERI: Yes, your Honor.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Settineri:

19 Q. Ms. Crockett-McNew, do you recall  
20 questions from counsel for the companies regarding  
21 comparisons between costs that the -- of the  
22 company's proposal versus costs of the grid  
23 modernization plan?

24 A. Yes.

25 Q. Have you reviewed the companies' proposed



1 grid modernization plan?

2 A. Yes, I have.

3 Q. Does that plan include cost estimates for  
4 the three scenarios?

5 A. To my knowledge, there was no -- they  
6 didn't define costs. They only defined the net  
7 benefits in that plan.

8 MR. SETTINERI: All right. No further  
9 questions. Thank you, your Honor.

10 EXAMINER ADDISON: Thank you,  
11 Mr. Settineri.

12 Mr. Pritchard?

13 MR. PRITCHARD: No questions.

14 EXAMINER ADDISION: Ms. Bojko?

15 MS. BOJKO: No questions.

16 EXAMINER ADDISON: Mr. Fisk?

17 MR. FISK: No questions.

18 EXAMINER ADDISON: Ms. Willis?

19 MS. WILLIS: No questions, your Honor.

20 EXAMINER ADDISON: Ms. Glover?

21 MS. GLOVER: No questions.

22 EXAMINER ADDISON: Mr. Boehm?

23 MR. K. BOEHM: No questions, your Honor.

24 EXAMINER ADDISON: Ms. Dunn?

25 MS. DUNN: No questions, your Honor.

1 EXAMINER ADDISON: Mr. McNamee?

2 MR. McNAMEE: Unanimous. No questions.

3 MR. HAYS: And no questions here, your  
4 Honor.

5 EXAMINER ADDISON: Thank you, Mr. Hays.

6 I have no other questions. You are  
7 excused, Ms.--

8 EXAMINER PRICE: I said I have questions.

9 EXAMINER ADDISON: Oh, I apologize.  
10 Examiner Price does have questions.

11 - - -

12 EXAMINATION

13 By Examiner Price:

14 Q. I wanted to follow-up with your issue  
15 about SmartGrid. Do you believe that the widespread  
16 deployment of SmartGrid in FirstEnergy's service  
17 territory would cause more competitive providers to  
18 come into the territory?

19 A. I can speak to my experience in Texas and  
20 I believe that that would be the case. With the  
21 advent of more smart meters and that technology, more  
22 products can be developed and offered to customers in  
23 Ohio.

24 Texas is a great example of, you know, I  
25 personally can have free nights and weekends if I

1 sign up on a particular plan and that's because as a  
2 supplier, I know exactly what that customer uses and  
3 I can bill them accordingly.

4 In Ohio, we don't have that granular  
5 information to be able to do that and offer that  
6 product.

7 Q. Would industrial and commercial customers  
8 benefit from the deployment of smart meters?

9 A. I think a lot of industrial customers  
10 currently have integral meters, but certainly other  
11 products could be developed, you could see a lot  
12 more -- or potentially see more peak-shaving type  
13 products and reduction of load, you know, type of  
14 products, encouragement of reduction of load type  
15 offerings.

16 Q. Do you believe that widespread deployment  
17 of smart meters would promote the use of net metering  
18 and behind the meter generation?

19 A. Absolutely. I can -- again, for -- as,  
20 you know, as Texas as an example, we have that  
21 information for net metering and we can offer unique  
22 products for net metering. In Ohio, that's a little  
23 more challenging.

24 Q. What kind of unique products do you offer  
25 in Texas?

1           A.    You can -- you can specialize or  
2 customize a price for that net metered product versus  
3 when you don't know -- you don't have that granular  
4 type of information of, you know, when they submit  
5 load back to the grid and/or if you are not settled  
6 properly within the ISO, then you have to make some  
7 additional assumptions that are not exactly  
8 customized to that net metered customer.

9           Q.    So do you believe encouraging the  
10 deployment of smart meters would be an important  
11 policy objective for this Commission?

12          A.    I do.

13               EXAMINER PRICE:   Thank you.

14               EXAMINER ADDISON:  Thank you.  I have no  
15 additional questions.  You are excused.

16               MR. SETTINERI:  Your Honor, at this time  
17 we would move for the admission of RESA Exhibit 7.

18               EXAMINER ADDISON:  Are there any  
19 objections to RESA Exhibit 7?

20               MS. DUNN:  No objections, your Honor.

21               EXAMINER ADDISON:  Hearing none, it will  
22 be admitted.

23               (EXHIBIT ADMITTED INTO EVIDENCE.)

24               EXAMINER ADDISON:  Let's go off the  
25 record for a moment.

1 (Discussion off the record.)

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

4 Ms. Willis, you may call your next  
5 witness

6 MS. WILLIS: Yes, thank you, your Honor.  
7 OCC/NOAC calls to the stand Mr. James F. Wilson.

8 (Witness sworn.)

9 EXAMINER PRICE: Please state your name  
10 and business address for the record.

11 THE WITNESS: James F. Wilson, 4800  
12 Hampden Lane, Suite 200, Bethesda, Maryland 20814.

13 EXAMINER PRICE: Please proceed,  
14 Ms. Willis.

15 MS. WILLIS: Thank you.

16 - - -

17 JAMES F. WILSON

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

20 DIRECT EXAMINATION

21 By Ms. Willis:

22 Q. Mr. Wilson, for purposes of this  
23 proceeding, by whom are you employed and in what  
24 capacity?

25 A. I am testifying on behalf of NOAC,

1 Northwest Ohio Aggregation Coalition, and OCC.

2 MS. WILLIS: And at this point, I would  
3 like to have marked as OCC/NOAC Exhibit No. 1, the  
4 public version of the rehearing direct testimony of  
5 James F. Wilson, dated June 22, 2016.

6 EXAMINER PRICE: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MS. WILLIS: And I would also like marked  
9 as OCC/NOAC Exhibit 2, the confidential version of  
10 the rehearing direct testimony of Mr. Wilson.

11 EXAMINER PRICE: Also be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. (By Ms. Willis) Mr. Wilson, do you have  
14 before you what has now been marked as OCC/NOAC  
15 Exhibit No. 1?

16 A. I thought you said, 2C, 2 and 2C?

17 Q. We have got 1 and 2C, I'm sorry.

18 A. Okay.

19 MR. KUTIK: "C" for confidential.

20 A. I have 2C.

21 Q. Do you have Exhibit No. 1?

22 A. I don't have the public version.

23 Q. I'm sorry. Let me give you that.

24 Mr. Wilson, can you identify what has  
25 been marked as OCC/NOAC Exhibit No. 1?

1           A.    Yes.  This is my rehearing direct  
2 testimony public version.

3           Q.    And was that document prepared by you or  
4 under your direct supervision and control?

5           A.    Yes, it was.

6           Q.    And do you have any additions,  
7 corrections, or deletions to that document?

8           A.    I have some errata, yes.

9           Q.    Could you please go through that errata.

10          A.    Okay.  Page 22, there's a footnote and it  
11 should say "INT-9" instead of "INT-10."

12                    Next page, 5, line 9, this is only in the  
13 confidential version actually.  This change.

14          Q.    Okay.  Go ahead and do that one if you  
15 would.

16                   MR. KUTIK:  Why don't you just say the  
17 difference in the number as opposed to what the  
18 number is.

19          A.    Okay.  That number needs to come 20 cents  
20 lower.

21                    And page 26, line 19, the exact same  
22 change to the same number.  There is two numbers, but  
23 it's the same one also comes down 20 cents.

24                    Page 28, line 3, "runs as a loss" should  
25 read "runs at a loss."

1                   And then page 35, line 4, should read --  
2 "Third Supplemental" should read "Rehearing Direct."

3                   And then page 3, line 14. Are the lines  
4 numbered different in the confidential version?

5                   Q. Yes.

6                   A. Okay. I guess it's line 15. And this  
7 appears to be in the public version. The "3.9"  
8 should be "3.6."

9                   And on page 3, line 14, "most scenarios"  
10 should read "most likely scenarios." That's all.

11                  Q. Now, Mr. Wilson, with respect -- let me  
12 ask you with respect to OCC Exhibit No. 2C, was that  
13 prepared by you or under your direct supervision and  
14 control?

15                  A. Yes.

16                  Q. And the errata that you indicated would  
17 follow -- would flow to that document as well?

18                  A. Yes.

19                  Q. And if I were to ask you today the  
20 questions that are posed in OCC/NOAC Exhibit 1 and  
21 2C, would your answers be the same?

22                  A. Yes.

23                  MS. WILLIS: At this time, your Honor, we  
24 would move for the admission of OCC/NOAC Exhibit 1  
25 and 2C subject to cross-examination.



1 EXAMINER PRICE: Thank you.

2 Mr. Settineri?

3 MR. KUTIK: Your Honor.

4 EXAMINER PRICE: You want to do your  
5 motions to strike now?

6 MR. KUTIK: I think it makes sense before  
7 any cross-examination.

8 MR. SETTINERI: Your Honor, Mr. Batikov  
9 will be at the desk.

10 MR. KUTIK: As unlikely as the intervenor  
11 cross may be, we should do it at this time if the  
12 Bench, please.

13 EXAMINER PRICE: We will take your  
14 motions to strike now.

15 MR. KUTIK: Your Honor, we, for  
16 Mr. Wilson's rehearing testimony, have motions in  
17 four groups. The first one, your Honor, and these  
18 are all, by the way, similar grounds to what we  
19 previously discussed.

20 The first one, your Honor, is directed to  
21 line 14 -- excuse me, page 14, the sentence that  
22 begins on line 13 and ends on line 15, as long -- as  
23 well as the footnote and the exhibit that is  
24 referenced in the first note, we would move to strike  
25 all of those on the ground of hearsay.

1           As we discussed with Mr. Comings,  
2           similarly this is a document that was published by  
3           ICF. ICF is not a party in this case. It is an  
4           out-of-court declarant and it's offered for the truth  
5           and it's classic hearsay and for that reason we would  
6           move to strike.

7           EXAMINER PRICE: Let's go on to the next.

8           MR. KUTIK: Okay. The next grounds, your  
9           Honor, the next grouping starts on line 3 -- excuse  
10          me, page 3, line -- starting at line 6, going all the  
11          way to page 5, line 10, that's Question and Answers 5  
12          and 6.

13          Next would be page 28, line 19 through  
14          21. It is basically the sentence that begins on  
15          line 19 and ends on 21. On page 32 --

16          EXAMINER PRICE: I'm sorry, can I have  
17          the last one again? I went to the wrong spot.

18          MR. KUTIK: Yes, page 28, the sentence  
19          that begins on line 19, "If the plants" and ends on  
20          line 21 about the reference to page 48.

21          MR. HAYS: Your Honor, I missed the last  
22          one. If you wouldn't mind.

23          MR. KUTIK: For the third time, your  
24          Honor, it is line 19, the sentence that begins "If  
25          the plants" and ends on line 21 with the reference to

1 page 48.

2 The next, your Honor, would be at  
3 page 32, line 7. Line 7, ending with line 19, the  
4 Question and Answer No. 36.

5 And the last in this group, your Honor,  
6 would be page 33, line 16 to line 21, ending with the  
7 word "impact."

8 The basis for this group, your Honor, is  
9 that all of the -- these excerpts are specifically  
10 points that Mr. Wilson raised in earlier testimony.  
11 For that reason, your Honor, as we similarly, as we  
12 argued with Mr. Comings's testimony on this grounds,  
13 these points have all been covered and don't need to  
14 be covered again. It's cumulative.

15 The third group, your Honor, is -- or the  
16 third excerpt is on line -- page 30, starting with  
17 line 1 and going over to page 32, line 2. This  
18 relates to portions of Ms. Mikkelsen's testimony  
19 relating to the 3,200 megawatt provision which has  
20 been withdrawn and, therefore, this testimony is no  
21 longer relevant.

22 And the last group, your Honor, we have a  
23 number of these.

24 EXAMINER PRICE: Let's hold on that one  
25 and let's take the arguments on the first three

1 groups now as those seem to be pretty concise. And I  
2 understand your hearsay arguments, so we'll allow  
3 Ms. Willis to respond to the hearsay argument.

4 MS. WILLIS: Yes, your Honor.

5 As your Honor is well aware, we do not  
6 necessarily have to adhere to the strict Rules of  
7 Evidence in this proceeding, and the Commission has  
8 never forced a strict reliance on -- on rules  
9 including hearsay.

10 This is -- the ICF forecast is  
11 information that Mr. Wilson is well aware of and is  
12 familiar with and can respond to questions on. So he  
13 may be able to answer questions on it. These are  
14 expert reports. They are reports that are available  
15 to the public, widely available. And the --  
16 Mr. Wilson's testimony and analysis on that would be  
17 helpful to this Commission.

18 Ironically enough, in the first phase of  
19 this proceeding, Mr. Wilson was cross-examined by  
20 Mr. Kutik on ICF information and reports, and I  
21 objected on the basis that it was hearsay and it was  
22 out-of-court statements and shouldn't be used against  
23 Mr. Wilson and that was overruled. So I believe  
24 what's fair is fair.

25 If Mr. Kutik could introduce ICF reports

1 in the first part of this proceeding and use them  
2 with Mr. Wilson, then we, in turn, could use ICF  
3 reports and have Mr. Wilson present those as part of  
4 his information that he relied on in supporting his  
5 testimony and in presenting his testimony to the  
6 Commission.

7 EXAMINER PRICE: Do you have a transcript  
8 reference on that?

9 MS. WILLIS: I can get that for you.

10 EXAMINER PRICE: Do you remember which --  
11 I think he has given several sets of testimony. Do  
12 you remember with respect to which set of testimony  
13 we were talking about?

14 MS. WILLIS: Your Honor, I don't know. I  
15 can, though, track that down. I have somewhere here  
16 the transcripts and the excerpts. My piles are  
17 getting a little unmanageable, but I did look that up  
18 prior to Mr. Wilson coming on because it was  
19 something I recalled that there were a number of  
20 documents thrown at Mr. Wilson because he is an  
21 expert and that, you know, are you aware of these,  
22 are you familiar with these, and they all came in.

23 So I think, and in particular there was a  
24 reference to the ICF analysis. And Mr. Kutik, in  
25 fact, in his cross, said that ICF was an expert and,

1     gee, wasn't ICF a well-known expert in the field. So  
2     I think -- I will get those -- those to you.

3             EXAMINER PRICE: Can you cite to any case  
4     where the Supreme Court of Ohio or the Commission has  
5     held that a contractor to a party is the same as that  
6     party for purposes of the hearsay rule?

7             MS. WILLIS: I'm not sure I understand  
8     your question, your Honor.

9             EXAMINER PRICE: Well, Mr. Kutik has made  
10    the point that ICF is not a party to this proceeding  
11    and that the -- and, therefore, ICF statements can be  
12    brought in as an admission of a party opponent. I am  
13    simply asking you if you can cite to a case which  
14    would undermine Mr. Kutik's point.

15            MS. WILLIS: Not -- not offhand, your  
16    Honor, no. But it is -- it is information that an  
17    expert is relying upon, and under Rule 702 an expert  
18    is permitted to provide testimony on facts known and  
19    data that he has relied upon in making his opinion.  
20    And so, I believe under 702, it would allow -- it  
21    would be an exception and would allow Mr. Wilson to  
22    testify on the ICF reports.

23            Moving along to the materials that were  
24    considered cumulative

25            MR. KUTIK: Excuse me, your Honor. May I

1 respond to that or do you want me to wait?

2 EXAMINER PRICE: Come back and respond to  
3 all three.

4 MR. KUTIK: Sorry.

5 MS. WILLIS: Moving to the information  
6 that was cumulative. Your Honor, in the first phase  
7 of this proceeding, we had -- this very same issue  
8 arose and I have got the transcript site to this one.

9 XXXVIII, with respect to Mr. Wilson's  
10 prior testimony Mr. Kutik made a motion to strike.  
11 It was XXXVIII, 8110, and it was on -- it was the  
12 objection was a restatement of Mr. Wilson's prior  
13 testimony and that it was wholly cumulative and  
14 repetitive and not part of the -- properly part of  
15 the discussions in this case.

16 Your Honor, my argument was that it  
17 provides context and background for the testimony.  
18 Your Honors ruling at 8111 was that we will deny the  
19 motion to strike. It's probably cumulative, but it's  
20 also harmless and it does help set the stage for  
21 following the remainder of his testimony.

22 So consistent with that ruling, I would  
23 believe that it is proper to allow that to remain in.  
24 It is contextual, it does provide background, and it  
25 is harmless.

1           EXAMINER PRICE: Does the fact that we  
2 are now in an evidentiary hearing on rehearing and  
3 the -- as I believe somebody pointed out, you can't  
4 give testimony by law, I believe it was  
5 Mr. Michael's, as a matter of fact, your colleague,  
6 you can't give testimony by law, according to the  
7 rehearing statute, that you have given -- that you  
8 could have reasonably given before.

9           So does the fact now we are simply  
10 repeating on rehearing his direct testimony, which  
11 not only could he have given before, but he did give  
12 before, make a difference?

13           MS. WILLIS: No. I don't think -- I  
14 think your Honor's interpretation of that statute is  
15 not something I would agree with.

16           EXAMINER PRICE: I was giving -- I was  
17 giving Mr. Michael's interpretation of the statute,  
18 not mine.

19           MS. WILLIS: Well, you were relying upon  
20 how you interpret 4903.10 and what evidence can  
21 and -- can come in and not come in. We disagree with  
22 you fundamentally about the fact that this proposal  
23 is at this stage allowed in the rehearing, so I think  
24 there is a fundamental disagreement.

25           EXAMINER PRICE: I think you disagree



1 with the Commission, not with me.

2 MS. WILLIS: Yes, that would be correct,  
3 your Honor, we do have that fundamental disagreement.

4 EXAMINER PRICE: Okay.

5 MS. WILLIS: In response to the Mikkelsen  
6 withdrawn testimony, you know, your Honors, I would  
7 still say that although I can see some merit to that  
8 motion, the fact that she withdrew that provision  
9 still does not mean that this transaction is not  
10 connected to the 3,200 megawatts.

11 We all know that the proxy costs or the  
12 costs that are -- that are to be charged to customers  
13 come from somewhere and that somewhere is those 3,200  
14 megawatts. So to strike Mr. Wilson's testimony on  
15 the basis that the 3,200 that Ms. Mikkelsen's  
16 withdrawn testimony has fundamentally changed the  
17 reliance on that 3,200 megawatts is, at best, a  
18 mistake or a very strange way of looking at the  
19 record.

20 EXAMINER PRICE: I think the arguments  
21 you are making here is precisely the muddying of the  
22 record that I raised with Mr. Settineri and that's --  
23 they have withdrawn that portion of their proposal  
24 and now you are trying to bootstrap that withdrawal  
25 into your other arguments that you want to make with

1 respect to modified rider RRS.

2 But that being said, let's let Mr. Kutik  
3 respond to these three points and then we will go  
4 from there.

5 MR. KUTIK: Your Honor, I've looked  
6 through the notes of my prior cross-examinations and  
7 I'm sorry that I don't know what Ms. Willis is  
8 referring to with respect to prior ICF documents. I  
9 take her at her word, but I'm sure if I had the  
10 context I could respond slightly -- in a better way.

11 In any event, what we are talking about  
12 here is classic hearsay. She hasn't rebutted the  
13 fact that it's classic hearsay, and the Bench  
14 obviously understands the position we are in, having  
15 to deal with that document.

16 As a legal matter, the test that  
17 Ms. Willis discusses about expert testimony being  
18 reasonably relied upon in the field, that's under the  
19 Federal Rule. Under the Ohio law, we have to have  
20 independently admissible, and this is not  
21 independently admissible. Therefore, just the fact  
22 he relies upon it is not enough.

23 With respect to cumulative nature, your  
24 Honor, I think your questions to Ms. Willis hit it  
25 right on the head in terms of we are now in a much

1 different procedural posture than we were before. We  
2 are limited to what we are to talk about; the  
3 Commission has limited what we are supposed to talk  
4 about.

5 And under, as you noted, OCC's very  
6 framing of the issues in terms of what we are allowed  
7 to talk about, that is, we are not allowed to talk  
8 about things we could have talked about earlier since  
9 they did this is clearly cumulative.

10 And frankly, your Honor, I am not sure I  
11 really understand the basis for opposing  
12 commentary -- posing striking commentary on the  
13 wisdom of a withdrawn provision of the -- of our  
14 proposal. Given that's what this testimony is  
15 directed at, a withdrawn proposal, it makes no sense  
16 for us to have cross-examination or any discussion of  
17 it at this point in the record.

18 EXAMINER PRICE: Thank you.

19 At this point, the third group, the  
20 withdrawn -- discussion with respect to the withdrawn  
21 proposal will be stricken.

22 MS. WILLIS: I'm sorry, just to be clear  
23 that would be page 32, line 7 through 19?

24 MR. KUTIK: No. Page 30, line 1, through  
25 page 32, line 2.

1 MS. WILLIS: Thank you.

2 EXAMINER PRICE: And at this point, the  
3 second group, the motion to strike will also be  
4 granted. I do believe we are in a different spot in  
5 the hearing, and as Ms. Willis pointed out in quoting  
6 the examiner, even at the time we acknowledged it was  
7 probably cumulative. So, at this time, we are  
8 acknowledging it's cumulative and we will strike the  
9 testimony.

10 MS. BOJKO: Your Honors, do you mind  
11 going through those?

12 EXAMINER PRICE: No, not at all. The  
13 second group.

14 MR. KUTIK: Did you tell me to go through  
15 them, your Honor?

16 EXAMINER PRICE: Let me try. Why don't  
17 you go through them. Your notes are probably more  
18 organized than my quickly scribbled things.

19 MR. KUTIK: Page 3, line 6 to page 5,  
20 line 10. Page 28, line 19, sentence begins "If the  
21 plants" to line 21, the reference to page 48.

22 MS. WILLIS: I'm sorry. I missed that.  
23 Can you repeat that?

24 MR. KUTIK: It must be something about  
25 this provision or my inflection of saying these

1 words, but it is page 28, line 19.

2 MS. WILLIS: Hang on. Can you hang on  
3 for a second?

4 MR. KUTIK: I certainly can. I  
5 apologize.

6 MS. WILLIS: Go ahead.

7 MR. KUTIK: Line 19.

8 MS. WILLIS: Yes.

9 MR. KUTIK: The sentence that begins "If  
10 the plants" going to line 21, and that's the same  
11 sentence ending with the reference to page 48. May I  
12 continue?

13 MS. WILLIS: I'm not sure, what are we  
14 talking about here? Is this --

15 MR. KUTIK: I'm repeating what's been  
16 stricken, can you tell?

17 MS. WILLIS: This is the second  
18 cumulative?

19 EXAMINER PRICE: Yes. It's the second  
20 part of the cumulative.

21 MS. WILLIS: Okay. Thank you.

22 MR. KUTIK: Page 32, line 7 to 19,  
23 Question and Answer 36 in its entirety. And lastly,  
24 page 33, line 16, beginning with the words "In my  
25 direct testimony" ending on line 21 with the words

1 "cost impact."

2 MS. WILLIS: Thank you.

3 EXAMINER PRICE: Okay. With respect to  
4 the hearsay, have you been able to locate that  
5 reference?

6 MS. WILLIS: Your Honor, I have been told  
7 this is -- I have not double-checked, so I will give  
8 you the reference and then I will double-check. I  
9 would hope that perhaps we could defer ruling on the  
10 motion until you give me some time, over lunch, to  
11 pull my notes together, but the transcript cite I  
12 have at this point is XXII, transcript Volume XXII,  
13 page 4491. But I would like to confirm and look at  
14 that over lunch because I'm not sure that was the  
15 reference I was thinking of.

16 EXAMINER PRICE: Mr. Kutik, your fourth  
17 batch.

18 MR. KUTIK: Yes, your Honor. That begins  
19 at page 9, line 14, going to page 10, line 7. It's  
20 the Question and Answer No. 11 in its entirety.

21 Next, page 12, line 1, through to  
22 page 17, line 4.

23 MS. WILLIS: That's 12 through 17 pages,  
24 that what you were saying?

25 MR. KUTIK: Yes. So we are starting at

1 line 1 on page 12, going over to line 17 and ending  
2 on line 4 of page 17.

3 MS. WILLIS: Thank you.

4 MR. KUTIK: And this would include the  
5 Questions and Answers 15 through 19 in their entirety  
6 and the Exhibits JFW-1 and JFW-2.

