

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Ohio Edison :
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case No. 16-0743-EL-POR
Approval of Their Energy :
Efficiency and Peak Demand :
Reduction Program Portfolio:
Plans for 2017 through 2019:

- - -

PROCEEDINGS

before Mr. Richard Bulgrin, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-D, Columbus, Ohio, called at
10:00 a.m. on Tuesday, January 24, 2017.

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VOLUME II

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1 Tuesday Morning Session,
2 January 24, 2017.

3 - - -

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

6 Good morning, ladies and gentlemen. This
7 is day two of Case No. 16-743-EL-POR. And I believe
8 we begin with OCC's witness this morning.

9 MR. STINSON: Yes