7 Next page 21, lines 7 through 21,  
8 including JFW-3, Exhibit JFW-3.

9 MR. HAYS: Mr. Kutik, I hate to ask. Can  
10 you do that once more?

11 MR. KUTIK: Certainly.

12 MR. HAYS: Thank you.

13 MR. KUTIK: Page 21, line 7 through  
14 line 21. The Question and Answer No. 23 in its  
15 entirety as well as Exhibit JFW-3.

16 Next page 22, lines 8 through 17,  
17 Question and Answer No. 25, as well as Exhibit JFW-4  
18 in its entirety.

19 And lastly, page 28, line 1, beginning  
20 with the words "if future prices" and continuing  
21 through that sentence on line 4, ending with the  
22 words customer -- "to customers."

23 Your Honor, similarly to Mr. Comings,  
24 this portion of Mr. Wilson's testimony does not  
25 present a comparison of the effect on customers of

1 rider RRS as approved versus rider RRS as proposed.

2 All this information does is it updates  
3 information using the exact same calculations that  
4 Mr. Wilson used in his prior testimony except  
5 updating information for information earlier in June.

6 That information is an attempt to attack  
7 the wisdom of rider RRS. It is not an attempt to  
8 deal with the specific effects of the change that is  
9 proposed by the company and, therefore, it is beyond  
10 the scope of this hearing. It should be stricken.

11 EXAMINER PRICE: Ms. Willis.

12 MS. WILLIS: Thank you, your Honor.

13 First of all, I think that there's very  
14 limited similarity to the motion to strike  
15 Mr. Comings's testimony. When we look at some of the  
16 provisions that Mr. Kutik wishes to strike, it's very  
17 clear that Mr. Wilson is addressing the change -- the  
18 difference or the changes between modified rider RRS  
19 and how that the -- what is put into modified rider  
20 RRS has tie-ins to what was approved under the  
21 original rider RRS.

22 In terms of the -- before the Commission  
23 originally, rider RRS relied upon projections and  
24 those projections and energy costs were to  
25 determine -- they were used for a specific purpose



1 and that purpose was to determine the net benefits to  
2 customers under the proposal and those -- those  
3 numbers and figures were used as part of the ESP  
4 versus MRO calculation and that net benefit was  
5 determined by the Commission to justify that original  
6 proposal and to find that with that proposal the  
7 ESP IV passed the MRO versus ESP test.

8 But now in this phase of the proceeding  
9 the projections are being used for a wholly different  
10 purpose. That purpose now is to use those  
11 projections to set rates, not to just evaluate the  
12 benefits, but we are now talking about using  
13 projections to set rates. Use of projections to set  
14 rates has not been litigated in this proceeding.

15 The PUCO must now determine whether it's  
16 appropriate as a value -- in evaluating part of the  
17 company's proposal to set rates based on projected  
18 costs while allowing other elements of the proposal,  
19 the revenues, to adjust based on actual prices.

20 In determining whether it's reasonable at  
21 this stage in the proceeding to set rates based on  
22 projections, we should be entitled to challenge the  
23 projections that the rates are being set on, and that  
24 would include challenging the 2014 projections as an  
25 unreasonable basis, not to determine the net -- the

1 benefit to customers, but as an unreasonable basis to  
2 set rates. That issue has never been before this  
3 Commission, it is now, and we should be afforded that  
4 opportunity.

5 The projections that were used to  
6 determine net benefits in the first part of this  
7 proceeding are -- become very important, especially  
8 now when they are being used to set rates. And  
9 specifically if we want to see what the problem is,  
10 we could go to Mr. Wilson's testimony, part of the  
11 testimony that is moved to be stricken.

12 We go to page 21, Mr. Wilson testifies  
13 that the use of projected rates to set rates is  
14 problematic under the modified RRS proposal because  
15 it -- when you use those projected rates and you try  
16 to mesh them with actual energy revenues, there lies  
17 a problem; and that is a criticism of the modified  
18 rider RRS.

19 EXAMINER PRICE: Can I seek a  
20 clarification? You referenced page 20 or 21?

21 MS. WILLIS: 21, your Honor.

22 EXAMINER PRICE: Okay. Thank you.

23 MS. WILLIS: Specifically, if you look at  
24 the question, "You have identified problems with  
25 modified rider RRS...." It's not rider RRS as

1 approved by the Commission, but modified rider RRS,  
2 that would result from using future market prices  
3 that are different from the prices that were assumed  
4 in the 2014 rider RRS estimate. And Mr. Wilson goes  
5 on to explain how that causes a problem.

6 Now, does it attack the 2014 projections?  
7 It does, but it attacks them on the basis of now we  
8 are using those projections for a wholly different  
9 purpose and that purpose is to set rates; to use  
10 those projections as proxy costs. The Commission has  
11 not addressed this.

12 EXAMINER PRICE: How is the revenue side  
13 different, under modified rider RRS, than the revenue  
14 side under rider RRS?

15 MS. WILLIS: I think, your Honor, that  
16 would be a question for the witness to answer.

17 EXAMINER PRICE: I am asking you. Come  
18 back to you. That was part of your argument you said  
19 was about setting rates. Why is the rate impact on  
20 the revenue portion part of the calculation any  
21 different today than it was before? I get that the  
22 cost side is different, so I get that. But we're not  
23 talking -- he is not talking about the cost side.

24 MS. WILLIS: Well, your Honor, there is a  
25 relationship between -- when the revenue side was

1 developed, the revenue side is -- it has -- and it's  
2 not the simplest thing to understand but the -- the  
3 revenue side is related to the generation output and  
4 the generation output is assumed as part of this  
5 whole process.

6 And because you had assumed generation  
7 output associated with those projected costs and you  
8 mesh them up with actual revenues, there's a mismatch  
9 and it does not fundamentally mesh. Mr. Wilson  
10 addresses this in his testimony, I believe, just at  
11 that point of his testimony I was referring to.

12 I'm somewhat inarticulate on -- with  
13 respect to this, but I am trying to explain how there  
14 is a mismatch when you use the -- when you hold  
15 projections of cost constant and use those as a basis  
16 to set rates and you mesh them up with revenues that  
17 are actual, that there is a problem and the problem  
18 relates to the assumptions that went into the  
19 projections and went into the costs coming out of  
20 those projections.

21 MR. SOULES: Your Honor, may I be heard  
22 for just a moment?

23 EXAMINER PRICE: Ms. Bojko actually asked  
24 first.

25 MS. BOJKO: I think we are talking about

1 the same issue. The reason that the revenue side  
2 changes is because the revenue, it's projected output  
3 and projected capacity that's projected to be  
4 cleared. So when you take the projected output of  
5 the plants and the projected capacity, then you  
6 multiply it by actual market prices. But the  
7 projections still changes the revenue side; that's  
8 different than rider RRS.

9 EXAMINER PRICE: I think those are all  
10 very legitimate criticisms of his previous testimony  
11 when he accepted the projected costs and didn't  
12 change the revenues, but that's not what the  
13 companies' proposing today.

14 MS. BOJKO: But --

15 EXAMINER PRICE: No. Don't interrupt.  
16 What the company is proposing, rightly or  
17 wrongly, but it's their proposal, is that those cost  
18 figures are in place.

19 Now, you are free to argue on brief that  
20 those cost figures should be different, but what they  
21 have simply said is this is the base -- the costs are  
22 a baseline and the Commission should use that  
23 baseline to apply these. That's what their actual  
24 proposal is.

25 If intervenors would like to do a

1 different alternative, which is your -- which is your  
2 option under the Commission's rules of the scope of  
3 the hearing, of using a different way to calculate  
4 costs, you are free to do so. But that's not what  
5 the companies' proposed and that's not what he is  
6 testifying to today.

7 MS. WILLIS: Your Honor, I disagree, and  
8 maybe we are talking apples and oranges, but the  
9 company is -- the company's relying upon the  
10 benefits, the net benefit that was calculated in the  
11 last proceeding. They are saying that net benefit  
12 applies to their new proposal. So to say that we  
13 have no right to challenge today, as we sit here,  
14 that net benefit under a new proposal is -- it's  
15 unreasonable.

16 We are challenging the determination of  
17 net benefits. That goes into the MRO versus ESP. We  
18 are saying that those net benefits that were  
19 associated with that proposal, which the company is  
20 still relying on today are unreasonable.

21 And why are they unreasonable? They are  
22 unreasonable in light of what has -- what has  
23 occurred. What -- they are unreasonable in light of  
24 the forecast being updated.

25 They are unreasonable because

1 Mr. Wilson -- in fact, when you -- when you determine  
2 the net benefit, you used Mr. Wilson's reference case  
3 scenario, the EIA reference case scenario. That  
4 reference case scenario has now been updated; it's  
5 much different.

6 So that number that they are relying upon  
7 for purposes of their modified proposal is  
8 unreasonable at this point. It doesn't -- it's not  
9 borne out by the record. The record today shows that  
10 that -- that those projections and what was  
11 considered reasonable is no longer reasonable given  
12 today and given the updated forecast.

13 EXAMINER PRICE: We will hear Mr. Soules.

14 MR. SOULES: Thank you, your Honor.

15 I think one important point that we  
16 should keep in mind is that the calculation -- the  
17 revenue side of the calculation is actually  
18 substantively different as well.

19 Under the original rider RRS proposal,  
20 both the projection and the actual revenues will be  
21 based upon nodal pricing for the Sammis and  
22 Davis-Besse. By contrast, the calculation of the  
23 modified rider, as explained in Ms. Mikkelsen's  
24 rehearing testimony, is based on AEP Dayton Hub  
25 prices, and that relates both to the forecast that

1 will be done quarterly as well as the true-up. So  
2 that is a -- it is not merely the cost side that has  
3 changed here; it's both the cost and revenue side of  
4 the calculation.

5 EXAMINER PRICE: Mr. Kutik.

6 MS. BOJKO: Your Honor --

7 EXAMINER PRICE: I'm moving on to  
8 Mr. Kutik. You all had -- I heard you all. I am  
9 moving on to Mr. Kutik.

10 MR. KUTIK: Thank you, your Honor.

11 Ms. Willis says that Mr. Wilson, in his  
12 testimony, addresses the changes. And that is true,  
13 he does address the changes, but not in the testimony  
14 that we are moving to strike.

15 The testimony that we are moving to  
16 strike has to do specifically with the calculations  
17 that he's made, the updated calculations that he's  
18 made with respect to the ultimate cost or credit of  
19 rider RRS.

20 It has nothing to do with the change in  
21 the revenue calculations discussed by Mr. Soules. In  
22 fact, Mr. Wilson's testimony is that it is just  
23 exactly the same, except updating the natural gas  
24 price forecasts for two of his scenarios. That's it.

25 Ms. Willis gives the game away with her



1 last argument. You know, she tries to say this is  
2 all about setting rates and how we are going to set  
3 rates and that type of thing. Well, certainly,  
4 that's certainly part of something the Commission  
5 needs to discuss; but again, that's not the  
6 testimony.

7 The testimony here is about updates. And  
8 Ms. Willis gives an impassioned plea that, oh, we  
9 should be allowed to update. We've had that argument  
10 already. You've ruled and you should rule again the  
11 same way.

12 EXAMINER PRICE: At this time we are  
13 going to grant the motion to strike in part and deny  
14 in part.

15 It will be granted with respect to all  
16 questions except page 15, line 1 through line 9,  
17 where I do believe it is appropriate and fair to  
18 update a new capacity actual price. We are not  
19 revisiting new forecasts, but this is an actual  
20 capacity price, and I believe it's fair for him to go  
21 ahead and make that testimony.

22 Ms. Willis, do you have a proffer?

23 MR. KUTIK: And the motion is granted  
24 otherwise?

25 EXAMINER PRICE: The motion is otherwise

1 granted.

2 MS. WILLIS: I do have a proffer. I  
3 would take exception. I think the, you know, if you  
4 look at the specific motions to strike. For  
5 instance, on page 9, "Have you estimated the cost to  
6 customers based on the modified rider RRS proposal?"

7 EXAMINER PRICE: You are just revisiting  
8 the argument, Ms. Willis. I am not -- we are moving  
9 forward. You've got your option to proffer.

10 MS. WILLIS: I would definitely proffer.

11 EXAMINER PRICE: And you can raise it on  
12 interlocutory appeal or just raise it on brief.

13 MS. WILLIS: Just so the record reflects,  
14 I strongly disagree with the ruling.

15 MR. KUTIK: Your Honor, may we go off the  
16 record at this point?

17 MS. BOJKO: Well, no. Your Honor, on  
18 this topic, I would like to be heard if that's  
19 possible.

20 EXAMINER PRICE: No.

21 MS. BOJKO: I am sorry?

22 EXAMINER PRICE: No. We're moving on.

23 Mr. Kutik?

24 MR. KUTIK: I would suggest, your Honor,  
25 that this might be a good time for a break so I can

1 see what's left. I will have cross of this witness,  
2 I expect it will probably be in the half-hour range,  
3 but I would like to be able to organize my cross.

4 EXAMINER PRICE: We also have the issue  
5 of the hearsay, Ms. Willis, where we are going -- on  
6 the break, we will look up the transcript reference  
7 she gave us and see if that's it. If there is  
8 another one, we will go from there.

9 MR. KUTIK: Your Honor, I am advised, if  
10 you want to go look at the cite, the cite she -- she  
11 pointed you to, the document was stricken as hearsay.

12 EXAMINER PRICE: Well, she didn't think  
13 it was the right cite either.

14 MS. WILLIS: Yeah, I am not certain that  
15 was the right cite. I would appreciate the time over  
16 lunch. Thank you.

17 EXAMINER PRICE: Uh-huh. At this time we  
18 will break for lunch. We will come back at 1:20.

19 (Thereupon, at 12:19 p.m., a lunch recess  
20 was taken.)

21 - - -

22

23

24

25

1 Thursday Afternoon Session,  
2 July 14, 2016.

3 - - -

4 EXAMINER PRICE: Ms. Grady, you want to  
5 supplement your argument regarding hearsay?

6 MS. WILLIS: Yeah, I would appreciate  
7 that opportunity, your Honor.

8 We believe that the information related  
9 to the ICF updated projections fall within the  
10 hearsay exception rule under 803.17 which allows  
11 market quotations and publications generally relied  
12 upon by the public or persons in a particular  
13 occupation as an exception to hearsay.

14 We would note that the record in this  
15 proceeding, actually the earlier parts of this  
16 proceeding established that ICF is a -- is known for  
17 its forecasting in the energy area and that ICF is  
18 the main consultant to the USEPA on analyzing the  
19 impact of environmental regulations on the power  
20 industry; and, in fact, it's the main consultant to  
21 the U.S. Environmental Protection Agency as  
22 established by transcript -- the transcript, XXII,  
23 excerpts on page 4533 and 4534.

24 In fact, the PUCO itself, in the Opinion  
25 and Order in this case, described ICF as a leader in

1 the field and noted that EIA uses ICF projections, so  
2 I would believe that this would fit within the  
3 exception to hearsay under 803.17.

4 Secondly, your Honor, this morning I  
5 spoke with respect to transcript cites dealing with  
6 ICF. I want to put that in the proper context now  
7 that I have had more time to review that. The  
8 transcript cite that I want to direct your attention  
9 to is transcript XXII at page 4489 through 4492.

10 And although the -- the testimony or that  
11 piece of information was struck, it was struck  
12 because it was hearsay within hearsay, and that  
13 colloquy that occurred between the Bench and Counsel,  
14 I thought, was instructive in that the -- the  
15 background is that Mr. Kutik was objecting to an  
16 INGAA Foundation -- or, a forecast that was prepared  
17 by ICF for the INGAA Foundation, and Mr. Kutik --  
18 Mr. Wilson relied upon that.

19 And Mr. Kutik objected. And the  
20 conversation was that the -- that had it been just an  
21 ICF forecast, there would not have been an issue, but  
22 the fact that INGAA relied upon that forecast, that  
23 was the reason for ruling, that that should be  
24 stricken and it should not be part of the record.

25 And, in fact, the Bench noted that

1 because Mr. -- or because the company had utilized an  
2 ICF witness and it could call that ICF witness on  
3 rebuttal to rebut any ICF -- any questions --

4 EXAMINER PRICE: Wasn't that a question  
5 from the Bench?

6 MS. WILLIS: I am sorry?

7 EXAMINER PRICE: Was that a question from  
8 the Bench or was it a declarative statement?

9 MS. WILLIS: I believe it was questioning  
10 by the Bench.

11 EXAMINER PRICE: If I ask questions, it's  
12 because I'm pursuing an issue, not necessarily  
13 because I am making an affirmative statement.

14 MS. WILLIS: I thought your Honor was  
15 making a distinction saying had it been a report by  
16 ICF, given the fact that ICF was a -- Mr. Rose was  
17 from ICF and presented a -- presented testimony, and  
18 I would make the argument that in this case, ICF  
19 certainly could be called by the company as a  
20 surrebuttal witness and could respond to any  
21 questions on that ICF forecast, but certainly that  
22 gives them the opportunity to cross-examine and to be  
23 able to address any issues related to the ICF study.

24 EXAMINER PRICE: Thank you.

25 Mr. Kutik, response?

1 MR. KUTIK: Yes, your Honor.

2 The document that they want to have in  
3 does not qualify under the exception of 803.17.  
4 803.17 is with respect to market reports and  
5 compilation, things like what's -- what was the spot  
6 price for natural gas on March 4, 2016? That type of  
7 information is information you can get and compile  
8 and you can rely upon. That's the type of  
9 information that is assumed under 803.17.

10 The companies, and perhaps even the  
11 Bench, are second to none in their admiration of ICF  
12 and their belief in ICF that it is a leader in  
13 forecasting. That doesn't mean that ICF -- that  
14 every ICF document falls under 803.17, except if it  
15 is, in fact, a market compilation as opposed to a  
16 projection, whose assumptions and other things are  
17 unclear on the record and unknowable unless we have  
18 someone from ICF here. Someone from ICF isn't here.  
19 And nothing that Ms. Willis said means that this  
20 stuff isn't hearsay. It's hearsay.

21 And I should also note, your Honor, two  
22 other things. First, that the transcript that we're  
23 talking about, to be clear, wasn't a document that I  
24 was showing the witness. It was a document that OCC  
25 and NOPEC were seeking to offer through Mr. Wilson.

1 The objection that we had to the document was  
2 sustained and should be sustained here. That's  
3 first.

4 Second and finally, given your prior  
5 rulings, the information with respect to hearsay has  
6 been stricken so this issue is moot.

7 EXAMINER PRICE: Although I agree it is  
8 potentially moot, you did make the motion, so I feel  
9 like I owe you a ruling and we will grant the motion  
10 to strike on the grounds that it's hearsay.

11 Ms. Willis, you had a second question?

12 MS. WILLIS: Yes, your Honor. Just to  
13 make things clear, I want to make sure that I  
14 understand the material that was stricken. I have  
15 included in that material that I believe was  
16 stricken, testimony on page 9, carrying over to  
17 page 10, starting with Question 14 which asks "Have  
18 you estimated the cost to customers based on the  
19 modified RRS proposal?"

20 And so my question is, is the Bench  
21 really intending to exclude from the record the cost  
22 to customers of the company's proposal?

23 And I guess the other portion of that  
24 cost to customer's proposal begins on page 12 through  
25 13, "What is the cost to customers of modified rider



1 RRS based on your analysis?"

2 And if that is truly the case that the  
3 Commission -- that the Attorney Examiners are ruling  
4 that the cost to customers of the modified rider RRS  
5 proposal is stricken, I would ask for reconsideration  
6 of that ruling in that it would seem perfectly  
7 reasonable, logical, and compelling to have cost  
8 information related to what this is going to cost  
9 customers under the companies' modified proposal.

10 EXAMINER PRICE: Mr. Kutik.

11 That wasn't exactly a clarification, was  
12 it?

13 MR. KUTIK: No, it wasn't, your Honor.

14 EXAMINER PRICE: I believe they simply  
15 asked us to relitigate this issue.

16 MR. KUTIK: Yes, it does. And further, I  
17 think it's a mischaracterization of your ruling. I  
18 think the basis of our motion, your Honor, was that  
19 these questions are updates of the projections that  
20 Ms. Willis made about the effect of rider RRS.

21 The modifications of rider RRS have  
22 nothing to do with the projected costs. Therefore,  
23 it's outside the scope of the hearing and is  
24 appropriately stricken.

25 MS. WILLIS: Your Honor, if I might?

1 EXAMINER PRICE: No. We need to move on.  
2 We have got a lot of witnesses yet to go today.

3 We've thoroughly heard this. You asked  
4 for a clarification and it turned out to be more  
5 issues you want to raise; but, notwithstanding that,  
6 yes, it was our intent to strike those particular  
7 provisions. Nothing in the company's proposal  
8 changed the revenue side. It is simply an effort to  
9 update his projections once again. And we are not  
10 going to spend our limited hearing time, and it  
11 wasn't within the scope of this hearing, to  
12 relitigate all of the projections which the  
13 Commission thoroughly addressed in its Opinion and  
14 Order in this proceeding.

15 With that, Mr. Pritchard.

16 MR. PRITCHARD: I have no questions, your  
17 Honor.

18 EXAMINER PRICE: Mr. Oliker?

19 MR. OLIKER: No questions, your Honor.

20 EXAMINER PRICE: Ms. Bojko?

21 MS. BOJKO: No. Thank you.

22 EXAMINER PRICE: Mr. Soules?

23 MR. SOULES: No questions, your Honor.

24 EXAMINER PRICE: Mr. "Bantikov"?

25 MR. BATIKOV: Batikov.

1 EXAMINER PRICE: Batikov.  
2 MR. BATIKOV: No questions, your Honor.  
3 EXAMINER PRICE: Mr. Hays.  
4 MR. HAYS: No questions.  
5 EXAMINER PRICE: You don't get a chance.  
6 Mr. Whitt?  
7 MR. WHITT: No questions.  
8 EXAMINER PRICE: Mr. Boehm?  
9 MR. K. BOEHM: No questions.  
10 EXAMINER PRICE: Mr. Kurtz -- Mr. Kutik?  
11 I'm struggling through.  
12 MR. KUTIK: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Kutik:  
16 Q. Good afternoon. Mr. Wilson, you believe  
17 that the proposed calculation of rider RRS, as  
18 proposed, would produce assumed periods of  
19 inefficient dispatch, correct?  
20 A. The calculation, of course, doesn't have  
21 any impact on dispatch. But within the calculation  
22 there would be calculations that could only be  
23 interpreted as inefficient dispatch because they  
24 would use generation quantities from the 2014  
25 simulation that are based on the prices that were

1 used in that simulation and they would multiply them  
2 by future prices that might be very, very different  
3 and under which those generation quantities wouldn't  
4 have happened.

5 So, in that regard, my answer is yes,  
6 that, within the calculations, it would correspond to  
7 something that could only be interpreted as  
8 inefficient dispatch.

9 Q. And when we're talking about periods of  
10 assumed inefficient dispatch, I think you said where  
11 costs would be greater than revenues, correct?

12 A. It could be -- it could be either  
13 direction.

14 Q. Okay. Now, would it be fair to say that  
15 nuclear units do not typically follow dispatch?

16 A. That's correct.

17 Q. Because they run 100 percent of the time  
18 when they are available?

19 A. That's usually right.

20 Q. And you are aware, are you not, that  
21 there are a number of Sammis units?

22 A. Yes.

23 Q. You are aware that there are seven Sammis  
24 units?

25 A. I believe that's correct.

1 Q. And you are aware that each of the Sammis  
2 units aren't the same?

3 A. That's correct.

4 Q. Two of the Sammis units, particularly  
5 Sammis 6 and 7, are sometimes referred to as  
6 "supercritical units."

7 MS. WILLIS: Objection, your Honor.

8 EXAMINER PRICE: Grounds?

9 MS. WILLIS: I believe with  
10 Ms. Mikkelsen's withdrawal of the -- of her testimony  
11 on the 3,200 megawatts being tied to Sammis and  
12 Davis-Besse, this is no longer relevant.

13 EXAMINER PRICE: Mr. Kutik?

14 MR. KUTIK: Your Honor, we are talking  
15 about the assumptions that are in the projections and  
16 whether they are reasonable. He said that there  
17 would be inefficient dispatch because there would be  
18 times when the plants would be running at lower  
19 costs. The fact of the matter is there are several  
20 units here that will be running all the time  
21 regardless of whether we had actual costs or  
22 projected costs.

23 EXAMINER PRICE: Overruled. We'll see  
24 where this goes.

25 MR. KUTIK: Not too much longer.

1                   May we have the question read, please?

2                   EXAMINER PRICE: You may.

3                   (Record read.)

4                   Q. Correct?

5                   A. I don't recall the details, but I recall  
6 that several units had different numbers in terms of  
7 their frequency of operations and such.

8                   Q. And assuming the record reflects that  
9 Sammis 6 and 7 are supercritical units, those units  
10 also would run most of the time when they were  
11 available, correct?

12                  A. I don't know. We have some information  
13 from discovery that I could review, but I don't know.

14                  Q. Now, for at least the Sammis 1 through 5  
15 units or the OVEC units, the dispatch model did not  
16 assume that they would stop running any hours where  
17 generation would not be profitable, correct?

18                  A. I don't know.

19                  Q. Well, do you have your deposition  
20 transcript, sir, from July 5?

21                  MS. WILLIS: May I have a moment, your  
22 Honor, to find that?

23                  MR. KUTIK: Does the Bench need copies?

24                  EXAMINER PRICE: Yes.

25                  MR. KUTIK: May I approach?

1 EXAMINER PRICE: You may.

2 MS. WILLIS: Thank you.

3 MR. KUTIK: Are you ready, Counsel? Do  
4 you have the deposition, Counsel?

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

6 Q. (By Mr. Kutik) Mr. Wilson, you recall  
7 that I took your deposition on July 5, correct?

8 A. Yes.

9 Q. And you took an oath to tell the truth at  
10 the deposition, correct?

11 A. Yes.

12 Q. Did you have the opportunity to review  
13 the transcript?

14 A. I did.

15 Q. Let me refer you to page 50 of your  
16 transcript.

17 A. Yes.

18 Q. And starting at line 21, did I ask you  
19 the following question and did you give the following  
20 answer: "Question: And would it be fair to say that  
21 the dispatch model that was used by the companies did  
22 not assume that every hour of generation would be  
23 profitable?"

24 Mr. Sauer raised an objection.

25 "The Witness: Well, if I understand, you

1 had -- yes. The original dispatch model, I hope, was  
2 probably efficient in the sense that it generally did  
3 not call for operation and generation in hours and  
4 periods when prices were below variable cost. I  
5 expect that yes, it probably had that  
6 characteristic." Did I read that correctly?

7 A. Yes.

8 Q. Now, a coal unit can't dispatch that way  
9 either, correct?

10 A. What way?

11 Q. That is, be dispatched one hour and not  
12 dispatched another hour depending on whether it was  
13 profitable or not?

14 A. Correct. It's got a ramping speed that  
15 prevents it from doing that.

16 Q. So the dispatch model did not assume that  
17 every hour that Sammis runs would be profitable,  
18 correct?

19 A. A dispatch model simulates operation. It  
20 doesn't -- the word "assume" I am having trouble  
21 with. But a dispatch model is not going to result in  
22 every hour being profitable. Is that what you are  
23 asking?

24 Q. Yes.

25 A. Yes.



1           Q.    Now, would it be fair to say that the  
2 rider RRS calculations, as proposed by the company,  
3 would not make any assumptions comparing hourly costs  
4 with hourly revenues?

5           A.    That's correct.

6           Q.    The calculations are done on a monthly  
7 basis, correct?

8           A.    Yes.

9           Q.    Now, there may be circumstances, would  
10 you agree, in which the calculation of rider RRS as  
11 proposed, would be more favorable to customers than  
12 the calculation used for rider RRS as approved?

13          A.    That's hypothetically possible.

14          Q.    For example, if actual incremental or  
15 variable costs were greater than forecasted, the  
16 calculation proposed by the companies would be more  
17 favorable to customers, correct?

18          A.    Correct.

19          Q.    And if fixed costs were greater than  
20 forecasted, the calculation proposed by the companies  
21 would be more favorable to customers, correct?

22          A.    Correct.

23          Q.    And if there were outages -- there were  
24 extended outages that did not occur in the dispatch  
25 model, the calculation proposed by the companies

1 would be more favorable to customers, correct?

2 A. That depends on whether it's making or  
3 losing money --

4 Q. Well --

5 A. -- when that outage would have occurred.

6 Q. Especially if it occurs at times of high  
7 LMPs, the outage.

8 A. Then what was the question again?

9 Q. It would be more favorable to customers  
10 if there were extended outages that were not assumed  
11 in the dispatch model.

12 A. Yes.

13 Q. You would agree with me also that the  
14 companies' proposal eliminates certain risks inherent  
15 as part of rider RRS as approved.

16 A. Yes.

17 Q. For example, it eliminates the risks of  
18 costs increasing beyond the forecast's costs,  
19 correct?

20 A. Yes.

21 Q. Now, you would agree with me, would you  
22 not, that you would expect plants to run during  
23 periods of high LMPs?

24 A. Yes, you would expect that.

25 Q. And you would also expect that there

1 would be times in January and February where there  
2 would be high LMPs?

3 A. There could be, yes, in some -- some  
4 years there would be.

5 Q. Now, would it be fair to say that under  
6 the companies' proposed calculation, the customers  
7 would get the benefit of higher LMPs in months even  
8 if the plants didn't run at those hours in the model?

9 A. If -- in the simulation they had -- I  
10 mean, it's on a monthly basis. Okay. But when LMPs  
11 are high, you are going to multiply them by whatever  
12 number came out of that 2014 simulation.

13 Q. Right. And so --

14 A. High or low, you are going to multiply it  
15 by that number.

16 Q. Right. So if you had higher LMPs in the  
17 month, the average monthly LMP might be higher, or  
18 would reflect those prices, correct?

19 A. If prices are higher, the prices are  
20 higher. Your question seemed rather -- I don't  
21 understand the question.

22 Q. Well, if there were months of higher  
23 LMPs, the monthly average price would reflect those  
24 prices, correct?

25 A. Yes.

1 MR. KUTIK: That's all. Thank you, your  
2 Honor.

3 EXAMINER PRICE: Thank you.  
4 Redirect?

5 MS. WILLIS: I would like a 10-minute  
6 break, please. Thank you.

7 EXAMINER PRICE: You may.

8 (Recess taken.)

9 EXAMINER PRICE: Let's go back on record.  
10 Ms. Grady -- Ms. Willis.

11 MS. WILLIS: Thank you, your Honor.

12 - - -

13 REDIRECT EXAMINATION

14 By Ms. Willis:

15 Q. Mr. Wilson, do you recall in the  
16 cross-examination of Mr. Kutik where he led you  
17 through a series of examples where he asked you if  
18 the changes that had been made under the companies'  
19 proposal are more favorable to customers than the  
20 prior proposal. Do you recall those questions?

21 A. Yeah. He posed a few hypotheticals where  
22 it could be more favorable, yes, sir.

23 Q. Now, in your testimony didn't you address  
24 some of the hypothetical changes where -- and your  
25 opinion as to how that would -- how the new proposal

1 compares to the original proposal?

2 A. Yeah. In my testimony I gave some  
3 examples where the changes would result in outcomes  
4 less favorable to the customer than the original  
5 rider RRS.

6 Q. And overall, sir, do you believe that the  
7 changes made in the companies' proposal, in total,  
8 make it more or less favorable to customers?

9 A. Yes. With this -- with regard to this  
10 question of hypotheticals and dispatch and such, I  
11 concluded that overall the changes to use fixed  
12 generation amounts and fixed cost amounts, et cetera,  
13 would raise the cost of rider RRS to customers  
14 relative to the original proposal.

15 Q. And can you tell me what the main  
16 determinant or main factor that -- that affects and  
17 causes the proposal to be less favorable to  
18 customers?

19 A. Yes. The main problem is that the  
20 calculations, the modified calculations as proposed,  
21 would use generation amounts from the 2014  
22 simulations for the revenue calculations and the cost  
23 calculations; as opposed to the original rider RRS,  
24 where the calculations would use future prices and  
25 generation amounts, actual generation amounts that

1 are consistent with those future prices.

2 And I explained that the inefficient  
3 dispatch assumption results from the fact that the  
4 assumed generation amounts from the 2014 simulation  
5 could be very inconsistent with what should happen  
6 under the future prices that may occur from time to  
7 time over the course of the rider. So that's what  
8 leads to inefficient dispatch and the nonsensical  
9 assumptions that I referred to.

10 Q. And can you tell me what you attribute  
11 the nonsensical result to come from related to the  
12 companies' new proposal?

13 A. The inefficiency and the nonsensical  
14 results are driven by the extent to which future  
15 prices may, at times, be very different from the  
16 prices that were assumed in the 2014 simulations.

17 So if -- at times when those future  
18 prices are similar to what was used in the  
19 simulation, then presumably the dispatch may be  
20 similar and the calculation may be similar.

21 But in the future, if those prices are  
22 lower or what I believe is -- if those prices are  
23 higher or if what I believe is much more likely,  
24 future energy prices are much lower than what was  
25 assumed in the 2014 simulation, then those generation

1 amounts from the simulation will be very inconsistent  
2 with what makes sense under those prices; and the  
3 revenue calculation, in particular, will make no  
4 sense because it will multiply prices by quantities  
5 that make no sense under those prices.

6 Q. And, Mr. Wilson, what's your best  
7 understanding of how future pricing is likely to  
8 compare or differ from the 2014 pricing?

9 MR. KUTIK: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. KUTIK: That wasn't part of cross, so  
12 it's beyond the scope. It's a backdoor way to get in  
13 what's already stricken.

14 EXAMINER PRICE: Ms. Willis?

15 MS. WILLIS: Your Honor, it goes to his  
16 analysis, and Mr. Kutik opened the door by suggesting  
17 by his questions that this proposal is more favorable  
18 to customers than the original proposal so this is  
19 just an extension of that.

20 EXAMINER PRICE: Let's have the question  
21 back again.

22 (Record read.)

23 EXAMINER PRICE: Objection is sustained.

24 MR. SOULES: Your Honor, may I be heard  
25 for just a moment?

1 EXAMINER PRICE: You may.

2 MR. SOULES: I just want to point out  
3 Mr. Kutik did ask a number of questions related to  
4 hypotheticals regarding high LMPs and so I would  
5 share in OCC's view that he did open the door.

6 EXAMINER PRICE: Thank you. Noted.

7 MS. WILLIS: That's all the questions I  
8 have. Thank you, Mr. Wilson.

9 At this time we would re-move for --

10 EXAMINER PRICE: They get a chance to  
11 recross.

12 MS. WILLIS: I'm sorry.

13 EXAMINER PRICE: IEU-Ohio?

14 MR. PRITCHARD: No questions, your Honor.

15 EXAMINER PRICE: OMAEG?

16 MS. BOJKO: No questions, your Honor.

17 EXAMINER PRICE: Sierra Club?

18 MR. SOULES: No questions.

19 EXAMINER PRICE: RESA?

20 MR. BATIKOV: No questions. Thank you.

21 EXAMINER PRICE: Direct?

22 MR. WHITT: No questions.

23 EXAMINER PRICE: OEG?

24 MR. K. BOEHM: No questions.

25 EXAMINER PRICE: Company?



1 MR. KUTIK: No questions, your Honor.  
2 Thank you.

3 EXAMINER PRICE: Thank you.

4 Mr. Wilson -- Ms. Addison, any questions?

5 EXAMINER ADDISON: No questions.

6 EXAMINER PRICE: Mr. Wilson, you are  
7 excused.

8 MS. WILLIS: At this time, before he  
9 leaves the stand, we move for admission of OCC/NOAC  
10 Exhibit No. 1 and No. 2C.

11 EXAMINER PRICE: He can leave the stand  
12 while we consider this.

13 Any objections?

14 MR. KUTIK: Subject to the motions to  
15 strike, your Honor.

16 EXAMINER PRICE: At this time we will  
17 admit OCC/NOAC 1 and 2C subject to the motions to  
18 strike which we ruled on.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 MS. WILLIS: And noting objections.

21 EXAMINER PRICE: Noting the strenuous  
22 objections.

23 MS. WILLIS: And that's okay. I can go  
24 back to the office and tell Mr. Weston they were  
25 strenuous.

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

2 (Discussion off the record.)

3 EXAMINER ADDISON: Let's go ahead and go  
4 back on the record.

5 OCC may call its next witness.

6 MR. KUMAR: The OCC would like to call  
7 Daniel Duann to the stand and would like his direct  
8 testimony marked.

9 EXAMINER ADDISON: Hold on, Mr. Kumar.  
10 Let me swear him in.

11 (Witness sworn.)

12 EXAMINER ADDISON: Thank you. You may be  
13 seated.

14 MR. KUMAR: We would like to mark his  
15 testimony as OCC, I guess Exhibit No. 43.

16 EXAMINER ADDISON: It will be so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 - - -

19 DANIEL J. DUANN, Ph.D.  
20 being first duly sworn, as prescribed by law, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Kumar:

24 Q. Dr. Duann, could you state your full name  
25 and business address for the record.

1           A.    Daniel J. Duann.  10 West Broad Street,  
2   Suite 1800, Columbus, Ohio 43215.

3           Q.    Are you the same Dr. Daniel J. Duann  
4   whose direct testimony was filed in these cases?

5           A.    Yes.

6           Q.    On whose behalf do you appear?

7           A.    I appear on behalf of the Office of the  
8   Ohio Consumers' Counsel.

9           Q.    Do you have your prepared testimony with  
10  you on the stand?

11          A.    Yes.

12          Q.    Did you prepare the testimony or have it  
13  prepared at your direction?

14          A.    Yes.

15          Q.    Do you have any changes or corrections to  
16  your direct testimony?

17          A.    Yes.  My first change is on page 3,  
18  line 5, the word "testified" should be deleted and  
19  replaced by "file testimony."  So that line will read  
20  as "have also filed testimony in the 2010 AEP Ohio  
21  SEET proceeding (Case No. 11-4571...."

22          Q.    Can you explain that change?

23          A.    Yes.  When I'm preparing my testimony, I  
24  rely on the list of testimony filed before the PUCO  
25  which is the attachment drafted for the purposes

1 DJD-1 and -- and I look at -- and I noticed there is  
2 two cases that I filed testimony, but I did not  
3 remember that in the 2010 AEP Ohio SEET proceeding,  
4 in that case I filed testimony, but the OCC did not  
5 call me as a witness in that proceeding, so my  
6 testimony was not entered into the record.

7 So this -- I just simply forgot when I  
8 prepared my testimony. And also I did not record it  
9 at the deposition, but after the deposition I went  
10 back and checked the transcript of that proceeding  
11 and I noticed that.

12 And regarding the FirstEnergy ESP III  
13 proceeding, I did file testimony in that case, and I  
14 did testify in that case and FirstEnergy does not ask  
15 any questions, so in that case my testimony was  
16 stipulated and admitted into the record.

17 Q. Thank you.

18 Do you have any other changes or  
19 corrections to your testimony?

20 A. Yes. On page 5, on the footnote 6,  
21 "Ibid," that should be deleted and it should be  
22 replaced by "See hearing testimony of Mikkelsen at  
23 18." So this is essentially just a wrong reference  
24 to the previous footnote. And the same page,  
25 footnote No. 7, that "Ibid" should be replaced by

1 "Id."

2 Also page 6, line 10, the word "finds"  
3 should be replaced by "found," f-o-u-n-d.

4 And page 18, at end of that line --

5 Q. Do you mean line 18?

6 A. Yes, line 18, sorry. End of that  
7 line 18, after the word "special" the word "or"  
8 should be replaced with "and," and I meant this  
9 particular correction just to be consistent with the  
10 order that I cited. It doesn't change my opinion or  
11 testimony. And that's all the corrections and  
12 changes I have.

13 Q. With those changes and corrections, if I  
14 asked you today the same questions found in your  
15 direct testimony, OCC Exhibit 43, would your answers  
16 be the same?

17 A. Yes.

18 MR. KUMAR: The OCC would like to move  
19 for the admission of OCC Exhibit 43 and make this  
20 witness available for cross-examination.

21 EXAMINER ADDISON: Thank you, Mr. Kumar.  
22 We will defer ruling on admission of OCC 43 upon the  
23 conclusion of cross-examination.

24 MR. LANG: Would your Honor entertain  
25 motions to strike?

1 EXAMINER ADDISON: Of course, Mr. Lang.

2 MR. LANG: Of course, there is two  
3 motions, same basis, so I will give you them both.

4 The first one is on page 7, starting on  
5 line 13, after the word "Yes" where it says "I am  
6 advised by counsel" going through to the end of that  
7 line -- the end of that sentence on page 15.

8 MR. KUMAR: Do you mean line 15?

9 MR. LANG: I'm sorry, on line 15.

10 The second is on page 13 and it's all of  
11 lines 5 through 9.

12 The basis is -- and understanding that  
13 the Bench certainly allows witnesses with regulatory  
14 experience to testify as to their opinion of legal  
15 matters and Dr. Duann certainly has done that  
16 throughout his testimony here. The motion to strike  
17 in these two instances is because this does not  
18 represent Dr. Duann's opinion as an economist or  
19 someone with regulatory experience. These are  
20 statements that are based on advice of counsel.

21 Dr. Duann, in these places of his  
22 testimony, is not giving his nonlegal opinion, but he  
23 is providing the hearsay legal opinion of others. So  
24 I, therefore, move to strike on the basis of hearsay.

25 EXAMINER ADDISON: Thank you.

1 Do you have a response, Mr. Kumar?

2 MR. KUMAR: Yeah, I do. I would  
3 disagree. I think that these -- these portions of  
4 his testimony are not actual legal conclusions but,  
5 rather, they are assumptions that underlie some of --  
6 partially underlie portions Mr. Duann's testimony  
7 and, as a result, they should be included in his  
8 testimony.

9 And I think that additionally, the fact  
10 that he is simply asked the meaning of certain legal  
11 provisions in order to enhance his testimony should  
12 not be grounds to strike this from the record.

13 EXAMINER ADDISON: Thank you.

14 Consistent with prior holdings by this  
15 Bench, we are going to go ahead and grant the motion  
16 to strike. And just to be clear, those -- that  
17 includes both the reference on page 7, lines 13,  
18 beginning after the word "Yes" to line 15 after the  
19 citation to the Revised Code.

20 MR. KUMAR: Wait. Line -- line 15,  
21 right?

22 EXAMINER ADDISON: Yes. I believe I said  
23 line 15.

24 MR. KUMAR: Okay. Sorry.

25 EXAMINER ADDISON: Moving on to page 13,

1 line 5 to line 9.

2 MR. LANG: Thank you, your Honor. I have  
3 no other motions.

4 EXAMINER ADDISON: Thank you, Mr. Lang.  
5 Mr. Pritchard?

6 MR. PRITCHARD: No questions, your Honor.

7 EXAMINER ADDISON: Ms. Bojko?

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

9 EXAMINER ADDISON: Mr. Soules?

10 MR. SOULES: No questions, your Honor.

11 EXAMINER ADDISON: Mr. Batikov?

12 MR. BATIKOV: No questions, your Honor.

13 EXAMINER ADDISON: Did I say it  
14 correctly?

15 MR. BATIKOV: You did.

16 EXAMINER ADDISON: Wonderful.

17 Mr. Hays?

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

19 EXAMINER ADDISON: Mr. Whitt?

20 MR. WHITT: No questions --

21 EXAMINER ADDISON: Mr. Boehm?

22 MR. WHITT: -- your Honor.

23 EXAMINER ADDISON: Sorry. I knew what  
24 you wanted to say.

25 Mr. Boehm?



1 MR. K. BOEHM: No questions, your Honor.

2 Mr. Lang?

3 MR. LANG: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Lang:

7 Q. Good afternoon, Mr. Duann.

8 A. Good afternoon.

9 Q. You would agree that you do not have any  
10 experience working or consulting as an accountant for  
11 a for-profit company, correct?

12 A. Correct.

13 Q. And outside of the public utility  
14 context, you do not have any experience determining  
15 what items are nonrecurring, special, or  
16 extraordinary for purposes of excluding those items  
17 from net income, correct?

18 MR. KUMAR: Objection, your Honor.

19 EXAMINER ADDISON: Grounds?

20 MR. KUMAR: I am not sure when we are  
21 going to be outside the utility context in this  
22 hearing. I guess relevance.

23 EXAMINER ADDISON: Would you mind just  
24 rephrasing, Mr. Lang?

25 MR. LANG: The -- certainly, your Honor.

1 EXAMINER ADDISON: Thank you.

2 Q. (By Mr. Lang) Dr. Duann, you have not  
3 participated in any regulatory proceeding in which  
4 one of the contested issues was whether an accounting  
5 item was nonrecurring, special, or extraordinary for  
6 purposes of excluding that item from that income; is  
7 that correct?

8 MR. KUMAR: May I have the question  
9 reread?

10 EXAMINER ADDISON: You may.

11 (Record read.)

12 A. I have participated in many SEET  
13 proceedings and it is certainly one of the issues to  
14 be addressed in those proceedings.

15 Q. Can you identify any of those SEET  
16 proceedings that were contested, for example went to  
17 hearing in which one of the contested issues was  
18 whether an accounting item was nonrecurring, special,  
19 or extraordinary?

20 A. Yes, I remember in the 2009 AEP SEET  
21 proceeding, and I said one of the issues being  
22 contested is the -- margin of off-system sales.

23 Q. And that -- and that proceeding was --  
24 the margin of AEP's off-system sales dealt with under  
25 the standard of whether it was a nonrecurring,

1 special, or extraordinary item.

2 A. I think the order speaks for itself. At  
3 this time I cannot recall the details of that case,  
4 but I remember that's one of the issues.

5 Q. Would you agree that whatever experience  
6 you do have with regard to determining whether an  
7 item is nonrecurring, special, or extraordinary for  
8 purposes of excluding that item from that income,  
9 that experience would be wholly here at the PUCO  
10 either in ESP proceedings or in SEET proceedings?

11 THE WITNESS: Can I have the question  
12 read back, please?

13 EXAMINER ADDISON: You may.

14 (Record read.)

15 A. I would say most of my experience would  
16 be in the ESP and SEET, but since I was involved in  
17 other cases, and some of them may be a few years  
18 back, so I cannot recall whether they have those  
19 issues or not. But I will say, yeah, most of those  
20 would be related to the SEET proceeding.

21 Q. So you would agree that your experience  
22 with those accounting terms are limited to the  
23 regulatory context and you do not have experience  
24 outside of the public utility regulatory context,  
25 correct?

1           A.    I'm not accountant and I would not  
2 necessarily agree with you that nonrecurring,  
3 special, or extraordinary only has accounting  
4 meaning -- accounting meanings, and I say those --  
5 those common words and you can use your commonsense  
6 to look at it.

7           Q.    That's fair. Let me rephrase the  
8 question then.

9                   Your only experience with regard to  
10 determining whether an item is nonrecurring, special,  
11 or extraordinary is within -- solely within the  
12 regulatory context and is -- you do not have  
13 experience in the nonutility regulatory context,  
14 correct?

15           MR. KUMAR: I am going to object. I  
16 think this question has been asked and answered  
17 already.

18           EXAMINER ADDISON: I will allow it this  
19 time. I think he has made it more clear what he  
20 means by his question.

21                   You can answer.

22           A.    I think we are dealing with regulatory  
23 proceeding here, and I would certainly use my  
24 experience in the regulatory field to address those  
25 issues.

1 Q. So what I asked you is true?

2 A. No, it's not true. I'm using my  
3 regulatory experience and I have commonsense on what  
4 recurring, what special, what extraordinary is,  
5 and -- and whether I apply that to other things, you  
6 know, I probably could.

7 Q. Okay. So is your statement that in  
8 addition to your regulatory experience, you are using  
9 your commonsense in defining "nonrecurring,"  
10 "special," and "extraordinary"?

11 A. Yes.

12 Q. Now, in providing your testimony today,  
13 you are not providing a legal opinion, correct?

14 A. No, I am not.

15 Q. Now, let me ask you to turn to page 4 of  
16 your testimony. At lines 5 through 10, you discuss  
17 and you provide the statement that rider RRS revenues  
18 are an adjustment under Revised Code Section  
19 4928.143(F). Is it fair to say in this portion of  
20 your testimony you were offering your opinion,  
21 nonlegal, as to what the word "adjustment" means in  
22 the ESP statute?

23 MR. KUMAR: I am going to object at this  
24 point. Mr. Lang has already struck the portion of  
25 Dr. Duann's testimony that deals with that, I

1 believe, in page 7. And this language, I think,  
2 speaks for itself and it specifically says, earlier,  
3 "as a regulatory economist." So I think he is  
4 mischaracterizing Mr. Duann's testimony.

5 EXAMINER ADDISON: Mr. Lang?

6 MR. LANG: Your Honor, I was unclear as  
7 to the objection. Is counsel suggesting that the  
8 language on lines 5 through 10 should also be  
9 stricken as legal opinion?

10 MR. KUMAR: No. What I'm suggesting is  
11 that -- is that it says specifically in the preface  
12 to that section "based on my experience as a  
13 regulatory economist." It's clearly not a legal  
14 opinion. So for you to bring in a local statute for  
15 Mr. Duann to interpret is inappropriate.

16 EXAMINER ADDISON: Mr. Kumar, please  
17 direct all comments to the Bench.

18 MR. KUMAR: I apologize. Sorry.

19 MR. LANG: Your Honor, in that case, I  
20 think --

21 EXAMINER ADDISON: You are going to win,  
22 Mr. Lang. I am going to overrule the objection. He  
23 can clearly provide his understanding as I think he  
24 is attempting to do in his testimony.

25 You may answer the question. Do you need

1 the question read back?

2 THE WITNESS: Yes, please.

3 EXAMINER ADDISON: Thank you, Karen.

4 (Record read.)

5 A. I think -- I think this conclusion is  
6 based on my experience and knowledge by participating  
7 in the various SEET proceedings and my understanding  
8 is pretty straightforward. If a rider, such as rider  
9 RRS, is approved as part of an ESP, then it is an  
10 adjustment in the meaning of that Revised Code.

11 Q. So, again --

12 A. But it's not a legal opinion.

13 Q. Right. So what I asked you is true,  
14 that's -- you're offering your nonlegal opinion as to  
15 what "adjustment" means in an ESP statute, correct?

16 A. Yes.

17 Q. Now, still on page 4 and footnote 5, you  
18 list examples of certain exclusions from that income  
19 permitted under the SEET, the significantly excessive  
20 earnings test. Dr. Duann, do you agree that the  
21 exclusions you have listed here in footnote 5 are not  
22 the only permitted exclusions?

23 A. Yes.

24 Q. And you would also agree that the -- as I  
25 believe you mentioned earlier, the Commission has

1 authorized the exclusion of the margin from  
2 off-system sales in the two AEP SEET proceedings that  
3 you listed on page 3 of your testimony, correct?

4 A. I think in my previous answer I referred  
5 to 2009 AEP SEET proceeding.

6 Q. Let me rephrase the question then.

7 You would agree that the Commission has  
8 authorized the exclusion of the margin from  
9 off-system sales in both of the AEP SEET proceedings  
10 you list on page 3 of your testimony, both the 2009  
11 and the 2010 AEP Ohio SEET proceedings, correct?

12 A. I didn't cite that in my testimony and I  
13 didn't say that in my answer. I am only referring to  
14 the 2009 AEP Ohio SEET proceeding. Whether, in 2010,  
15 they include that, I cannot recall at this time.

16 Q. Okay. So let me see if I can clarify  
17 this. So you do agree that the Commission authorized  
18 the exclusion of the margin from off-system sales in  
19 AEP's 2009 SEET proceeding, but you cannot recall  
20 whether that was done in the 2010 proceeding; is that  
21 correct?

22 A. Yes.

23 Q. Now -- now, the testimony that you filed  
24 in the 2010 AEP Ohio SEET proceeding argued that the  
25 margin from off-system sales should be included in



1 the SEET, correct?

2 A. Yes. I think that's consistent with my  
3 recollection at this time.

4 Q. And is it fair to say, other than the  
5 exclusions from SEET that are in your footnote 5 and  
6 the margin from off-system sales that we've just  
7 discussed, you -- you cannot remember any other SEET  
8 exclusions that the Commission has authorized?

9 A. Can you be more specific on the exclusion  
10 that you are referring to?

11 Q. The question is with regard to the  
12 exclusions that you've described in footnote 5 of  
13 your testimony on page 4, and then adding to that the  
14 margin from off-system sales for AEP that we've  
15 discussed, whether you remember any other exclusions  
16 from SEET that the Commission has authorized.

17 A. I believe that they are. They are the  
18 exclusion.

19 Q. And what would those be?

20 A. On page 6, line 5, 6, 7, I talk about "as  
21 a result of SEET refund," there can be exclusion  
22 and -- and I'm pretty sure there are others, but I  
23 probably cannot recall now.

24 Q. Okay. Would you agree that in the  
25 companies' second ESP proceeding, Case 12-1230, the

1 Commission authorized the companies to exclude  
2 deferred carrying charges from the SEET calculation?

3 A. I'm not sure about an ESP II proceeding,  
4 but I say in the ESP III proceeding the company does  
5 propose that and -- and I believe I think my  
6 testimony addressed that particular issue.

7 Q. Okay.

8 A. My testimony in that proceeding addressed  
9 that particular issue.

10 Q. So you do remember that in one of the  
11 companies' past ESP proceedings, you filed testimony  
12 offering your opinion that excluding deferred  
13 carrying charges from the SEET calculation was  
14 contrary to the public interest and inconsistent with  
15 the Commission's practice regarding exclusions,  
16 correct?

17 A. I think that's good description of my  
18 testimony.

19 Q. And are you also aware in Duke Energy  
20 Ohio's second ESP proceeding the Commission  
21 authorized Duke to exclude, from the SEET  
22 calculation, all impacts of mark-to-market  
23 accounting?

24 MR. KUMAR: Objection, your Honor.

25 EXAMINER ADDISON: Grounds?

1 MR. KUMAR: I think we have gone through  
2 a few of these.

3 EXAMINER ADDISON: Mr. Lang.

4 MR. LANG: The relevance for his  
5 testimony is what's missing in his testimony.

6 EXAMINER ADDISON: I'll allow this  
7 question. We'll see where we go.

8 THE WITNESS: Can I have the question  
9 read back, please.

10 EXAMINER ADDISON: You may.

11 (Record read.)

12 A. I don't remember the detail of  
13 Commission's decision in the Duke ESP II, and in my  
14 review of those SEET filing, and I did remember that  
15 assigned mark-to-market adjustment got taken out of  
16 their book, either taken out or added back to their  
17 book income.

18 Q. And from your review of that SEET  
19 proceeding, do you remember what was being marked to  
20 market?

21 A. No.

22 Q. Let's talk about the Commission's generic  
23 SEET proceeding which you discuss on page 6 of your  
24 testimony. I am looking specifically on page 6 of  
25 the quote you have from the Commission's order --

1 Finding and Order in that case. The quote is on  
2 lines 1 through 15. You would agree that if an item  
3 satisfies the requirements to be deemed a  
4 nonrecurring item, it can be excluded from that  
5 income for purposes of the SEET, correct?

6 A. Yeah. I would say it has the potential  
7 of being excluded.

8 Q. Dr. Duann, do you remember being deposed  
9 in this proceeding?

10 A. Yes.

11 Q. And that deposition took place on the  
12 afternoon of July 1, while people were setting up for  
13 "Red White & Boom!" in downtown Columbus?

14 A. Yes.

15 Q. And there was a court reporter there?

16 A. Yes.

17 Q. And you were sworn in at that time?

18 A. Yes.

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

20 EXAMINER ADDISON: You may.

21 Q. Dr. Duann, do you need a copy of your  
22 transcript?

23 A. No, I have a copy.

24 Q. Dr. Duann, if I could have you turn to  
25 page 25 of your deposition transcript, I am going to

1 read a question and answer and ask you if I have read  
2 it correctly.

3 Starting on line 14. "Question: Well,  
4 would you agree that if an item satisfies the  
5 requirements to be deemed a nonrecurring item, then  
6 it could be excluded from net income for purposes of  
7 the SEET?"

8 "Answer: Yeah, if it's a nonrecurring."  
9 Did I read that correctly?

10 A. Yes.

11 Q. All right. Now, going on to a special  
12 item. You would agree that if an item satisfies the  
13 requirements to be deemed a special item, it can be  
14 excluded from that income for purposes of the SEET,  
15 correct?

16 A. So you are reading from line 19?

17 Q. We are not in the deposition anymore.  
18 Sorry. We are back to live. So let me ask me -- let  
19 me ask my question again.

20 Do you agree that if an item satisfies  
21 the requirements to be deemed a special item, it can  
22 be excluded from that income for purposes of the  
23 SEET?

24 A. Yeah. It has the potential of being  
25 excluded.

1           Q.    It not only has the potential, but as the  
2 Commission's generic proceeding, as the question is  
3 stated in the generic proceeding, it can be excluded  
4 from the SEET, correct?

5           A.    I think when you use the word "can" it  
6 means "can," that means it has the potential. It  
7 does not mean it should be or -- so that's the reason  
8 I use the word "potential."

9           Q.    Okay. So with that explanation, you  
10 agree with my -- with my question, correct?

11           MR. KUMAR:  Objection, your Honor.  
12 Mr. Lang -- it's asked and answered.

13           EXAMINER ADDISON:  Overruled.

14           A.    As I said, it has the potential of being  
15 excluded.

16           Q.    And, Dr. Duann, you are providing a  
17 qualification. I just want to make sure we're on the  
18 same page. When you say it has the potential to be  
19 excluded, you are agreeing that it can be excluded  
20 under the generic SEET order that refers to special  
21 items being excluded from that income, correct?

22           THE WITNESS:  Can I have the question  
23 read back?

24           EXAMINER ADDISON:  You may.

25                   (Record read.)

1           A.    As I say, it can be included -- it can be  
2 excluded, but you have to look at special items as  
3 you describe it. This is a generic proceeding, so  
4 that only provides a guideline.

5           Q.    Now, the third category is extraordinary  
6 item. You would also agree that an item that  
7 satisfies the requirements to be deemed an  
8 extraordinary item can be excluded from that income  
9 for purposes of the SEET.

10          A.    It can be excluded.

11          Q.    Now, as an economist, you do not believe  
12 that the words "nonrecurring," "special," or  
13 "extraordinary" have a technical meaning associated  
14 with them, correct?

15          A.    There's no technical economic meaning  
16 associated with it.

17          Q.    And you would agree and in your opinion  
18 the -- let me start that question over.

19                Your opinion is that the common  
20 dictionary meaning of "nonrecurring," "special," and  
21 "extraordinary" should apply, correct?

22          A.    Apply to what?

23          Q.    Should apply when determining whether an  
24 item is nonrecurring, special, or extraordinary for  
25 purposes of excluding it from income under the SEET.

1 MR. WHITT: Your Honor, I am going to  
2 object at this point. Whether an item is includable  
3 or excludable in a SEET proceeding is a function of  
4 Ohio statute, not any particular definition of  
5 certain terms or an accountant's or economist's  
6 understanding. And those issues can be decided in a  
7 SEET proceeding if there is one.

8 EXAMINER PRICE: So you're moving to  
9 strike Dr. Duann's testimony?

10 MR. WHITT: I am objecting to the  
11 question that was just asked.

12 EXAMINER ADDISON: Overruled.

13 THE WITNESS: Can I have the question  
14 read back, please?

15 EXAMINER ADDISON: You may.

16 MR. LANG: I think it would be the  
17 question and his question back to me and then my  
18 explanation.

19 EXAMINER ADDISON: Thank you for that,  
20 Mr. Lang.

21 (Record read.)

22 A. My answer would be that you should start  
23 with the -- you know, the common definition of  
24 "nonrecurring," "special," and "extraordinary." But,  
25 on the other hand, I think the SEET proceeding has



1 been going on in the State of Ohio for over a number  
2 of years. And the Commission has spoken on many  
3 issues and -- many proceedings regarding the term  
4 "nonrecurring," "special," and "extraordinary."

5 And so -- so I think, yeah, you can start  
6 with it, but you have to look at what the -- what's  
7 the precedent in the State of Ohio and what the  
8 standard says. You cannot just -- just say oh, I  
9 think it's extraordinary and -- and then exclude it.  
10 I think just like in FirstEnergy's rehearing  
11 testimony, there's no explanation why it's a special  
12 item.

13 MR. LANG: Your Honor, I would move to  
14 strike his response starting with the word "but" and  
15 then everything that comes thereafter.

16 EXAMINER ADDISON: Mr. Kumar.

17 MR. KUMAR: I don't agree. I think it  
18 gets to the heart of what Mr. Lang is asking. It  
19 provides essential context, understanding Mr. Duann's  
20 answer.

21 EXAMINER ADDISON: Consistent with our  
22 practice, I will afford Mr. -- Dr. Duann one bite of  
23 the apple. I think he is especially owed, since he  
24 was not here the first two hearings.

25 But from this point forward, Dr. Duann,

1 if you could just listen to Counsel's question and  
2 answer only that question. Mr. Kumar can bring up  
3 any other issues you feel are important to bring up  
4 during redirect.

5 THE WITNESS: Sure.

6 EXAMINER ADDISON: Thank you.

7 Q. (By Mr. Lang) Dr. Duann, your  
8 understanding is that in the context of the quotation  
9 on page 6 of your testimony that "special" means "one  
10 of a kind, not ordinary"; is that right?

11 A. Yes.

12 Q. And you agree that you -- you base that  
13 definition on your commonsense; is that correct?

14 A. As well as my knowledge and experience  
15 in -- my involvement with prior SEET proceedings.

16 Q. Can I refer you to page 28 of your  
17 deposition transcript. Starting at line 2, did I ask  
18 you the question: "And are you drawing from your  
19 economic" -- just for context, let me back up.

20 At the end of page 27, you see we had an  
21 exchange about what the word "special" means and your  
22 understanding of what "special" means.

23 So now at the top of page 28, starting at  
24 line 2, I asked you: "And are you drawing from your  
25 economic expertise to provide that definition or

1 something else?"

2 Your answer was: "I think this is just  
3 common sense."

4 Did I read that correctly?

5 MR. KUMAR: Objection, your Honor.

6 EXAMINER ADDISON: Grounds?

7 MR. KUMAR: I think it's improper  
8 impeachment, and as Mr. Lang stated before, this  
9 discussion started on page 27. And if you look at  
10 page 27, Mr. Duann does refer, specifically lines 13  
11 through 17, how the context of that definition would  
12 also --

13 MR. LANG: Your Honor, that would be  
14 appropriate for redirect.

15 MR. KUMAR: Your Honor, it's improper  
16 impeachment. He's not providing --

17 EXAMINER ADDISON: Thank you. You can  
18 raise that during redirect, Mr. Kumar.

19 Q. (By Mr. Lang) Now, Dr. Duann, you did  
20 agree that I read that correctly.

21 A. What you read on page 28, line 2 to 5?

22 Q. Correct.

23 A. Yeah, you read that correctly.

24 Q. Thank you.

25 Now, Dr. Duann, is it correct that you

1 have no opinion on whether annual mark-to-market  
2 adjustments would qualify as a special item?

3 MR. KUMAR: Objection, your Honor.  
4 Relevance. This is the provision of -- we are  
5 discussing the relevance of FirstEnergy's rider RRS  
6 to the SEET proceeding, not Duke's mark-to-market  
7 adjustments.

8 EXAMINER ADDISON: Mr. Lang?

9 MR. LANG: Your Honor, his testimony is  
10 that a special item must also be nonrecurring and  
11 anything that would happen on an annual basis would  
12 not qualify as special. So I'm testing his opinion  
13 with regard to other items that actually are  
14 recurring.

15 EXAMINER ADDISON: Thank you. The  
16 objection is overruled.

17 A. I have no opinion on that.

18 Q. Dr. Duann, your understanding is that in  
19 the context of the quote on page 6 of your testimony,  
20 that "extraordinary" means "out of the ordinary, not  
21 ordinary, or unusual," correct?

22 A. Yes.

23 Q. And your understanding of what  
24 "extraordinary" means is based on your standard  
25 English, commonsense reading of the word, correct?

1           A.    As well as my expert -- my experience and  
2 knowledge in participating in prior SEET proceedings.

3           Q.    And your understanding is that in the  
4 context of the quote on page 6, the word  
5 "nonrecurring" means "an item that does not happen  
6 regularly" or "it happens one time," correct?

7           A.    My definition of "nonrecurring" means  
8 this happened once and not regular, yes, I will agree  
9 to that.

10          Q.    So you -- so you were agreeing with both  
11 my statements, not happening regularly, or happens  
12 one time; is that correct?

13          A.    Yes, I agree.

14          Q.    Okay. Now, you agree that the Commission  
15 can interpret the SEET statute and make a decision  
16 based on its interpretation; is that fair?

17          A.    No, that's not fair.

18          Q.    Okay. Well, your proposal is that when  
19 the companies would pay credits under modified rider  
20 RRS, that the cost of those credits would be included  
21 in net income for purposes of the SEET, correct?

22          A.    Correct.

23          Q.    And you're also proposing that when the  
24 companies receive revenue from charges under modified  
25 rider RRS, that those revenues would be included in

1 that income for purposes of the SEET, correct?

2 A. Yes.

3 Q. And you believe that including rider RRS  
4 revenues as well as the costs of credits in the SEET  
5 would result in symmetrical treatment, correct?

6 THE WITNESS: Can I have the question  
7 read back, please?

8 EXAMINER ADDISON: You may.

9 (Record read.)

10 MR. KUMAR: Objection.

11 EXAMINER ADDISON: Grounds?

12 MR. KUMAR: I think you are  
13 mischaracterizing his testimony. Where is that in  
14 his testimony?

15 MR. LANG: Your Honors --

16 MR. KUMAR: I'm sorry, your Honor.

17 EXAMINER ADDISON: Thank you. I believe  
18 it's a fair question. Overruled.

19 A. Actually, I don't quite understand the  
20 question. I would like to know in what context were  
21 you referring to "symmetric"?

22 Q. Your understanding is with regard to  
23 including rider RRS revenues in the SEET for the cost  
24 of charges in the SEET in a different year that, in  
25 either case, it should be treated symmetrically,

1 correct?

2 A. Actually, I still don't understand the  
3 question. I apologize. Because I think when you say  
4 that, then you say "should be treated symmetrically,"  
5 so I kind of get lost in that part, so maybe you can  
6 rephrase it.

7 Q. Let's try something else. You would  
8 agree that if the cost of rider RRS credits is  
9 included in the SEET, and that results in the  
10 companies' earned return on equity being too low,  
11 there is no mechanism to have customers refund those  
12 credits to the companies, correct?

13 A. Actually, I don't know -- I don't quite  
14 understand the question. So for example -- let me  
15 try to see if I can answer. Say, for example, you  
16 have a credit and -- and that credit would become --  
17 your credit provided to the customer in certain years  
18 and that credit will be taken out of your net income  
19 in your financial statement. And you will have --  
20 then you can use that to calculate your return on  
21 equity. And so whether you exclude or include that  
22 expense for SEET purpose, doesn't change your -- your  
23 book return on average.

24 Q. With that explanation, you would agree  
25 then that there is no mechanism in the statute to

1 adjust for a significantly lower earnings in the same  
2 way that there is a mechanism in the statute to  
3 adjust for significantly excessive earnings.

4 A. My understanding of the statute is the  
5 statute does not adjust anything. Does not adjust --  
6 the statute -- the SEET statute just essentially say  
7 if the utility -- if the Commission approve an ESP  
8 and, as a result of that approved ESP, the companies'  
9 earnings are significantly higher than those  
10 companies that can earn in that particular year, then  
11 the company need to provide a refund and -- refund or  
12 credit to customer.

13 However, this refund to customer is  
14 calculated on a company-wide basis -- on a company --  
15 you know, it could be the result of other rider, it  
16 could be the result of other things. So you cannot  
17 really say that's a return of the charge specifically  
18 related to rider RRS. All you can say that's --  
19 that's a collection of the credit related to the  
20 rider RRS. It's on a totally income basis; it's not  
21 related specifically to a specific rider.

22 Q. And so you will agree with me that the  
23 refund mechanism you just described is the only  
24 refund mechanism in the statute.

25 A. I will agree with you the statute -- the



1 SEET statute treat the excess earning as a result of  
2 ESP different from the treatment of lower earning  
3 from ESP.

4 Q. Thank you.

5 Now, is it your view that the exclusions  
6 from net income that the Commission has authorized in  
7 prior SEET proceedings are the only possible  
8 exclusions?

9 A. In general, I would say that's the case.  
10 That's the -- probably all the possible exclusions.  
11 And as I explained earlier, you know, we had this  
12 proceeding, this SEET provision for a number of  
13 years. There's a number of cases being hotly  
14 debated, litigated, so I think we had a pretty good  
15 record and guidance there.

16 But, on the other hand, I don't want to  
17 be absolutely say oh, there's no -- no more. I  
18 think, you know, it's possible, but I don't think  
19 it's likely. I think the Commission has a pretty --  
20 pretty good guidelines from the statutes, and the  
21 Commission's precedents are pretty clear, and -- and  
22 so my answer would be I would generally say that's  
23 all possible, but there could be exceptions.

24 Q. If I could ask you to look at page 8 of  
25 your testimony. Here on lines 7 through 13, you do

1 reference exclusions that have been authorized by the  
2 Commission that are one-time events. Do you agree,  
3 Dr. Duann, that the examples you provide are not the  
4 only examples of items that could be excluded from  
5 net income for purposes of the SEET?

6 A. I agree.

7 Q. And also on pages 8 and 9 of your  
8 testimony, you reference what you describe as  
9 "regular and continuous riders." Do you agree that  
10 all of those regular and continuous riders that you  
11 reference on pages 8 and 9 of your testimony are  
12 riders that are revenue-collection mechanisms?

13 MR. KUMAR: Excuse me, your Honor. May I  
14 have that clarification for line numbers?

15 MR. LANG: Just generally on pages 8 and  
16 9, your Honor.

17 EXAMINER ADDISON: Thank you.

18 A. Yes, I agree that the FirstEnergy  
19 proposed rider RRS, the -- the FirstEnergy rider DCR,  
20 and the Dayton Power and Light rider SSR, and AEP's  
21 rider RSR, they are all revenue-collection  
22 mechanisms.

23 Q. And let me ask you, at the bottom of  
24 page 8, going over to page 9 of your testimony, and  
25 this is starting on line 23 of page 8, you refer to

1 "other regular (recurring) and continuous riders."

2 Is that reference there in your testimony to the  
3 three riders that you just named in your previous  
4 answer?

5 A. No. It will be more than any regular and  
6 continuous rider.

7 Q. So the extent you are referring in that  
8 reference at the bottom of page 8, going over to  
9 page 9, to, "regular and continuous riders," you  
10 would agree that to whichever riders you are  
11 referring, those are riders that are solely designed  
12 to collect revenues; is that correct?

13 A. I will agree that's generally the case  
14 but I -- I really have to -- to look all the riders.  
15 I mean, for example, I think FirstEnergy probably has  
16 more than 15 riders, AEP has more than 20 riders, and  
17 I will have to look at that.

18 And -- and also I think internal -- the  
19 rider, I think there's also, in many cases, an annual  
20 or quarterly true-up. And I -- I remember that  
21 inside of AEP's economic development rider or other  
22 rider, they have credit provided on certain year or  
23 reduction of rider. So my answer is generally that's  
24 the case, but there is a lot of -- there may be some  
25 exceptions.

1           Q.    Now, let's talk about you just mentioned  
2 on page 9, your riders -- well, AEP's rider RSR, and  
3 DP&L's SRR, your belief is that both of those riders  
4 functioned at hedges, correct?

5           MR. KUMAR: Your Honor, just to clarify  
6 would, that be "SSR" not "SRR"?

7           EXAMINER ADDISON: Thank you.

8           MR. LANG: Did I have it wrong? Yes, the  
9 SSR.

10          EXAMINER ADDISON: Thank you, Mr. Lang.

11          A.    Yes.

12          Q.    Would you also agree there is no  
13 possibility that either of those riders would pay  
14 credits to customers, correct?

15          A.    I would say that, in general, when this  
16 rider -- well, was designed and approved, they did  
17 not anticipate any credit to the customer. But I  
18 think, you know, the recent Supreme Court decision on  
19 the -- especially in the AEP ESP and capacity case,  
20 you know, this would be recalculation of the RSR --  
21 of the capacity cost deferral balance and we don't  
22 know what will happen on those -- on that particular  
23 case. And just based on my own opinion, I think, or  
24 based on my initial -- I think there could be credit  
25 provided.

1           Q.     So you would agree that under the design  
2 of those riders, AEP's and DP&L's stability charges,  
3 there was no possibility that they would pay a credit  
4 to customers, correct?

5           A.     As I say as originally the -- as  
6 originally approved, they are not intended to provide  
7 a credit to the customer.

8           Q.     Now, AEP's RSR and DP&L's SSR were  
9 designed to support each utility's financial  
10 integrity as they transitioned to market-based SSO  
11 pricing and divested their generation assets,  
12 correct?

13          A.     I think the Order speak's for itself, and  
14 my understanding is those two riders are designed to  
15 enhance those utilities's financial integrities.

16          Q.     Dr. Duann, if I can take you to page 41  
17 of your deposition, and again if you look at the  
18 bottom of page 42. You will see we are talking about  
19 DP&L's SSR and AEP's RSR.

20                     And then at the top of page 43, starting  
21 at line 2, I asked you the question: "And isn't it  
22 true that each of those riders were designed to  
23 support the utilities' financial integrity as those  
24 utilities transition to market-based SSO pricing and  
25 divested their generation assets?"

1                   And you answered: "That's one of the  
2                   rationales used in those two cases."

3                   Did I read that correctly?

4                   A.    Yes.  And I think that's perfectly  
5                   consistent with what I say here.

6                   MR. LANG:  Your Honor, I would move to  
7                   strike after the word "Yes."

8                   MR. KUMAR:  Objection, your Honor.  I  
9                   think you -- again, you have to look at the page he  
10                  refers to, page 42, in which Mr. Lang, himself,  
11                  refers to those -- that those riders were designed to  
12                  support the financial integrity.  And Mr. Duann  
13                  replies "Yes, that's one of the rationales," as Mr.  
14                  Duann stated earlier in his testimony on the stand.

15                  EXAMINER ADDISON:  He doesn't have to  
16                  cite to the earlier pages.  He is just trying to get  
17                  some context.

18                  MR. KUMAR:  Exactly.  And I think that  
19                  context is essential to that whole question.

20                  EXAMINER ADDISION:  Which he provided.  I  
21                  am just going to let the record stand.  The motion  
22                  will be denied.  Objection overruled.

23                  Q.    Dr. Duann, the companies' what you  
24                  referred to as the "modified rider RRS" was not  
25                  designed to support the companies' financial

1 integrity while they transitioned to market-based SSO  
2 rates and divest their generation, correct?

3 A. My answer is it would be the company,  
4 that utility has already divested their generation  
5 assets, so I don't -- I don't know the meaning of  
6 your question.

7 Q. Sounds like you accepted the truth of my  
8 question, correct?

9 A. I accept the truth that these companies  
10 are already divested. Why there's -- those -- what's  
11 the purpose? They are already divested from -- of  
12 their generation assets.

13 Q. And as a result, modified rider RRS was  
14 not designed to support the companies' financial  
15 integrity while they transition to market-based SSO  
16 rates and divest of generation, correct?

17 MR. KUMAR: Objection, your Honor.  
18 That's already asked and answered by the witness.

19 EXAMINER ADDISON: That's a slightly  
20 different question. I'll allow it.

21 MR. LANG: Still looking for an answer,  
22 your Honor.

23 A. My answer is the company already used  
24 company EDU to procure their -- their electricity for  
25 their SSO customer.

1 Q. So, Dr. Duann, let me take you to page 58  
2 of your deposition. Start at the very bottom of  
3 page 58, line 25. I asked you the question: "Do you  
4 agree that rider RRS is not intended to protect the  
5 companies from financial harm while they transition  
6 to market-based SSO rates and divest their  
7 generation?"

8 You answered: "Those companies already  
9 divested their generation."

10 I asked the question: "So you would  
11 agree?"

12 "Answer: For that limited purpose, yes."

13 MR. KUMAR: Objection.

14 MR. LANG: Did I read that correctly?

15 A. You did.

16 Q. Thank you.

17 Now, Dr. Duann, modified rider -- would  
18 you also agree that modified rider RRS was not  
19 designed to support the company's financial integrity  
20 while they transitioned to market-based SSO rates?

21 MR. WHITT: Objection.

22 EXAMINER ADDISON: Grounds?

23 MR. WHITT: When I asked the question the  
24 other day that used the word "transition," I was  
25 admonished that it has a peculiar legal meaning that



1 witnesses can't testify to. And on that basis,  
2 consistent with that ruling, I object to this  
3 question.

4 EXAMINER PRICE: That's a totally  
5 different context.

6 EXAMINER ADDISON: Overruled. You may  
7 answer the question.

8 THE WITNESS: Can I have the question  
9 read back, please?

10 EXAMINER ADDISON: You can.

11 MR. KUMAR: I would like to note for the  
12 record I would join Mr. Whitt's objection.

13 EXAMINER ADDISON: Thank you, Mr. Kumar.  
14 It's noted.

15 EXAMINER PRICE: It's still a totally  
16 different context.

17 (Record read.)

18 A. As I say in deposition, those companies  
19 are already market-based SSO rate.

20 EXAMINER ADDISON: Dr. Duann, please  
21 don't refer to your deposition when you are answering  
22 questions.

23 THE WITNESS: Sure.

24 EXAMINER ADDISON: Thank you.

25 Q. So your answer is yes, you agree?

1           A.    No.  My answer is it would be those  
2 companies are already in market-based SSO rate.

3           Q.    And, therefore, you agree that modified  
4 rider RRS could not have been designed to support the  
5 companies' financial integrity while they  
6 transitioned to market-based SSO rates, that could  
7 not be -- the purposes for the rider, correct?

8           A.    Because they are already market --  
9 already market-based SSO, how can they do the  
10 transition?  So I don't understand the question.

11          Q.    Dr. Duann, you believe the companies,  
12 with regard to modified rider RRS, are not absorbing  
13 the financial consequences of the hedge risk,  
14 correct?

15                THE WITNESS:  Can I have the question  
16 read back, please?

17                EXAMINER ADDISON:  You may.

18                (Record read.)

19          A.    I think I have difficulty regarding the  
20 word "absorb" and the reason is obviously the -- the  
21 impact, you know, the collection of charges and the  
22 credits, those reflect in the companies' financial  
23 statement.  But, on the other hand, the company is  
24 part of large organization, the FirstEnergy  
25 Corporation.  So -- so I think the answer is -- could

1 be yes and no.

2 Q. Dr. Duann, let me go to page 59 of your  
3 deposition. At line 17, I asked you the question:  
4 "And do you agree that the companies are absorbing  
5 the financial consequences of the hedge risk?"

6 You asked to have the question reread.  
7 It was. Then your answer was: "No, I don't agree  
8 with that."

9 Did I read that correctly?

10 A. Yes.

11 Q. Now, the Commission set the revenue  
12 requirement for the RSR and SSR riders by targeting a  
13 reasonable range of equity for AEP and DP&L, correct?

14 A. That's my general understanding.

15 Q. And is it your general understanding that  
16 there was a range of ROEs cited in each Commission  
17 order?

18 A. I would generally agree with that.

19 Q. And is it your understanding that the  
20 range of ROE had a floor of 7 percent and a ceiling  
21 of 11 to 12 percent?

22 A. I cannot recall that.

23 Q. Is it fair to say you do not know the  
24 total amount of revenues that modified rider RRS  
25 would provide to the companies in 2017?

1           A.    I think nobody knows at this time,  
2 including me.

3           Q.    And it would also be fair to say you do  
4 not know the total amount of revenues that modified  
5 rider RRS would provide to the companies in 2018?  
6 Just asking with regard to your knowledge.

7           A.    I did not make that kind of calculation.

8           Q.    And you personally do not know whether  
9 rider RRS will be a charge or a credit in 2019 or any  
10 following year, correct?

11          A.    My understanding, based on my reading of  
12 the filing made in the SEET proceeding, including the  
13 earlier, when it was first filed, is -- is -- and  
14 also the more recent one, I believe is the company  
15 estimated there could be -- there could be some  
16 credit in 2019. And OCC's witness estimated there  
17 could not be any credit to customers at least until  
18 2023 or '24, and that will happen only in very  
19 limited and variable scenario.

20          MR. LANG: And, your Honors, if I could  
21 move to strike. I was trying to be very specific to  
22 his personal knowledge and what he knows. He  
23 answered, by reference, to other testimony. I'm only  
24 asking him what he's looked at and what he knows with  
25 regard to, you know, any year of a charge or credit.

1 MR. KUMAR: Your Honor, first of all, I  
2 believe Mr. Lang asked what Mr. Duann's understanding  
3 was and Mr.-- Dr. Duann's understanding is partially  
4 also based on OCC's testimony. And as he mentioned,  
5 he also has read what the company has filed in this  
6 case. And so, additionally, Dr. Duann is also  
7 reflecting OCC's position in this case and he is  
8 testifying on behalf of OCC.

9 EXAMINER ADDISON: Thank you.

10 I believe Mr. Lang did use the words  
11 "personal knowledge" in his question though, so I  
12 will grant the motion to strike.

13 Mr. Lang, would you like that question  
14 reread?

15 MR. LANG: Thank you, your Honor, but  
16 we'll move on.

17 EXAMINER ADDISON: Thank you.

18 Q. Dr. Duann, slightly new SEET topic, you  
19 agree that the SEET requires that a utility's return  
20 on equity be compared to the return on equity of  
21 publicly-traded companies including utilities that  
22 face comparable business and financial risk, correct?

23 A. Correct.

24 Q. However, you do not know whether any of  
25 the companies, including utilities that are

1 considered to be comparable or that have been  
2 considered to be comparable in recent SEET  
3 proceedings, provide a hedge to their customers that  
4 are similar to the proposed rider RRS, correct?

5 MR. KUMAR: Your Honor, may I have that  
6 question reread?

7 EXAMINER ADDISON: You may.

8 (Record read.)

9 A. I did not examine or I did not even  
10 remember all those companies based in the comparable  
11 group, and so I have no opinion whether those  
12 companies have or have not riders similar to  
13 modified -- the rider that FirstEnergy had, as  
14 proposed. So there could be some company has or  
15 could -- I simply don't know.

16 Q. Dr. Duann, you would agree that the  
17 policy of the State of Ohio is to assure the  
18 availability to consumers of adequate, reliable,  
19 safe, efficient, nondiscriminatory, and  
20 reasonably-priced retail electric service; is that  
21 correct?

22 A. I would agree with that.

23 Q. Now, you believe that stability charges  
24 are not authorized by the ESP statute; is that  
25 correct?

1           A.     That's my understanding.

2           Q.     And to further pursue that point, your  
3 understanding is that the Ohio Supreme Court  
4 decisions in the recent AEP and DP&L appeals means  
5 that no stability charge can be approved under the  
6 ESP statute; is that your understanding?

7           MR. KUMAR:   Objection.

8           EXAMINER ADDISON:   Grounds?

9           MR. KUMAR:   I think this calls for a  
10 legal conclusion on the part of Dr. Duann.

11          EXAMINER ADDISON:   Dr. Duann, I don't  
12 believe we've asked you this question on the record,  
13 but are you an attorney?

14          THE WITNESS:   No.

15          EXAMINER ADDISON:   I believe he can  
16 answer in his capacity as a regulatory economist if  
17 he has an opinion on the matter.

18          You can answer.

19          THE WITNESS:   Can I have the question  
20 read back?

21          EXAMINER ADDISON:   You may.

22          (Record read.)

23          A.     That's my understanding.

24          MR. KUMAR:   Your Honor, in light of the  
25 most recent exchange, I would ask the Bench to

1 reconsider their ruling on Mr. Lang's earlier motion  
2 to strike and ask them to just limit, I guess, on  
3 page 13, lines 5 through 9, to just strike the part  
4 "I was advised by counsel" because as we've just  
5 established, Mr. Duann does have an understanding of  
6 those cases.

7 MR. LANG: And, your Honor, the point for  
8 striking was hearsay, that to the extent Ms. Willis  
9 or Mr. Kumar or Mr. Michael, who is sitting in the  
10 back, was providing the advice that he was providing  
11 in his testimony. And in those portions in his  
12 testimony he was specifically saying this was advice  
13 I was getting from attorneys at OCC. That's hearsay;  
14 that should be stricken.

15 He obviously spends of his testimony  
16 providing his opinion as a regulatory person on  
17 numerous legal subjects and once we put aside the  
18 advice -- the hearsay advice that he obtained from  
19 others, I'm -- have been spending the afternoon  
20 exploring what his opinion is and that's why I asked  
21 his opinion with regard to those cases. That  
22 certainly is relevant for purposes of this case and  
23 is not hearsay. But the hearsay advice that he got  
24 from other people that he sought to include in his  
25 testimony remains improper.



1 EXAMINER ADDISON: Thank you, Mr. Lang.  
2 I have reconsidered my earlier ruling and I will not  
3 be amending it.

4 MR. KUMAR: Thank you.

5 EXAMINER ADDISON: Let's move on. Thank  
6 you.

7 Q. (By Mr. Lang) Dr. Duann, you have some --  
8 you have some discussion in your testimony about  
9 making rider RRS revenues subject to refund. You  
10 would agree that if rider RRS revenues were approved  
11 subject to refund, that could affect the credit  
12 metrics of the companies.

13 A. No, I do not agree.

14 Q. Would you agree -- do you -- do you agree  
15 that a rating agency -- try this. Do you agree that  
16 a rating agency would look at the risk that a refund  
17 could occur in a future year?

18 A. They will certainly look at it, yes.

19 Q. And if rider RRS revenues were approved  
20 subject to refund, it could affect the ability of the  
21 companies to access capital markets, correct?

22 A. Not necessarily.

23 Q. I'm sorry. It may or it may not, would  
24 be your opinion; is that correct?

25 A. It may or may not, but I don't think it's

1 likely.

2 MR. LANG: Thank you, your Honor. That  
3 concludes my examination.

4 EXAMINER ADDISON: Thank you, Mr. Lang.  
5 Mr. McNamee?

6 MR. McNAMEE: No, thank you.

7 EXAMINER ADDISON: Thank you.

8 Mr. Kumar, redirect?

9 MR. KUMAR: May I have a few minutes,  
10 your Honor?

11 EXAMINER ADDISON: You may.

12 Let's go off the record.

13 (Discussion off the record.)

14 EXAMINER ADDISON: Let's go back on the  
15 record.

16 Mr. Kumar, redirect?

17 MR. KUMAR: I don't have any questions on  
18 redirect, your Honor.

19 EXAMINER ADDISON: Thank you.

20 Do you have any questions, Examiner  
21 Price?

22 EXAMINER PRICE: No.

23 EXAMINER ADDISON: I have no additional  
24 questions. You're excused, Dr. Duann. Thank you  
25 very much.

1 THE WITNESS: Thank you.

2 MR. KUMAR: Your Honor, I would move for  
3 the admission of OCC Exhibit 43 again.

4 EXAMINER ADDISON: Subject to the motions  
5 to strike, are there any objections to the admission  
6 of OCC Exhibit 43?

7 MR. LANG: No, your Honor.

8 EXAMINER ADDISON: Thank you. Hearing  
9 none, it will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER ADDISON: Let's go off the  
12 record for a second.

13 (Discussion off the record.)

14 EXAMINER PRICE: Go back on the record.  
15 Staff may call its next witness.

16 MR. McNAMEE: At this time, staff would  
17 call Dr. Hisham Choueiki.

18 (Witness sworn.)

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

21 THE WITNESS: Hisham, H-i-s-h-a-m, last  
22 name Choueiki, C-h-o-u-e-i-k-i, 180 East Broad  
23 Street, 3rd floor, Columbus, Ohio 43215.

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

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

DIRECT EXAMINATION

By Mr. McNamee:

Q. Dr. Choueiki, by whom are you employed?

A. By the Public Utilities Commission of  
Ohio.

MR. McNAMEE: Your Honor, at this time, I  
would ask to have marked for identification as Staff  
Exhibit 15, a document entitled "Rehearing Testimony  
of Hisham M. Choueiki."

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Dr. Choueiki, do you have what's been  
marked for identification as Staff Exhibit 15?

A. I do.

Q. What is it?

A. That's my rehearing testimony filed in  
this case.

Q. It was prepared by you or at your  
direction?

A. Yes.

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

1           A.    Yes.

2           Q.    What are they please, slowly?

3           A.    Typo on page 11.  I misspelled "RRS"  
4 after working with it for two years, but it should  
5 be, on line 4, it should be "RRS" not "RRSS."

6           Q.    With that correction, are the contents of  
7 what's been marked for identification as Staff  
8 Exhibit 15, true to the best of your knowledge and  
9 belief?

10          A.    Yes.

11          Q.    If I were to ask you the questions  
12 contained within what's been marked for  
13 identification as Staff Exhibit 15 again here this  
14 afternoon, would your answers be as represented  
15 therein?

16          A.    Yes.

17          Q.    Do you adopt that as your direct  
18 testimony -- or your direct rehearing testimony in  
19 this case?

20          A.    Yes.

21                MR. McNAMEE:  With that, your Honor, the  
22 witness is available for cross.

23                EXAMINER PRICE:  Do we have any motions  
24 to strike?

25                Mr. Fisk or Mr. Soules.

1 MR. SOULES: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Soules:

5 Q. Good afternoon, Dr. Choueiki, my name is  
6 Michael Soules, and I represent Sierra Club in this  
7 proceeding. How are you today?

8 A. Pretty good. Good afternoon.

9 Q. Before we discuss your rehearing  
10 testimony, I just wanted to cover a couple of  
11 preliminary points. First of all, if I refer to the  
12 companies' modified rider RRS proposal simply as "the  
13 proposal," will you understand what I mean?

14 A. Yes.

15 Q. And if I refer to the version of rider  
16 RRS that was approved by the Commission on March 31,  
17 2016, as "rider RRS," will you understand what I  
18 mean?

19 A. Yes.

20 Q. And if I refer to staff's proposed  
21 distribution modernization rider as "the staff  
22 proposal" or "DMR," will you understand what I mean?

23 A. Yes.

24 Q. Great. Thank you.

25 A. The only thing I would point out, I am --

1 in my testimony I call it "modified rider RRS" as the  
2 proposal, so now we are going to call it "proposal."

3 Q. Yeah. Yeah. Yep. Consistent with the  
4 nomenclature that other witnesses have used.

5 A. Okay.

6 Q. If you are confused at any point, please  
7 just let me know.

8 Could you please turn to page 13 of your  
9 rehearing testimony.

10 A. Yes, I'm there.

11 Q. The staff is recommending that the  
12 Commission deny the companies' proposal; is that  
13 correct?

14 A. That is correct.

15 Q. And in preparing your testimony, did you  
16 review the rehearing testimony of companies' witness  
17 Eileen Mikkelsen?

18 A. Yes.

19 Q. Are you aware that on July 11,  
20 Ms. Mikkelsen withdrew a portion of her testimony?

21 A. Yes.

22 Q. And I do have a copy of that testimony if  
23 you need it for purposes of our conversation.

24 A. Okay.

25 Q. By withdrawing that testimony, the

1 companies have altered one of the aspects of the  
2 proposal; is that correct?

3 A. That's correct. I believe now there is,  
4 as I recall when I saw what -- from my counsel he  
5 showed me what was stricken, there was -- there was a  
6 commitment on maintaining 3,200 megawatts of legacy  
7 assets. To the extent -- to the extent the megawatts  
8 of the legacy assets go below 3,200 megawatts, then  
9 proportionately the rider RRS will go down by that  
10 proportion. And I don't know if that's the only  
11 concept that was taken out of her testimony, but I  
12 thought that was the significant concept that was  
13 taken out.

14 Q. Would it be helpful to have a copy of  
15 her --

16 A. Sure.

17 MR. KUTIK: Your Honor, I'll object.  
18 This is -- we are talking about something that's been  
19 stricken. So we are talking about the contours of  
20 what's been stricken; that's irrelevant.

21 EXAMINER PRICE: I think he is going a  
22 long way around to get to an important point, so I  
23 will overrule your objection, but I think I know  
24 where you are going and I think we can --

25 MR. SOULES: Okay, okay. Thank you, your



1 Honor.

2 Q. (By Mr. Soules) Dr. Choueiki, did the  
3 companies' alteration of their proposal, does that  
4 affect staff's recommendation with respect to the  
5 proposal?

6 A. Not at all.

7 Q. Thank you.

8 EXAMINER PRICE: I do have a question.  
9 If you turn to page 14.

10 THE WITNESS: I'm there.

11 EXAMINER PRICE: And look at line 3 and  
12 read the sentence that begins at line 3 and that's  
13 halfway through line 4, I would like to ask you if  
14 you would like to make a correction.

15 THE WITNESS: "As a matter of fact, all  
16 of its credits and charges are ex --

17 EXAMINER PRICE: I meant to yourself, not  
18 out loud. Sorry.

19 THE WITNESS: No. No, it doesn't change  
20 anything in that statement at all because the  
21 costs -- the costs are still based on the units at  
22 hand.

23 EXAMINER PRICE: Okay. I understand.

24 THE WITNESS: So the costs are a function  
25 of 3,257 megawatts, so I will not change that.

1 EXAMINER PRICE: I misunderstood your  
2 testimony. My mistake.

3 Thank you, Mr. Soules.

4 MR. SOULES: Thank you, your Honor.

5 Q. (By Mr. Soules) Dr. Choueiki, let's  
6 switch gears and talk about the staff proposal.

7 A. Okay.

8 Q. Your rehearing testimony proposes a new  
9 distribution modernization rider, correct?

10 A. Correct.

11 Q. If the staff proposal were approved, the  
12 companies would not be required to spend any of the  
13 money collected through the DMR on grid  
14 modernization, correct?

15 A. So are they tied to a specific grid  
16 modernization item? The answer is no, but we are  
17 recommending that the Commission directs the company  
18 to initiate and start investing in modernizing the  
19 grid and this amount of money, according to  
20 Mr. Buckley, will provide credit support for the  
21 companies too, not only for the corp., for FE Corp.,  
22 to jump-start that modernization rather than go  
23 through -- I mean, the DC -- there is a  
24 distribution -- I can't recall if -- it's called  
25 "DCR" and I can't recall if it's delivery or

1 distribution cost recovery. But that one is audited  
2 annually and the companies would get recovery on  
3 investments they make annually and costs they incur  
4 annually similarly for the AMI.

5 This one is to jump-start this whole  
6 process upfront and provide a cash infusion to  
7 commence the -- the modernization initiatives.

8 Now, how much of it will be, according to  
9 Mr. Buckley, I heard him say yesterday a major  
10 portion of it, it's the expectation of staff, would  
11 be going towards that, but it's not tied to a  
12 specific item.

13 Q. Under the staff proposal there is no  
14 mandate that the cash collected through the DMR would  
15 go to the various initiatives you just identified,  
16 correct?

17 A. Correct.

18 Q. Under the staff proposal, the funds  
19 collected through the DMR would not need to be held  
20 in a segregated account, correct?

21 A. I'm not sure about the mechanics, but we  
22 haven't specified, ourselves, what type of account  
23 would go -- how the \$131 million would be itemized  
24 and accounted for and what account. I'm not sure.

25 Q. Okay. Thank you. There's nothing in the

1 staff proposal that would prevent the companies from  
2 transferring the cash associated with the DMR to  
3 FirstEnergy Corp. through dividends, correct?

4 A. The only -- we are asking -- with our  
5 recommendation, we are asking the Commission to  
6 direct the company to commence the modernization  
7 initiative. Now, how the Commission does that, the  
8 Commission could say -- put additional conditions  
9 than the ones that Mr. Buckley put. But our  
10 recommendation leaves it open to the Commission.

11 MS. WILLIS: May I have that answer  
12 reread, please?

13 EXAMINER PRICE: You may.

14 (Record read.)

15 A. I would just change "company" to  
16 "companies."

17 Q. Thank you.

18 MR. SOULES: Your Honor, with that, I  
19 would move to strike the answer as nonresponsive to  
20 the question which was quite specific.

21 EXAMINER PRICE: Denied.

22 Q. Dr. Choueiki, can you identify anything  
23 in the staff proposal that would prevent the  
24 companies from transferring the cash associated with  
25 the DMR to FirstEnergy Corp. through dividends?

1 MR. KUTIK: Objection. Asked and  
2 answered.

3 EXAMINER PRICE: In light of my denying  
4 his motion to strike, I'll give him some leeway to  
5 ask his question again.

6 MR. SOULES: Thank you, your Honor.

7 A. If you look at page 15, starting on  
8 line 14, it's not only recommending the new rider be  
9 formed and 131 be collected in it, but the Commission  
10 should direct -- I mean, you have got to take the two  
11 paragraphs together; you can't just take the first  
12 one and not the second one. So accordingly, the  
13 Commission should direct the companies to invest in  
14 modernization -- modernizing the distribution grid.  
15 Those are together, not separate.

16 Q. Okay. Thank you, Dr. Choueiki.

17 So maybe if we could step back and talk  
18 for a minute about the purpose of the DMR. The DMR's  
19 purpose is to enable the companies to provide credit  
20 support to FirstEnergy Corp., correct?

21 A. I think Mr. Buckley, yesterday, testified  
22 and in his testimony -- in his testimony yesterday  
23 that it's for the companies and FE Corp., FirstEnergy  
24 Corp.

25 Q. So the purpose of the DMR is to enable

1 the companies to provide credit support to both  
2 themselves and FE Corp.; is that correct?

3 A. The purpose of the DMR is to provide  
4 credit support, correct.

5 Q. Thank you. And it's the staff's belief  
6 that this credit support is necessary to help  
7 FirstEnergy Corp. maintain an investment grade credit  
8 rating from the major credit agencies; is that  
9 correct?

10 A. Those would have been good questions, and  
11 I thought Mr. Buckley responded to all these  
12 yesterday. He is the expert on the financial  
13 matters.

14 Q. Dr. Choueiki, does staff believe that  
15 this credit support is necessary in order to enable  
16 the companies to invest in modernizing the  
17 distribution grid?

18 A. According to Mr. Buckley's testimony,  
19 it's necessary to provide credit support to the  
20 companies and to FirstEnergy Corp., not to  
21 modernizing the grid. The modernization of the grid  
22 is an objective and a -- and a policy of the State of  
23 Ohio that I cited in my testimony.

24 MR. SETTINERI: Excuse me. Could I have  
25 that question and answer reread, please?

1 EXAMINER PRICE: You may.

2 MR. SETTINERI: Thank you.

3 (Record read.)

4 MR. SETTINERI: Thank you.

5 Q. (By Mr. Soules) If the DMR were approved  
6 by the Commission, but the companies did not spend  
7 any of the money collected under the DMR on grid  
8 modernization, would that outcome meet the purposes  
9 of the staff proposal?

10 MR. McNAMEE: Objection. This continuing  
11 line of questioning has all been covered by Staff  
12 Witness Buckley yesterday, I believe.

13 MR. SOULES: Your Honor, I'm -- Staff  
14 Witness Buckley said that Dr. Choueiki was the policy  
15 witness. I'm exploring the policy objectives of the  
16 staff proposal.

17 EXAMINER PRICE: I understand, but I am  
18 still going to sustain the objection. I think your  
19 hypothetical is incomplete. It sounds like you're  
20 saying if they don't spend the specific dollars from  
21 rider DMR, are you saying they don't spend any  
22 dollars or they have to take the \$20 bill they  
23 collected from FirstEnergy and invest in SmartGrid?

24 MR. McNAMEE: I thought the question was  
25 being asked if they would violate a Commission

1 requirement.

2 EXAMINER PRICE: That's why -- that's why  
3 I am trying to say it's an incomplete hypothetical.  
4 It's not clear exactly what he is asking.

5 MR. SOULES: Okay. Thank you, your  
6 Honor.

7 Q. (By Mr. Soules) Dr. Choueiki, it's  
8 staff's expectation that if the DMR were approved,  
9 that the companies will invest more in grid  
10 modernization than they otherwise would; is that  
11 correct?

12 A. So these -- the staff alternative  
13 proposal addresses the policy of the State of Ohio  
14 and the credit support recommended by Mr. Buckley.  
15 They are all together. I can't take each one of them  
16 independently. They are in the same section of the  
17 proposal that we're titling "Staff's alternative  
18 proposal." So I'm still having difficulty why you  
19 are separating them when staff did not separate the  
20 two from each other.

21 MR. SOULES: Your Honor, could I have  
22 that last question and answer, please.

23 EXAMINER PRICE: You may.

24 (Record read.)

25 MR. SOULES: Your Honor, I would move to



1 strike that response as nonresponsive to the  
2 question.

3 EXAMINER PRICE: Well, I think the  
4 problem is your question misconstrues what his  
5 testimony is. I don't think it says anywhere in his  
6 testimony that they will spend more and so I think  
7 that's -- he is trying to answer a question that's  
8 not relevant to what's not actually reflecting what  
9 his testimony is. I don't think anywhere in his  
10 testimony he says they will spend more. He says  
11 staff believes it's necessary for them to access the  
12 capital markets to get more favorable terms and  
13 conditions. So I will strike his answer, but I'm  
14 going to strike your question too. So if you would  
15 like to try again.

16 MR. SOULES: Okay. Thank you, your  
17 Honor.

18 Q. (By Mr. Soules) Is the staff recommending  
19 the Commission direct the companies to invest a  
20 specific amount of money in modernizing the  
21 distribution grid?

22 MR. McNAMEE: Objection. Wasn't this  
23 asked and answered?

24 EXAMINER PRICE: I don't think he asked  
25 the question about a specific amount of money. I'm

1 not sure it's in the scope of his testimony, but he  
2 can answer if he knows.

3 A. So per the stipulation the companies  
4 filed earlier this year, at length, they were  
5 supposed to file, like, 90 days after the stipulation  
6 was signed. There is a plan right now that  
7 intervenors and the companies and staff are  
8 reviewing, so --

9 THE WITNESS: Could you repeat again?  
10 May you reread the question again? I want to make  
11 sure I answer his question correctly.

12 (Record read.)

13 A. So in that -- in that case, which is the  
14 AMI case, I can't remember the course number -- case  
15 number, but I think it's cited in my testimony, there  
16 are numbers that the companies have included. And at  
17 the end of the day, there will be a plan, hopefully,  
18 that is agreed to by everyone that then we can file  
19 at the -- in the docket and then the Commission would  
20 decide how much money and what is the expenditure  
21 plan, but right now there is no number. On the  
22 costs, let me just add, on the costs, there are no  
23 numbers because the companies cite net benefits in  
24 that plan.

25 Q. And, Dr. Choueiki, you are referring to

1 the grid modernization business plan that's  
2 referenced on page 16 of your rehearing testimony; is  
3 that correct?

4 A. Yeah. I think I cite the case, right,  
5 and I think the grid modernization plan was filed in  
6 February sometime. I mean it's per the stipulation  
7 they have to file 90 days after. I don't remember  
8 when it was, the case number that was filed by the  
9 companies, that's the plan.

10 Q. Are you familiar with the companies'  
11 initial filing in that proceeding?

12 A. I read it when it was filed.

13 EXAMINER PRICE: I think this -- we have  
14 heard references to this filing multiple times and so  
15 just to make it easier for everybody, on my own  
16 motion we are going to take administrative notice of  
17 the companies' filing in that case and then people  
18 can freely refer to it in their briefs in this case.

19 MS. WILLIS: Does that include, your  
20 Honor, the Exhibit A which actually has the plan to  
21 the filing?

22 EXAMINER PRICE: I honestly don't  
23 remember. I will have to go back and look.

24 MS. WILLIS: We would ask if  
25 administrative notice be taken, it be taken of the

1 entire filing with the plan, the filed business plan.

2 EXAMINER PRICE: That's probably correct.

3 I will go ahead and take administrative notice of the  
4 entire filing. I reviewed it a long time ago also.

5 MS. BOJKO: Your Honor, for the record,  
6 do you have the case number handy there?

7 EXAMINER PRICE: I do not.

8 MR. KUTIK: It's in his testimony.

9 EXAMINER PRICE: Wait. It's right here.  
10 16-481-EL-UNC.

11 MS. BOJKO: Thank you.

12 Q. Dr. Choueiki, is it your understanding  
13 there will be a collaborative process in that grid  
14 modernization docket?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Relevance.

18 EXAMINER PRICE: Mr. Soules.

19 MR. SOULES: Your Honor, Dr. Choueiki  
20 cites to that document in his rehearing testimony, so  
21 I think it's directly relevant to his testimony.

22 EXAMINER PRICE: Well, I don't think the  
23 examiners assigned to that case have set forth any  
24 process for that case and so I don't think  
25 Dr. Choueiki is in a position to answer that

1 question. So some sort of process will be  
2 forthcoming once we wrap up this particular matter.

3 MR. KUTIK: So is my objection sustained?

4 EXAMINER PRICE: Sustained. I like my  
5 way; was more expansive.

6 Q. (By Mr. Soules) Dr. Choueiki, you don't  
7 know what the final outcome of that -- of that filing  
8 will be; is that a fair statement?

9 A. That is a fair statement.

10 Q. So you don't know if there will be a  
11 specific level of funding mandated by the Commission  
12 in that proceeding; is that correct?

13 A. Our recommendation is for the grid to be  
14 modernized and to become one of the most intelligent  
15 grids in the current industry. We would like Ohio,  
16 the entire state of Ohio, with all of its  
17 distribution electric utilities, to develop a  
18 modernization grid that is self-healing, that is  
19 open, that is available for retailers and consumers  
20 and third-party providers to, as I state in my  
21 testimony, interact and transact and offer all sorts  
22 of services to consumers and empower consumers in the  
23 state of Ohio.

24 Q. Thank you.

25 In -- Dr. Choueiki, you're referring to

1 page 15 of your rehearing testimony, starting on  
2 line 14; is that correct?

3 A. Yes.

4 Q. And is it staff's official recommendation  
5 that the Commission direct the companies to invest in  
6 modernizing the distribution grid?

7 A. It is our -- in our recommendation, yes.

8 Q. If the Commission were to require a  
9 certain level of investment in grid modernization as  
10 a condition of approving the DMR, would you agree  
11 that that condition would help achieve the staff  
12 recommendation?

13 A. I am not going to -- my recommendation is  
14 not going to be adding more conditions on the  
15 Commission. The Commission will look at the entire  
16 application in that case and in the rehearing in this  
17 case and they will look at them and decide what  
18 should be the appropriate mechanics of this rider and  
19 of the AMI rider. So the Commission is free to do  
20 whatever it pleases. Consistent with the policy of  
21 the State of Ohio.

22 Q. Just so I understand, staff is not  
23 recommending that the Commission be required to make  
24 any specific level of investment in grid  
25 modernization under their proposal; is that correct?

1 MR. McNAMEE: Objection.

2 EXAMINER PRICE: Grounds?

3 MR. McNAMEE: I believe this was  
4 literally asked before.

5 EXAMINER PRICE: Sustained.

6 Q. (By Mr. Soules) Dr. Choueiki, what  
7 proportion of the revenues collected through the DMR  
8 does staff anticipate will be spent on grid  
9 modernization?

10 A. What I heard Mr. Buckley state yesterday  
11 that it's his expectation that a major portion of it  
12 would be. Again, it's a cash infusion for the  
13 company -- companies to go and access more in the  
14 capital market and -- but at least it will be a start  
15 for them because right now it looks like their  
16 financial condition is not healthy enough to go on  
17 their own.

18 MS. WILLIS: May I have that answer  
19 reread?

20 EXAMINER PRICE: You may.

21 (Record read.)

22 Q. (By Mr. Soules) Dr. Choueiki, earlier  
23 we -- I posed a question to you about whether the  
24 staff proposal would prevent the companies from  
25 transferring the cash associated with the DMR to

1 FirstEnergy Corp. through dividends. Do you recall  
2 that exchange?

3 A. I recall that exchange.

4 Q. If the revenue associated with the DMR  
5 were transferred up to FirstEnergy Corp. through  
6 dividends, is there anything in the staff proposal  
7 that would prevent FirstEnergy Corp. from  
8 subsequently using that cash to make equity infusions  
9 into FirstEnergy Solutions?

10 A. Again, I thought that line of questioning  
11 was asked of Mr. Buckley. I don't address any of  
12 this in my testimony.

13 Q. So you are not aware of any aspect of the  
14 proposal that would prohibit that; is that a fair  
15 statement?

16 A. I can't recall what Mr. Buckley stated,  
17 so I don't want to say something other than that he  
18 is the financial expert, not me.

19 Q. The Commission approved the original  
20 rider RRS in its March 31, 2016, order, correct?

21 A. Correct.

22 Q. And the Commission staff supported the  
23 original rider RRS, correct?

24 A. Correct.

25 Q. And as we sit here today, rider RRS



1 remains part of ESP IV as approved by the Commission,  
2 correct?

3 MR. KUTIK: Could I have the question  
4 read, please?

5 EXAMINER PRICE: You may.

6 (Record read.)

7 A. Yes. Right now it has a zero in it.

8 EXAMINER PRICE: Well, technically, it  
9 has a blank in it. The record is clear about that.

10 MS. BOJKO: Thank you, your Honor.

11 MR. KUTIK: Thank you, your Honor.

12 Q. Under the staff proposal, if the DMR were  
13 approved by the Commission, would rider RRS be  
14 removed from ESP IV?

15 A. So rider RRS does not exist anymore.  
16 There is now a proposal. It is our recommendation  
17 that the Commission deny that proposal. Now, the  
18 mechanics of that, I'm not sure, whether the RRS  
19 suddenly goes away and now there is a new rider  
20 called "distribution modernization rider" if the  
21 Commission should agree with us, with staff. But our  
22 recommendation is to deny the proposal.

23 Q. And staff would be opposed to an ESP that  
24 included both the original rider RRS and the DMR,  
25 correct?

1 MR. McNAMEE: Objection.

2 EXAMINER PRICE: Yes, sir.

3 MR. McNAMEE: This witness does not speak  
4 to the RRS, I don't believe.

5 EXAMINER PRICE: I think the difficulty,  
6 Mr. Soules, is you are asking a non-attorney about  
7 the legal intricacies of the rehearing process, and I  
8 think that is why you are not getting the answers you  
9 would like to get from him, because I don't think  
10 it's his place to answer that question.

11 So I think what happens, whether the  
12 Commission goes with staff's proposal, the companies'  
13 modified proposal, or addresses the applications for  
14 rehearing with respect to -- to the original rider  
15 RRS, including the companies' application assignments  
16 of error, is a matter for brief or for the Commission  
17 to decide. It's not -- it's not within his  
18 expertise.

19 MR. SOULES: Your Honor, I was merely  
20 trying to explore whether the staff would be opposed  
21 to a situation where the DMR were approved and added  
22 to the ESP. And if, hypothetically speaking, FERC  
23 withdrew its, you know, requirement or signed off on  
24 the PPA, if somehow we could end up with an ESP that  
25 included both the original RRS and DMR.

1 EXAMINER PRICE: Again, I think that's a  
2 legal question for brief. I don't believe that  
3 that's a question for this non-attorney witness.

4 MR. SOULES: I guess I was thinking of it  
5 in terms of both of these are revenue collection  
6 mechanisms and I was trying to understand the staff's  
7 position with respect to that.

8 EXAMINER PRICE: Again, I think you are  
9 asking a question that calls for a legal conclusion  
10 so your question is not going to go on.

11 Q. Under the staff's proposal, the companies  
12 will be authorized to collect \$131 million per year  
13 from customers for at least three years, correct?

14 MR. McNAMEE: Could I have that question  
15 reread, please?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. I believe Mr. Buckley stated it was for  
19 three years and the companies would have the burden  
20 of proof to come back to the Commission and ask for  
21 no more than two. So stating that it's at least  
22 three years is not true.

23 Q. Okay. Thank you for that clarification.

24 So the Commission would have to approve  
25 any requests for an extension of the DMR past three

1 years; is that accurate?

2 A. I didn't hear you. I'm sorry.

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

5 (Record read.)

6 A. Yes. But no more than two years, our  
7 recommendation. So it's not like they can come in,  
8 the companies can come in and ask for another four  
9 years or another five years. Our recommendation is  
10 that the burden is on them to demonstrate to the  
11 Commission that they need an additional two years or  
12 no more than two years.

13 Q. But under the staff proposal would there  
14 be a full Commission proceeding on that extension  
15 request, with an evidentiary hearing?

16 A. The Commission would have to address that  
17 in its order, in its rehearing order. We did not --  
18 staff did not specify the mechanics of the procedure,  
19 a the description of what can happen.

20 Q. Under the staff proposal would the  
21 companies have to make any showing that FirstEnergy  
22 Corp. needs credit support in order to receive an  
23 extension of the DMR?

24 A. Well, what I heard -- again, that's a  
25 question for Mr. Buckley, but I heard him say that

1 the Commission would have to decide on that. I'm not  
2 sure I personally -- I'm not sure what would be the  
3 necessary financial showing because I didn't -- I  
4 wasn't the one who evaluated the financial metrics of  
5 the companies to make the recommendation.

6 Q. Under the staff proposal would the  
7 companies have to make any showing that they had  
8 invested in grid modernization in order to receive an  
9 extension of the DMR?

10 A. I highly doubt that the companies will  
11 come in asking for an extension without that showing.  
12 But to answer your question, I have to be fair, it's  
13 not in the recommendation.

14 Q. Thank you.

15 Under the staff proposal, is there any  
16 limit on the amount of revenue that the companies  
17 could request for the fourth and fifth years if the  
18 DMR were extended?

19 A. Again, that's a question I thought  
20 Mr. Buckley answered, and I can't recall what he  
21 answered.

22 MR. SOULES: Your Honor, I believe  
23 Mr. Buckley referred to Dr. Choueiki for -- on that  
24 point.

25 A. On a financial matter he referred to me?

1 EXAMINER PRICE: Do your best,  
2 Dr. Choueiki.

3 MR. McNAMEE: I don't remember.

4 MS. WILLIS: I've got the transcript if  
5 you want me to check.

6 EXAMINER PRICE: I trust all of you that  
7 you are not misrepresenting that --

8 MR. KUTIK: May we have the question put  
9 to the witness again?

10 EXAMINER PRICE: -- on this issue.

11 MR. KUTIK: May we have the question put  
12 to the witness again?

13 EXAMINER PRICE: We may.

14 (Record read.)

15 A. There would have to be a methodology that  
16 the companies are going to use to come up with a  
17 number. Then staff is going to look at that  
18 methodology, ourselves, and decide whether we agree  
19 with it or not. And the metrics could be completely  
20 different. I recall him saying that maybe their  
21 financial exposure to risk in three years is -- is  
22 smaller than now. So maybe it won't be 14-and-a-half  
23 percent. Maybe it will be 12 percent. And the  
24 metrics may be different. The ratio could be a  
25 different ratio.

1           So the burden is on them, and then the  
2 staff will make a recommendation to the Commission at  
3 that time. The Commission could alternatively  
4 address it in their order. They may disagree with us  
5 on the two year and say only three years. Who knows  
6 what the Commission will decide.

7           Q. The staff proposal, as it currently  
8 stands, does not include any monetary limit on the  
9 amount of revenue that the companies could request  
10 for the fourth and fifth years of the DMR; is that  
11 correct?

12          A. That is correct.

13          Q. Dr. Choueiki, I think earlier you had  
14 made a reference to the companies having difficulty  
15 accessing capital markets. Do you recall that?

16          A. I am relying on Mr. Buckley's testimony.

17          Q. So you are not offering any opinions as  
18 to the amount of credit support the companies would  
19 need; is that correct?

20          A. No. Mr. Buckley provided that opinion.

21          Q. And you are not offering any opinions  
22 about the effect of a downgrade -- a credit rating  
23 downgrade to FirstEnergy Corp. on the companies'  
24 ability to access capital markets; is that correct?

25          A. Again, that's addressed in Mr. Buckley's

1 prefiled testimony and testimony yesterday.

2 Q. Is it your opinion the DMR would be  
3 better for the companies' customers than the  
4 proposal?

5 A. It is staff's opinion it is better.

6 Q. And why is that?

7 A. Because the alternative proposal --  
8 staff's proposal addresses the policy goals of the  
9 State of Ohio, two of the policy goals articulated in  
10 State of Ohio's set of policy rules.

11 This -- the proposal -- I am talking  
12 about the companies' proposal now, is more of an  
13 insurance hedge. And staff's position is that our  
14 proposal benefits the State of Ohio more. And the  
15 companies' customers.

16 Q. Does staff believe that the DMR  
17 economically benefits the companies' customers more  
18 than the proposal would?

19 A. Yes. In the long run, it is better for  
20 consumers.

21 Q. Are you aware of the companies'  
22 projections of charges and credits under their  
23 proposal?

24 A. Yes.

25 Q. And the companies project a net credit to



1 customers of \$561 million in nominal terms over the  
2 eight-year period of the proposal; is that correct?

3 A. That's correct.

4 Q. And that's \$260 million in net present  
5 value dollars, correct?

6 A. I don't remember what the net present  
7 value is, but it seems reasonable.

8 Q. Okay. And under the DMR, customers would  
9 pay the companies \$131 million for three -- for three  
10 years; is that correct?

11 A. That is correct.

12 Q. So customers would pay the companies  
13 \$393 million under the DMR as proposed by staff,  
14 correct?

15 A. That is correct.

16 Q. So if you accept the companies'  
17 projection, then the companies' customers would pay  
18 far more under the DMR than they would under the  
19 companies' proposal, correct?

20 A. But I did not say that at this point in  
21 time, in July of 2016, we are now accepting the  
22 companies' forecasts.

23 EXAMINER PRICE: I think, Mr. Soules,  
24 you're not -- I am not saying this purposely, but I  
25 think you are not totally construing his -- you are

1 misconstruing his testimony somewhat.

2           Doctor, you are also concerned and you  
3 say in your testimony you're concerned that the  
4 proposal may be construed as a transition charge by  
5 the Supreme Court; is that correct?

6           THE WITNESS: It's not a legal conclusion  
7 but that's staff's opinion.

8           EXAMINER PRICE: Staff's concern.

9           THE WITNESS: Staff's concern.

10           EXAMINER PRICE: And if, at some point,  
11 two years down the line, three years down the line,  
12 the court were to throw out the proposal, the company  
13 would have collected some amount of money in the  
14 early years, as the company projects, and there would  
15 have been no opportunity to collect the credits at  
16 the back end; isn't that correct?

17           THE WITNESS: That is very true and  
18 correct, yes.

19           EXAMINER PRICE: So if you read your  
20 entire testimony, that would explain the staff's  
21 position; is that correct?

22           THE WITNESS: That's correct. He didn't  
23 allow me -- I mean, the way the questions were being  
24 asked, I --

25           EXAMINER PRICE: I am sure it was not

1 advertent.

2 MS. WILLIS: Can we have his,  
3 Mr. Soules's question, and Mr. Choueiki's answer  
4 reread?

5 EXAMINER PRICE: "Doctor."

6 MS. WILLIS: I'm sorry. Dr. Choueiki and  
7 Mr. Soules. I apologize.

8 EXAMINER PRICE: His previous --  
9 Mr. Soules's last question to Dr. Choueiki.

10 MS. WILLIS: Yes, thank you, your Honor.  
11 (Record read.)

12 MR. SOULES: No further questions, your  
13 Honor. Thank you, Doctor.

14 THE WITNESS: Thank you.

15 EXAMINER PRICE: Let's go off the record.  
16 (Discussion off the record.)

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

19 RESA, P3/EP SA, or Dynegy, or --

20 MS. PETRUCCI: Et al.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Settineri:

24 Q. Good afternoon, Dr. Choueiki.

25 A. Good afternoon.

1           Q.    My name is Mike Settineri.  Nice to see  
2 you today.

3           A.    Nice to see you.

4           Q.    I wanted to follow-up on that last  
5 question.  Now, we will go to the bottom-line  
6 question, and if we have to work back, we will.  It's  
7 just a numbers game.

8                         Under staff's alternative proposal, it  
9 would give the companies more money than the  
10 companies' project would be recovered under the  
11 modified rider RRS proposal, correct?

12           A.    If you are looking just at the pure, the  
13 first three years, the \$393 million versus, I can't  
14 remember what the number is, I think it's proprietary  
15 what the number is.  And if you were to accept the  
16 companies' projections at this point in time, then,  
17 yes, there is a difference, and I don't remember what  
18 the difference is, and I don't think we can address  
19 it in a open hearing.

20           Q.    Which one -- and staff's alter -- the  
21 difference would be that staff's alternative proposal  
22 would provide the companies with more money, correct?

23           A.    If staff, at this point in time, agreed  
24 with the companies' projections again that are in the  
25 record, which I did not address, yes, it would be

1 larger.

2 Q. And staff does not agree with the  
3 projections that are in the record for the companies'  
4 modified rider RRS proposal, correct?

5 MR. KUTIK: Objection.

6 EXAMINER PRICE: Grounds.

7 MR. KUTIK: Beyond the scope of this  
8 witness's testimony. Ms. Turkenton addressed that.

9 MR. SETTINERI: He just testified a  
10 minute ago. As of today, they may not agree with it.  
11 I am following up. It's a fair question.

12 MR. KUTIK: It's not in his testimony.

13 EXAMINER PRICE: Pardon?

14 MR. KUTIK: It's not in his testimony.  
15 The fact that somebody asked him about it doesn't  
16 mean it's in his testimony.

17 EXAMINER PRICE: I am going to sustain  
18 the objection. I am also going to note the company  
19 is free to advocate for its projections all it wants,  
20 but the Commission decided on a different number, and  
21 I don't believe staff has done anything about  
22 addressing what the Commission's number is.

23 So, you know, staff is -- they are not --  
24 I don't see anywhere in the rehearing evidence the  
25 staff is endorsing the companies' projections, and

1 the Commission found a totally different number.

2 MR. SETTINERI: Staff -- well, I am not  
3 going to respond unless you would like me to.

4 EXAMINER PRICE: Fire away.

5 MR. SETTINERI: I mean we have three  
6 proposals on the table today. We have the original  
7 rider RRS, we have a modified proposal, and now we  
8 have a staff proposal.

9 EXAMINER PRICE: Yes.

10 MR. SETTINERI: I think it's fair to  
11 point out which one would give the companies the most  
12 money and based on -- and the only thing we have is  
13 based on the initial projections.

14 EXAMINER PRICE: The staff cannot endorse  
15 the companies' projections as part of the -- as part  
16 of the company's proposal. That's my sole point.

17 MR. SETTINERI: It doesn't matter. I am  
18 creating a record of a comparison. Whether he  
19 endorsed it or not, and they've evaluated it --

20 EXAMINER PRICE: He just said they don't  
21 endorse the companies' projections at this time. Ten  
22 minutes ago.

23 MR. SETTINERI: My question was much more  
24 targeted. I don't think he said that.

25 EXAMINER PRICE: Go ahead and try again.

1 MR. SETTINERI: Can I have that question  
2 reread?

3 EXAMINER PRICE: Let's try again. You  
4 can go ahead and make the record. I do agree with  
5 Mr. Kutik, none of this is in the staff's testimony.

6 MR. SETTINERI: I guess, again, staff has  
7 a proposal. The Commission has to decide do we keep  
8 the original proposal, do we go with modified rider  
9 RRS proposal, or do we go with the alternative  
10 proposal.

11 EXAMINER PRICE: I understand that. And  
12 in the record of this case, we will have  
13 Ms. Mikkelsen testifying as to the companies' number,  
14 and we have Mr. Buckley who has testified as to the  
15 staff's number, and the Commission is fully able to  
16 make the -- and you have your evidence that you may  
17 or may not be submitting in the future, and the  
18 Commission is fully capable of deciding the case  
19 based upon that record.

20 MR. SETTINERI: We will also not have any  
21 intervenors testifying on those projections. The  
22 company got to get that in the record; they got to  
23 ask questions on it.

24 EXAMINER PRICE: I understand.

25 MR. SETTINERI: The intervenors have not

1 been able to get their evidence in the record.

2 EXAMINER PRICE: I understand what you  
3 are saying. I was there for my ruling.

4 MR. SETTINERI: I know. What I am trying  
5 to do is do comparisons and see where I go and you  
6 can tell me what you think. Or Mr. Kutik will first,  
7 so.

8 EXAMINER PRICE: Excuse me?

9 MR. SETTINERI: I will have an objection  
10 before you rule on it.

11 EXAMINER PRICE: Thank you.

12 Q. (By Mr. Settineri) Okay. So I can't have  
13 the last question reread.

14 As of today, isn't it true that the staff  
15 does not agree with the companies' projections of the  
16 modified rider RRS proposal as to the overall credit  
17 or charge?

18 MR. KUTIK: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. KUTIK: Beyond the scope of his  
21 testimony.

22 EXAMINER PRICE: I will allow this  
23 question and then we will move on.

24 A. Staff does not agree with the companies'  
25 projections, that is correct.



1           Q.    And why doesn't staff agree with the  
2 companies' projections?

3           MR. KUTIK:  Objection.

4           EXAMINER PRICE:  Grounds?

5           MR. KUTIK:  Beyond the scope of his  
6 testimony.

7           EXAMINER PRICE:  I told you we were going  
8 to get that one question and we were going to move  
9 on, so I think it's time to move on.

10          MR. SETTINERI:  Thank you, your Honor.

11          Q.    (By Mr. Settineri) Now, the -- would you  
12 agree with me we have three proposals in play  
13 currently which would be the original rider RRS  
14 proposal, the modified rider RRS proposal, and  
15 staff's alternative proposal?

16          A.    The nuance that I am not getting, by the  
17 company -- the company filing a proposal, doesn't  
18 that mean they are throwing away the other proposal,  
19 the original RRS?

20          Q.    Let me -- let me make it easier for you.

21                Assume that the Commission can select  
22 from all three proposals.  It can select either the  
23 original rider RRS proposal, it can select the  
24 modified rider RRS proposal, or it can select staff's  
25 alternative proposal.  So that's -- I am going to

1 make that assumption.

2 A. Sorry for the interruption, but in  
3 reality, that first -- the first RRS application is  
4 no longer there in my mind.

5 Q. Right. And what I am trying to do is I'm  
6 just asking you to assume. I am not asking you to  
7 say whether it's right or wrong.

8 A. All right.

9 Q. Just assume that all three are available  
10 to the Commission. And under all three proposals,  
11 the revenue collected would be included in  
12 FirstEnergy Corp.'s cash flow from operations,  
13 correct?

14 MR. KUTIK: Well, I'll object to the  
15 approved rider RRS as a "proposal."

16 EXAMINER PRICE: Grounds -- could you  
17 explain?

18 MR. KUTIK: Because it's not a proposal.  
19 It's approved.

20 MR. SETTINERI: I can rephrase. I will  
21 be glad to.

22 EXAMINER PRICE: Okay.

23 Q. Under the three alternatives I gave that  
24 the Commission could select from, the revenue  
25 collected would be included in FirstEnergy's Corp.'s

1 cash flow from operations, correct?

2 A. I mean, I am not the financial expert, so  
3 I hate to speculate here, so I won't. That would  
4 have been something you would have asked Buckley. He  
5 would know exactly what goes into the cash flow.

6 Q. Okay. Well, let me just close the loop  
7 on that, just to be clear then, of the three  
8 alternatives I gave that the Commission could collect  
9 from under this assumption I gave you, the revenue  
10 collected -- is it your understanding that the  
11 revenue collected would be included in FirstEnergy  
12 Corp.'s cash flow from operations?

13 MR. KUTIK: Objection. He just said he  
14 wouldn't want to speculate on that, plus it's beyond  
15 the scope of his testimony.

16 MR. SETTINERI: I am just asking for his  
17 understanding, and if he doesn't understand, that's  
18 fine.

19 EXAMINER PRICE: He already said he  
20 didn't understand.

21 A. I did not want to speculate.

22 Q. Thank you.

23 Under staff's new proposal, that proposal  
24 is -- would be for three years; is that correct?  
25 With a two-year extension available?

1           A.    Yes.

2           Q.    What about the term of the ESP IV that's  
3 currently in place, would that ESP IV continue to run  
4 to May 31, 2024?

5           A.    Right.  Now the company is in an  
6 eight-year ESP, the companies, so we have an  
7 eight-year ESP, we are in the first year of it.

8           Q.    But if the Commission approves staff's  
9 proposal, has staff considered whether the ESP IV  
10 should be shortened to match up with the term of  
11 staff's alternative proposal?

12                   MR. KUTIK:  Objection.

13                   EXAMINER PRICE:  Grounds?

14           MR. KUTIK:  It's beyond the scope of his  
15 testimony.  His testimony says nothing about changing  
16 the term of the ESP.

17                   EXAMINER PRICE:  But he is the policy  
18 witness.  He is capable of answering this question.  
19 Overruled.

20           A.    We do not contemplate or make a  
21 recommendation to change anything but rider RRS, the  
22 proposal.

23           Q.    So as the ESP progressed, at a certain  
24 point in time you would expect, you call it "rider  
25 DMR," would drop off, as some riders do during the

1 course of an ESP?

2 A. Based on our recommendation, yes.

3 Q. Thank you.

4 If could you turn to page 8 of your  
5 testimony lines 12 to 14. Let me know when you are  
6 there.

7 A. Okay. I'm there.

8 Q. Thank you.

9 There you note that FES docketed an  
10 informational filing to notify FERC that FES had  
11 executed a PPA.. Do you see that reference? And I  
12 paraphrased your testimony there, but do you see  
13 that?

14 A. Yes.

15 Q. Okay. Have you reviewed a copy of that  
16 executed PPA?

17 MR. KUTIK: Objection.

18 EXAMINER PRICE: Grounds?

19 MR. KUTIK: Beyond the scope.

20 EXAMINER PRICE: He references it.

21 Overruled.

22 A. I did not review the executed PPA. I  
23 reviewed the correspondence, the filing, but not the  
24 PPA itself.

25 Q. Are you aware of whether anyone in staff

1 has seen a copy of the executed PPA?

2 A. I'm not aware. I don't know whether  
3 someone has seen it or not.

4 Q. Thank you.

5 The modified rider RRS is based on a  
6 different methodology than the original rider RRS,  
7 correct?

8 A. Correct.

9 Q. I have a series of questions here for  
10 you, Dr. Choueiki, starting first with: Staff's  
11 alternative proposal will not address the financial  
12 need of any generating plant in Ohio, correct?

13 A. It has nothing to do with any financial  
14 needs of generation in Ohio, that's correct.

15 Q. Staff's alternative proposal will not  
16 address the necessity of any generating facility in  
17 light of future reliability concerns, including  
18 supply diversity, correct?

19 A. The proposal is no longer tied to  
20 diversity, supply diversity, or economic development  
21 at all.

22 EXAMINER PRICE: I think he is asking you  
23 if staff's rider DMR is tied to.

24 A. I'm sorry. I misheard the first part.  
25 If you would read it again, please.

1           Q.    I would be glad to.  And these questions  
2 are all geared to staff's alternative proposal.

3           A.    Proposal, okay.

4           Q.    And if I -- I will just go forward.

5                   Staff's alternative proposal will not  
6 address the necessity of any generating facility in  
7 light of future reliability concerns, including  
8 supply and diversity; correct?

9           A.    That is correct.

10          Q.    And staff's alternative proposal will not  
11 ensure compliance, environmental compliance, correct?

12          A.    I mean to the extent you have -- there is  
13 an indirect relationship, which is to the extent you  
14 have a modernized grid, and you have, you know  
15 Volt/VAR deployment where you have energy  
16 conservation, and, you know, to the extent that might  
17 trickle down to less emissions, yes, but it's not  
18 directly tied to any power plant in Ohio reducing its  
19 emissions.

20          Q.    And it's not directed towards compliance  
21 with environmental regulations, correct?

22          A.    That's correct.

23          Q.    And staff's -- and staff's proposal will  
24 not address the closure of any generating plant and  
25 the impact that closure would have on electric prices

1 and economic development in the state of Ohio,  
2 correct?

3 A. That is correct.

4 Q. Let me ask you this question: Would you  
5 agree with me that the modified rider RRS proposal --  
6 the modified rider RRS is dependent on two variables?

7 A. Tell me what the two variables are, and I  
8 will tell you if you are missing anything. I think  
9 there is a lot more than two, but go ahead.

10 Q. I am talking about the modified rider RRS  
11 proposal.

12 A. Yes. Tell me what they are.

13 Q. Sure. It would be the actual capacity  
14 prices. And that would be on one side of the  
15 equation because -- and then the other would be the  
16 day-ahead energy prices, correct?

17 A. Those are the -- okay. So those are the  
18 prices that change year to year for capacity and,  
19 according to their proposal, month to month for  
20 energy. But, yes, they are tied to -- the revenues  
21 are tied to these, to prices, but there are other  
22 variables, however the variables are fixed.

23 So you have variables that are fixed like  
24 the output -- the output that they tie to, right?  
25 You have three power plants, there's an output in the



1 record, that output is fixed. There's also a UCAP  
2 which is a capacity unforced outage value, that's  
3 fixed also. So those variables are fixed. And then  
4 you have the market prices that change. That's why I  
5 hesitate when you said "variables." There are  
6 variables that are constant and variables that vary.

7 Q. So I will be a little more precise with  
8 the word "variable." And you are an engineer,  
9 correct?

10 A. Correct.

11 Q. So would you say "a variable changes,"  
12 correct?

13 A. Yes.

14 Q. Every -- all the other inputs are fixed,  
15 correct?

16 A. They are fixed within a -- like one year;  
17 but they may be different like the UCAP changes from  
18 year to year, but it's fixed in that -- in a specific  
19 year.

20 Q. Yes, I understand.

21 A. Okay.

22 Q. But as of today, they are all fixed.  
23 They are fixed inputs.

24 A. That's what I say in my testimony. They  
25 say they are fixed. As a matter of fact, I make sure

1 I stress that.

2 Q. All right. And because you have those --  
3 what you used to be -- now let me back up.

4 The original rider RRS proposal, those --  
5 on the cost side, those were variables throughout the  
6 life of the original rider RRS, correct?

7 A. That is correct.

8 Q. Okay. And so -- because we only have two  
9 variables under my definition --

10 A. Yes.

11 Q. -- under the modified rider RRS, do you  
12 believe that any forecast using this methodology  
13 would be more accurate than a forecast of the  
14 original rider RRS proposal?

15 MR. KUTIK: Objection.

16 EXAMINER PRICE: Grounds?

17 MR. KUTIK: Accurate as to what? And  
18 also beyond the scope of his testimony.

19 EXAMINER PRICE: It is way beyond the  
20 scope of this witness's testimony. I'm amazed it's  
21 gone this far without this objection. So the  
22 objection is sustained. This is way outside the  
23 scope of this witness's testimony.

24 MR. SETTINERI: He does compare them,  
25 your Honor, though. If I may?

1 EXAMINER PRICE: Show me where.

2 MR. SETTINERI: Let's see. Well, reviews  
3 the modified rider RRS in his testimony and he notes  
4 that the companies say it's an improvement. Do I  
5 have a paragraph that says what the original one is  
6 here?

7 MS. BOJKO: Yes. Page 4.

8 MR. SETTINERI: I am looking for that.

9 MS. BOJKO: Page 4.

10 MR. SETTINERI: He does, page 4. So his  
11 testimony presents a comparison. And I think it's  
12 important to recognize -- and previously, I believe,  
13 in this proceeding, he testified about how staff  
14 utilizes forecasts and how far staff would go out and  
15 would not go out.

16 And we now have a methodology that relies  
17 on only two inputs that change over the course.  
18 There are only two inputs that change over the  
19 course.

20 EXAMINER PRICE: That's way outside. The  
21 things on page 4 you're referencing are entitled  
22 "Brief History. Rider RRS as Originally Proposed."  
23 Then he goes on to his understanding of the  
24 companies' proposal, and then he states their  
25 recommendations, and he gives his specific reasons

1 why the staff does not agree with the rider RRS as  
2 the proposal to modified rider RRS.

3           You need to confine your questions to  
4 what he is actually testifying to; not try to  
5 bootstrap in issues that have already been resolved.  
6 That way we can all wrap up this hearing as quickly  
7 as possible.

8           MS. WILLIS: Your Honor, if I might, just  
9 get into the fray. He does have this testimony that  
10 is a history; it does explain the staff's past  
11 position and explains the companies' proposal, so  
12 they have opened the door to these type of questions.

13           I'm frankly shocked that there wasn't a  
14 motion to strike Mr. Choueiki's recitation of what  
15 had occurred before because that is cumulative, just  
16 as Mr. Wilson's testimony was cumulative on the  
17 position that OCC had taken in the past. So he opens  
18 the door by giving us a history. I appreciate the  
19 history and appreciate the door being opened, but he  
20 does do that.

21           EXAMINER PRICE: I don't believe that's  
22 opening the door at all. He is simply setting forth  
23 some context for how we got here and then gives his  
24 recommendations.

25           You can ask him any question you want on

1 his recommendations. If you want to ask him a  
2 question as to why his recitation of history is  
3 inaccurate, you are free to do that if that's the way  
4 you want to spend your cross-examination time, but's  
5 he's not making a comparison. He gives specific  
6 reasons why they are not in favor of what the  
7 companies' proposed and he has laid out a proposal.

8 We would best use our time if we address  
9 those two issues and not opening the door to some  
10 hypothetical line of questioning that's not going to  
11 be allowed.

12 MR. SETTINERI: Thank you, your Honor.

13 Q. (By Mr. Settineri) Dr. Choueiki, staff's  
14 alternative proposal is not a fully-developed  
15 proposal, correct?

16 A. You have got to explain to me what that  
17 means, "fully-developed proposal."

18 Q. For instance, has staff determined how  
19 this rider should be allocated among the classes of  
20 customers?

21 A. I'm trying to recall if Ms. Turkenton  
22 addressed that or not. But I am not addressing it.

23 Q. And when you said you are not addressing  
24 it, what did you mean? I'm sorry.

25 A. I am not addressing a rate design or how

1 it's allocated.

2 Q. Were you here yesterday during her  
3 testimony?

4 A. Yes, I was, but I don't recall what she  
5 said. I tried to recall, but I couldn't. That's why  
6 I paused for a second.

7 Q. When I say "fully-developed proposal" to  
8 you, what does that mean to you?

9 A. That's why I asked you, because I don't  
10 know what you -- what you mean by a "fully-developed  
11 proposal." In my mind -- in my mind what we -- we  
12 have developed a concept. The mechanics and the  
13 procedures those would be -- the Commission will  
14 decide those. They could decide to allocate them in  
15 the same manner as when they approved rider RRS or  
16 they could allocate to a different rate design. It  
17 doesn't exist in my testimony.

18 Q. So you view -- just to be clear, to you,  
19 the staff's alternative proposal is a concept at this  
20 time?

21 A. The -- I think the \$131 million is a lot  
22 more than a concept developed. It's -- I mean that's  
23 modernization. And because we have a case that's  
24 open, because we are in an ESP that has already  
25 commitments and there's a business plan that is being

1 reviewed by staff and by intervenors, so the only  
2 thing we recommend is that could be addressed, the  
3 modernization plan could be addressed, modernization  
4 investment in that case or in another case. Whatever  
5 the Commission deems appropriate.

6 Q. But the staff's proposal does not include  
7 a mandate that the companies make investments in grid  
8 modernization, correct?

9 A. We are making a recommendation for the  
10 Commission to direct the companies to start investing  
11 and modernizing the grid, that is correct.

12 Q. Earlier you said about -- on page 15 of  
13 your testimony. There are two paragraphs there. You  
14 said earlier that you had to take those -- you have  
15 to consider those two paragraphs together. Do you  
16 recall that?

17 A. Yes.

18 Q. What did you mean by that?

19 A. So the first paragraph discusses the  
20 formation of the rider. And the reason for that  
21 rider. But it has to also -- the second paragraph  
22 addresses the modernization issue. So first one is  
23 what would be the venue or under what statute would  
24 we even recommend and it would be under 143(B)(2)(h).  
25 And then, of course, we articulate the policy, policy

1 goals, the policy goals.

2 And then the second one has to do with,  
3 okay, the modernization, so that would be the second  
4 paragraph. So together -- you can't evaluate one of  
5 them by itself independently.

6 Q. All right. Now, rider -- I will say the  
7 rider DMR is not a precondition to the companies'  
8 investment in projects to modernize the grid,  
9 correct?

10 A. Every --

11 EXAMINER PRICE: I don't understand your  
12 question. I don't know if he does, but I certainly  
13 don't understand your question.

14 THE WITNESS: Thank you, your Honor. I  
15 don't understand the question either.

16 Q. Let me try again. Dr. Choueiki,  
17 Commission approval of rider DMR is not necessary in  
18 order for the companies to invest in projects to  
19 modernize the grid, correct?

20 A. So according to Mr. Buckley's testimony,  
21 again I am going to recite some of his testimony,  
22 although I am pretty sure he answered it yesterday,  
23 they have more favorable terms and conditions, the  
24 companies would with rider DMR being included,  
25 because, first, it's his expectation that maybe a



1 downgrade would be avoided if that -- if the DMR is  
2 taken into account with the list of other financial  
3 moves that the companies and FE Corp. would have to  
4 take.

5 Q. But let me -- going back to the two  
6 paragraphs. One of your paragraphs talks about DMR  
7 and then you proceed to the policy of directing --  
8 asking the Commission to direct the companies to  
9 invest in modernizing the grid. What I am asking you  
10 is do you believe -- let me strike that. I am asking  
11 you -- strike that. Rider DMR -- strike that.  
12 Commission approval of rider DMR, though, is not  
13 necessary in order for the companies to invest in  
14 projects to modernize the grid, correct?

15 MS. WILLIS: Can I have that question  
16 reread?

17 EXAMINER PRICE: You may.

18 MS. WILLIS: I apologize, Dr. Choueiki.

19 (Record read.)

20 MR. KUTIK: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. KUTIK: Asked and answered.

23 MR. SETTINERI: Your Honor, I have to say  
24 he did not answer. He referred to Mr. Buckley.

25 MR. KUTIK: The same answer.

1 MR. SETTINERI: This witness, he has tied  
2 the DMR, he is presenting DMR coupled with this grid,  
3 and it's -- and it's an answer -- a question that has  
4 not been answered.

5 EXAMINER PRICE: Overrule the objection.

6 A. I thought I made -- my testimony is very  
7 clear. Lines 8 through 12 answers your question.

8 MS. BOJKO: Which page?

9 THE WITNESS: On page 15.

10 Q. (By Mr. Settineri) Let me ask you this,  
11 Dr. Choueiki, isn't it true that the companies' grid  
12 modernization plan was filed well before staff  
13 developed its alternative proposal?

14 A. That's correct. It was filed in February  
15 and rehearing wasn't filed until, I can't remember,  
16 May maybe.

17 Q. So you would agree with me that the  
18 companies had already implemented a docket on grid  
19 modernization --

20 A. They simply filed their plan. That's the  
21 only thing they did per the stipulation agreement.  
22 They didn't implement anything. They just filed the  
23 plan.

24 EXAMINER PRICE: And isn't it true,  
25 Doctor, in the interim, between the filing of the

1 plan and the filing of the staff testimony, according  
2 to Mr. Buckley's testimony, S&P put the companies on  
3 a ratings watch from stable to negative?

4 THE WITNESS: I don't recall when the  
5 date was, but, yeah, maybe it was in the April time  
6 frame so.

7 EXAMINER PRICE: So this was an  
8 intervening event between the filing of the gridSMART  
9 plan and the filing of your testimony.

10 THE WITNESS: Lots of events occurred  
11 after the Commission order.

12 EXAMINER PRICE: It's been a busy time  
13 for us.

14 THE WITNESS: Yes.

15 Q. (By Mr. Settineri) So is it your  
16 understanding that if rider DMR is not approved, the  
17 companies will not be investing in projects to  
18 modernize the grid in the near future?

19 A. No. The Commission can still direct them  
20 to invest. But, again, there is a concern that staff  
21 raises and that's the possibility of a downgrade, a  
22 possibility of collateral goals, increasing the cost  
23 of money borrowing -- borrowing money. That's a  
24 concern that Mr. Buckley addressed so.

25 Q. And those are concerns --

1 MR. KUTIK: Excuse me, your Honor, had he  
2 finished his answer?

3 EXAMINER PRICE: Did you finish your  
4 answer, Doctor?

5 THE WITNESS: I think I have.

6 EXAMINER PRICE: You may proceed.

7 Q. Those are concerns, correct?

8 A. Yes, they are concerns.

9 Q. If the Commission approves staff's  
10 alternative proposal and directs the companies to  
11 invest in modernizing the distribution grid, do you  
12 have an understanding of when the companies would  
13 actually implement projects to modernize the  
14 distribution grid?

15 A. Right now there is a plan that is  
16 being -- is before us right now so -- so whenever --  
17 I mean that's why I cite that case so that at least  
18 that would be where things could be initiated. And  
19 then the Commission could decide whether they want to  
20 direct us to do something, you know, in that case,  
21 and give deadlines when they come up with their  
22 order. That would be -- they will provide guidance.

23 Q. Under your proposal, then, is it your  
24 expectation that the only grid modernization projects  
25 that would result from rider DMM would be out of the

1 grid modernization plan?

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

4 EXAMINER PRICE: You may.

5 (Record read.)

6 Q. Correcting that same question, but "DMR."

7 A. "DMR." That's why I don't say "just that  
8 case." You think -- let me see -- let me tell you  
9 what I wrote. It should not be limited to that case.  
10 The Commission could do it generically; it could do  
11 it in this case.

12 Q. So were you here for the testimony of  
13 Ms. Crockett-McNew earlier today?

14 A. No, I'm sorry. I had meetings in the  
15 morning. I would have liked to, but.

16 Q. So it's your expectation, under your  
17 recommendation at page 15, line 14, that the  
18 Commission would not be limited to directing  
19 companies to invest in modernizing the grid to what  
20 is in the grid modernization business plan?

21 A. We left it open.

22 Q. And you also left it open for the  
23 Commission to impose additional requirements such as  
24 a specific dollar amount of investment or a specific  
25 time frame for investment, correct?

1           A.    We did not address those, that is  
2 correct.

3           Q.    If you could turn to page 16 of your  
4 testimony, Dr. Choueiki.

5           A.    Okay.  I'm there.

6           Q.    At line 9 you reference potential  
7 implications of FERC's authority over wholesale power  
8 markets.  Do you see that?

9           A.    Yes.

10          Q.    And my understanding is you are not an  
11 attorney, correct?

12          A.    That is correct.

13          Q.    But you have added this phrase to your  
14 testimony.  I would like to know what do you mean  
15 by -- what "implications" are you referring to there?

16          A.    So although it's no longer a PPA, it's no  
17 longer -- the rider RRS is no longer tied to a PPA,  
18 it's still in staff's opinion a function of  
19 generation.  Whether you say fixed or not fixed or  
20 whether you say there is a PPA or not a PPA, we  
21 haven't forgotten that the costs are a function of  
22 Davis-Besse's output, Samsis's output, and FES's  
23 portion of OVEC's output.

24          Q.    Would you agree with me that it could be  
25 characterized as a "virtual PPA"?

1 MR. KUTIK: Objection.

2 EXAMINER PRICE: Grounds?

3 MR. KUTIK: I will withdraw that.

4 EXAMINER PRICE: You can answer.

5 A. I don't know what to call it. You want  
6 to call it a "virtual PPA," by all means.

7 Q. Fair enough.

8 EXAMINER PRICE: We are not adding it to  
9 the lexicon of this hearing, however.

10 MS. WILLIS: Was there an answer to the  
11 question? I am kind of losing it here. There was an  
12 answer?

13 MR. KUTIK: "I don't know what to call  
14 it. If you want to call it a 'virtual PPA,' by all  
15 means."

16 MS. WILLIS: Oh, okay. I'm sorry. If  
17 that could be reread, I would appreciate it.

18 EXAMINER PRICE: Let's have the last  
19 answer back, please.

20 MS. WILLIS: Mr. Kutik, a citation.

21 (Record read.)

22 EXAMINER PRICE: I want to follow-up on  
23 some questions that Mr. Settineri had asked you  
24 earlier and it seems like an opportune time.

25 Mr. Settineri paraphrased a list of the factors the

1 Commission set forth at one point and as to whether  
2 staff's proposal meets some of those factors,  
3 including the necessity of the generating facilities,  
4 the financial need of the generating facilities, the  
5 impact of the closures of generating facilities.  
6 Isn't it true the staff's proposal doesn't address  
7 any of those because the staff's proposal is not  
8 related to generation whatsoever?

9 THE WITNESS: I thought I answered that  
10 several times. I told him it's not tied to  
11 generation.

12 EXAMINER PRICE: I just want to make the  
13 overarching clear point, it's not a generation  
14 related charge.

15 THE WITNESS: I agree with you all the  
16 way. Yes.

17 EXAMINER PRICE: Thank you.

18 Q. (By Mr. Settineri) Dr. Choueiki, could  
19 you turn back to page 16 of your testimony.

20 A. I haven't moved away from it, so I'm  
21 there.

22 Q. Thank you very much -- I just want -- for  
23 Attorney Examiner Price's last question and your  
24 answer. I want to go back though. You gave prior  
25 answers on why you believed -- or, the implications



1 with FERC's answers. And you reference that and you  
2 still felt there was, I'm paraphrasing, but a  
3 generation component. You're not -- your answer to  
4 Attorney Examiner Price was not changing your prior  
5 answers to me about what I had asked you on page 16,  
6 correct?

7 A. No. We are talking about two different  
8 riders. He was asking me about rider DMR.

9 Q. Oh.

10 A. This paragraph addresses the proposal.  
11 At its core, I state, is generation.

12 Q. All right. I apologize.

13 A. And its implications to FERC.

14 Q. I was not listening well, thank you.  
15 Staff's recommendation on its proposal,  
16 it shall -- strike that.

17 You're not testifying here today that any  
18 particular grid modernization initiative must be in  
19 place before collections under staff's proposed rider  
20 could begin, correct?

21 A. Again, they are together. In our  
22 recommendation they are together. So there is the  
23 rider DMR and the Commission directing the company to  
24 modernize the grid. They are tied together.

25 MS. BOJKO: Your Honor, I'm sorry, may I

1 have his answer reread.

2 EXAMINER PRICE: You may.

3 (Record read.)

4 MS. BOJKO: Thank you.

5 Q. (By Mr. Settineri) Dr. Choueiki, I asked  
6 you previously some questions about the ESP IV term  
7 related to the term of the rider. You remember those  
8 questions?

9 A. Yes.

10 Q. Okay. If the Commission adopts staff's  
11 proposal and approves rider DMR, would rider DMR be  
12 added to the companies' current ESP IV?

13 A. So we are right -- I don't know the legal  
14 process, but we are -- ESP IV is still open. So it  
15 is my understanding, staff's understanding that, yes,  
16 it will be added. And the other one will be  
17 subtracted, but that's our recommendation.

18 MR. SETTINERI: All right. Thank you for  
19 your patience, your Honor.

20 Thank you, Dr. Choueiki. No more  
21 questions.

22 EXAMINER PRICE: Ms. Willis.

23 MS. WILLIS: OCC is going last on this  
24 one.

25 EXAMINER PRICE: The company is going

1 last.

2 MS. WILLIS: Well, I meant of the  
3 intervenors.

4 EXAMINER PRICE: Okay. Who was next on  
5 the list then?

6 MS. WILLIS: I think Kim is.

7 EXAMINER PRICE: Ms. Bojko.

8 MR. WHITT: Which is fine with me, I have  
9 maybe 15, maybe 20 minutes, if that makes any  
10 difference.

11 EXAMINER PRICE: It does make a  
12 difference because that way it will be easier, rather  
13 than interrupting her, we will have you up and down  
14 before the end of the evening.

15 MR. WHITT: Is that okay, Kim?

16 MS. BOJKO: That's fine.

17 EXAMINER PRICE: Let's go with Mr. Whitt.

18 MS. WILLIS: Thank you.

19 EXAMINER PRICE: Mr. Whitt.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Whitt:

23 Q. Dr. Choueiki, Mark Whitt, on behalf of  
24 Direct Energy. Regardless of what we call the  
25 modified proposal the company has filed, would it be

1 fair to describe the companies' modified proposal as  
2 seeking the same financial outcome of the PPA without  
3 actually executing and perform the PPA?

4 A. There are some nuances in the sense of  
5 the discussion we had -- I had with Mr. Settineri.

6 THE WITNESS: I'm sorry if I said your  
7 last name wrong.

8 MR. SETTINERI: Perfect.

9 A. The output of the power plants were not  
10 fixed; now they are fixed so, but the concept is  
11 similar; it's tied to an output of three power  
12 plants. And the prices are the wholesale market  
13 prices so the concepts are very similar.

14 Q. So could we fairly say that what the  
15 company is proposing is a different means of  
16 achieving the same result that they have sought  
17 previously?

18 A. Again, the result is a bit different,  
19 right? Because before, outages to power plants were  
20 in the equation. The prices were a bit different;  
21 the way -- the formation of prices before. But,  
22 again, the concepts are the same, you tie -- there is  
23 an output from three power plants that are not there  
24 anymore, but the outputs are still there and you are  
25 multiplying them by market prices, and you have

1 credits and charges, and you do the arithmetic and  
2 reflect it and then your proposal.

3 Q. Thank you.

4 Now, there has been discussion today of  
5 two similarly-sounding concepts that I think may be  
6 causing some confusion, at least on my part, and I  
7 may very well be the only one confused.

8 But there's been discussion of the grid  
9 modernization business plan that the FirstEnergy  
10 companies filed in February that was alluded to  
11 earlier in a separate docket, correct?

12 A. Correct.

13 Q. And what staff is proposing now is a  
14 distribution modernization rider, correct?

15 A. They are two different -- the ESP  
16 required them to file a plan, and in that plan cost  
17 recovery would be under rider AMI or something like  
18 this. If my memory serves me correctly, it was AMI.  
19 And then there is this addition of DMR, with the  
20 recommendation that proposed rider RRS will go away.

21 Q. Okay. Well, what I am trying to  
22 understand is what, if any, relationship there is  
23 between the docket considering the grid modernization  
24 business plan and the distribution modernization  
25 rider. And to be more specific, is the staff

1 proposal intended to allow the companies to recover  
2 costs for whatever projects may eventually be  
3 developed in the, with I will call "the grid  
4 modernization docket"?

5 A. Okay. So there it is again. I will go  
6 back, refer you to page 15 of my testimony.  
7 Mr. Buckley recommended the credit support. The  
8 credit support would enable the companies, okay, the  
9 companies, that the Public Utilities Commission of  
10 Ohio regulate, have more favorable terms and  
11 conditions to access the capital market.

12 And then, in turn, that would jump start  
13 then the -- the investment schedule. So in the long  
14 term it may be cheaper for ratepayers if the  
15 companies were to borrow at the lower rate with less  
16 collateral and less collateral calls and more  
17 favorable conditions than otherwise if that rider did  
18 not exist. And by "that rider" I mean DMR.

19 Q. Okay. What, if anything, do the  
20 FirstEnergy companies have to do to begin receiving  
21 the \$131 million that staff is recommending?

22 A. The Commission would have to issue an  
23 order allowing the company to gather 131 and,  
24 according to our recommendation, directing the  
25 company to invest in modernizing the grid. They go

1 together.

2 Q. Okay. Now, you're familiar, I assume,  
3 with the concept of riders generally when we are  
4 talking about utilities and cost recovery, correct?

5 A. A little bit, yes.

6 Q. Okay. And is it the case that typically  
7 once the Commission approves a rider, typically the  
8 initial rate for that rider is zero, correct?

9 A. I'm not sure if it's always this way or  
10 not.

11 Q. But typically it would be?

12 A. I'm not sure.

13 Q. Okay.

14 A. That's my answer.

15 Q. All right. Isn't it the case that when a  
16 utility has an approved rider, that the utility is  
17 recording costs in some account, so that during some  
18 subsequent proceeding the Commission can look at what  
19 was actually spent on whatever the rider relates to,  
20 correct?

21 A. There are riders this way, but there are  
22 riders also based on forecasts. So they populate  
23 with a forecast, they collect, we get to one-year  
24 anniversary and they do an audit. They reconcile the  
25 actuals with the forecast and then move on. So some

1 riders are this way. Some riders start at zero, wait  
2 until the end of the year, and then you populate with  
3 actual. And I am not sure which -- you know, which  
4 ones are required to be this way and which ones are  
5 based on forecasts.

6 Q. Okay. But whether we start with a  
7 forecast or we start at zero, at some future point in  
8 time the Commission would ordinarily have staff do a  
9 review in order to reconcile projected costs with  
10 actual costs, correct?

11 A. That's a slight -- it's a capital  
12 expenditure rider -- tied rider.

13 Q. Okay. As the DMR would be, correct?

14 A. No. The DMR is a bit different. The DMR  
15 again is providing credit support to the companies  
16 and right now the concept is to have that money be  
17 collected annually based on, you know, some billing  
18 determinants or based on some rate design.

19 Q. Right. What I am trying to figure out is  
20 when the money would actually be collected.

21 A. Annually, I mean, the way I am thinking  
22 about it, that's just me. You should have asked that  
23 question to Ms. Turkenton.

24 EXAMINER PRICE: Actually, Mr. Buckley  
25 did answer that question.



1 MR. WHITT: Perhaps he did. I don't  
2 recall it.

3 EXAMINER PRICE: Mr. Buckley, in response  
4 to somebody's question, said that the rider will be  
5 collected on a 36-month period of time following the  
6 Commission order in this proceeding.

7 Q. What I am trying to understand, what is  
8 being collected.

9 A. The \$131 million.

10 Q. From the time the rider is approved, the  
11 company would begin collecting money under that  
12 rider?

13 A. If the Commission approves it, then what  
14 would happen is -- I am going to give the simplest  
15 way, and it's not this way, okay, you will have  
16 \$131 million; you would have 53 million  
17 megawatt-hours. So you divide 131 by 53, let's say  
18 you get \$2 or \$2.20 a megawatt-hour. So they will  
19 populate, they do a rate design and allocate the  
20 \$131 million into residential/commercial/industrial,  
21 and then based on that they will have dollars per  
22 megawatt-hour or cents per kilowatt-hour tariff. And  
23 that's how it would be -- it would be collected. So  
24 that by the end of the year they have collected 131.

25 Q. Okay.

1           A.    To the extent they collected 130, it will  
2 be reconciled with the next set of collections for  
3 the next 12 months.

4           Q.    Understood. So that collection will  
5 occur independent of what, if anything, the company  
6 actually spends on distribution modernization,  
7 correct?

8           A.    Again, you are assuming that the  
9 Commission agreed only to this. The --

10          Q.    I am assuming that.

11          MR. KUTIK: Excuse me. Let him finish  
12 his answer.

13          MR. McNAMEE: That's right.

14          A.    The Commission generally, in my opinion,  
15 that's how I am speaking now, is going to look at all  
16 the recommendations. If they -- under your  
17 hypothetical that the Commission disagreed with our  
18 second paragraph and only looked at the first  
19 paragraph and authorized 131 million, then under that  
20 hypothetical, yes, they will start collecting without  
21 any investments.

22          Q.    Okay. So, in that respect, the recovery  
23 under the distribution modernization rider, is not  
24 tied to distribution investment, correct?

25          A.    That's not staff's position. That's your

1 assumption. Staff's position is the Commission  
2 will -- we recommend the Commission authorize the  
3 collection of 131 and the Commission directs the  
4 company to initiate investment. So those are  
5 together. Not -- we've had that discussion already.  
6 They have to be together. The Commission may  
7 disagree with us and go with your hypothetical and  
8 says you get 131. Under that hypothetical, yes, they  
9 will collect regardless of what modernization  
10 schedule.

11 Q. Okay. But then again, going back to the  
12 grid modernization business plan, the reason for that  
13 docket is to have a stakeholder process and forum to  
14 determine what the utilities should be doing with  
15 regard to grid modernization, correct?

16 A. That's correct. And I cite that case and  
17 I say this initiative can begin with that case. So  
18 the Commission may direct.

19 EXAMINER PRICE: Doctor, it's your  
20 testimony that the grid modernization case is not the  
21 entire population of projects the companies should  
22 undertake as a result of this.

23 THE WITNESS: That's correct, because I  
24 say that it's not only this one and others, so the  
25 Commission could have a bigger objective than just

1 the grid modernization that is described in the  
2 companies' business plan.

3 EXAMINER PRICE: For example, let me  
4 follow-up. For example, in the stipulation, the  
5 staff agreed to in this proceeding, there was a  
6 discussion of investments in battery technology which  
7 would be used to modernize --

8 THE WITNESS: That's correct, on the  
9 distribution side.

10 EXAMINER PRICE: That also is another  
11 part of the overall. I think what is confusing is  
12 you've got grid modernization and then you have got  
13 another docket that has a similar title, but it's all  
14 part of a larger effort to modernize the grid; is  
15 that correct?

16 THE WITNESS: That's correct. Because  
17 the ESP that we agreed to includes several other,  
18 beside the AMI filing, like what his Honor was  
19 talking about. So that's why the recommendation is  
20 to initiate discussions in this case, but others too.

21 Q. (By Mr Whitt) Understood. But to the  
22 extent the DMR is intended to provide credit support,  
23 wouldn't collection under that rider necessarily need  
24 to begin regardless of whether any plans have been  
25 finalized in any other pending docket?

1           A.     The Commission will decide whether that  
2     should be collected separately, regardless of what  
3     happens in the grid modernization and in the ESP  
4     commitments or together.

5           Q.     Okay.  You had mentioned -- well, in your  
6     testimony, a concern that the companies' modified  
7     proposal could be construed as a transition charge,  
8     and my question is whether staff has any concern that  
9     its proposal could be construed as authorizing the  
10    transition charges?

11          A.     That's -- now, I am not a lawyer.

12          Q.     I understand.

13          A.     So staff's opinion is that there is no  
14    concern at all with our proposal.

15          Q.     Okay.

16          A.     It's not considered a transition charge.  
17    Transition charge has to do with generation.  And I'm  
18    referring to transition charge per the statute,  
19    4928.38, 39, and 40, I think.  Those are the ones  
20    I've looked at as a nonlawyer.  Those have to do with  
21    generation.

22          Q.     Okay.  Who decided -- who came up with  
23    the name of distribution modernization rider?  How  
24    did you settle on that nomenclature?

25                 MR. KUTIK:  I'll object.

1 MR. McNAMEE: Okay.

2 MR. KUTIK: It's compound at least.

3 MR. McNAMEE: What possible difference  
4 does it make?

5 EXAMINER PRICE: It's irrelevant. And to  
6 the extent it calls for staff's trial preparation,  
7 it's improper. Sustained.

8 Q. (By Mr. Whitt) Did the term "distribution  
9 modernization rider" come up in the context of any  
10 settlement discussions with the company?

11 MR. KUTIK: I will object, your Honor.

12 MR. McNAMEE: Objection.

13 EXAMINER PRICE: Sustained.

14 Q. If rider DMR was approved, would you  
15 agree that that approval of that rider would  
16 generally reduce the financial risk of the utilities?  
17 That's its purpose, is it not?

18 A. So rider DMR, according to Mr. Buckley,  
19 will improve the financial situation of the  
20 companies.

21 Q. Does staff have an opinion whether --  
22 about whether any revenue received under the DMR  
23 should be considered in any SEET proceeding,  
24 significantly excessive earnings test?

25 A. We did not address it in our testimony.

1 Q. Does staff have an opinion on that as of  
2 today?

3 EXAMINER PRICE: Mr. Buckley testified as  
4 to this issue when he was on the stand.

5 MS. WILLIS: Your Honor, if I might add  
6 to the record, Mr. Buckley indicated that he could  
7 not -- he was not -- the staff had not taken a  
8 position on SEET, just as Mr. -- or, Dr. Choueiki  
9 did. He offered -- I think he punted and I think --

10 EXAMINER PRICE: He gave his opinion. I  
11 think he said we haven't taken a position, but in my  
12 opinion something should be decided in the SEET  
13 proceeding.

14 MS. WILLIS: And I think, too, the  
15 question was, from the Bench, does, you know, does  
16 anyone -- or do you have an opinion or does anyone  
17 address the SEET.

18 And the upshot of it was that you had  
19 asked if Dr. Choueiki would be prepared to speak to  
20 that question, and the response was well, it's not in  
21 his testimony, but Mr. -- and I am looking at the  
22 transcript, 614, and Mr. McNamee's response was "The  
23 witness did not speak to the SEET test."

24 And your question was "Is Dr. Choueiki  
25 prepared to speak to this question?"

1           Mr. McNamee said "This is not in his  
2 testimony either."

3           And you said -- your response was "That's  
4 not what I asked. I know it's not in his testimony.  
5 I am asking if he is prepared to speak to this  
6 question."

7           And Mr. McNamee said "I think not so."

8           And it went on.

9           EXAMINER PRICE: Is there a point to  
10 this?

11           MS. WILLIS: I guess the point is, your  
12 Honor, it was punted, and so we should be able to  
13 explore this issue with Dr. Choueiki.

14           MR. KUTIK: You Honor.

15           MR. McNAMEE: I think just the opposite.

16           MR. KUTIK: Let me read the answer  
17 because you let him answer that.

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

24           EXAMINER PRICE: Everything you said in  
25 the transcript indicates that I pushed Mr. McNamee to



1 whether he could punt it to Dr. Choueiki and he kept  
2 saying no.

3 MS. WILLIS: I was under the impression,  
4 just from reading that, that you are pushing it to  
5 Dr. Choueiki.

6 EXAMINER PRICE: I was pushing for an  
7 answer, and the answer I kept getting was "No, I  
8 can't promise you that."

9 MR. McNAMEE: And the answer we have  
10 gotten from Dr. Choueiki is we don't know; we haven't  
11 taken a position so.

12 EXAMINER PRICE: Which is not  
13 inconsistent with what Mr. Buckley did testify to  
14 yesterday.

15 MR. WHITT: It's all good enough for me.  
16 Thank you, your Honor.

17 EXAMINER PRICE: They are just trying to  
18 screw up your cross-examination estimates.

19 Q. (By Mr. Whitt) There was a question  
20 punted to you, I don't know if you were here when I  
21 asked of Mr. Buckley, but has staff considered  
22 whether there is any moral hazard by having a  
23 precedent where utilities regulated by the Commission  
24 are authorized to collect money in order to support  
25 the credit of unregulated affiliates?

1 MR. KUTIK: I'll object. That's not  
2 staff's proposal.

3 MR. WHITT: Well, it's a -- I am simply  
4 asking whether the staff has considered this  
5 particular implication of its proposal.

6 MR. McNAMEE: Just by way of  
7 clarification, by way of clarification perhaps we  
8 should have a definition of "moral hazard." Not a  
9 term of art frequently used in utility matters.

10 MR. WHITT: As perhaps it should be.

11 Q. (By Mr. Whitt) Dr. Choueiki, have you  
12 heard the term moral hazard before?

13 A. I've heard it before.

14 Q. Sort of colloquial and maybe in the  
15 context of "too big to fail." Have you heard that  
16 before as well?

17 A. Yes.

18 Q. Has staff considered the potential  
19 implications of proposing that regulated utilities be  
20 authorized to recover money from captive customers  
21 for the express purpose of benefiting the capital and  
22 financial situation of unregulated affiliates in a  
23 parent company? Understanding that the intent is for  
24 some of that benefit to flow down to the regulated  
25 utilities, but, in fact, credit support is needed for

1 unregulated entities as well, correct?

2 MR. KUTIK: Objection.

3 EXAMINER PRICE: Grounds?

4 MR. KUTIK: Well, my prior objection but  
5 this is compound.

6 EXAMINER PRICE: The witness can answer  
7 what he knows.

8 A. It wouldn't have been recommended if we  
9 felt it was a moral hazard. In the long term we  
10 think it is beneficial to the ratepayers of Ohio to  
11 have a health company -- to have healthy companies,  
12 so to have the healthy companies, you need the  
13 healthy parent, but the objective -- regardless what  
14 decisions were made in the past that have caused this  
15 issue to happen now, there is this issue that is a  
16 concern.

17 A concern is our utilities continue to  
18 provide reliable service and to the extent -- and to  
19 the extent the Commission agrees with us on the  
20 policy matter that we would like to have a modernized  
21 grid that requires cash infusion at this point. So  
22 to have a modernized grid and have healthy companies,  
23 we don't see this at all as a moral hazard. The  
24 objective is to modernize the distribution grid in  
25 Ohio. That's our objective.

1           Q.    Have any of the other electric utilities  
2 or holding companies that operate electric utilities  
3 in Ohio required a cash infusion in order to engage  
4 in grid modernization efforts?

5           A.    We can't compare FirstEnergy -- the  
6 FirstEnergy companies to anyone else right now.  
7 Right now, this case is before -- that is what we are  
8 discussing, the FirstEnergy companies, and staff  
9 raised a concern. We have raised a concern before  
10 with other cases, and the Commission agreed or  
11 disagreed with us on these concerns.

12           Q.    And the companies' grid modernization  
13 business plan was filed before staff recommended its  
14 cash infusion, correct?

15           A.    That is correct, but we've established  
16 that the negative downgrading came after the threat  
17 of a negative -- downgrading, it doesn't have to be a  
18 negative. Downgrade is a negative.

19           Q.    But the companies' actual rating from the  
20 agencies has remained at investment grade and is  
21 investment grade today, correct?

22           EXAMINER PRICE: I think at this point we  
23 are simply rehashing Mr. Buckley's testimony, and  
24 Mr. Buckley was the witness that is designated to  
25 testify about this. You asked if you could ask your

1 moral hazard question of this witness. He gave you  
2 his best answer. I think you are now just getting  
3 into rehashing Mr. Buckley's testimony.

4 MR. WHITT: That's actually my last  
5 question.

6 EXAMINER PRICE: Sorry. You are not  
7 going to get an answer to that, Mr. Whitt, but you  
8 get an answer for moral hazard as your last question,  
9 so that's a plus.

10 Ms. Bojko?

11 EXAMINER PRICE: Let's go off the record.  
12 (Discussion off the record.)

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

15 We will adjourn for the day, at which  
16 point we'll take up Ms. Bojko's cross-examination of  
17 Dr. Choueiki --

18 MR. KUTIK: Actually, aren't we going to  
19 start with the date certians?

20 EXAMINER PRICE: Oh, that is absolutely  
21 correct. Let me strike what I just said. At this  
22 point we are going to adjourn for the day. We will  
23 resume at 9 o'clock.

24 We are off the record.

25 (Thereupon, at 5:53 p.m., the hearing was

1 adjourned.)

2 - - -

3 CERTIFICATE

4 I do hereby certify that the foregoing is  
5 a true and correct transcript of the proceedings  
6 taken by me in this matter on Thursday, July 14,  
7 2016, and carefully compared with my original  
8 stenographic notes.

9  
10 \_\_\_\_\_  
11 Karen Sue Gibson, Registered  
12 Merit Reporter.

13 \_\_\_\_\_  
14 Carolyn M. Burke, Registered  
15 Professional Reporter.

16 (KSG-6221)

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**Case No(s). 14-1297-EL-SSO**

Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 07/14/16 - Volume IV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.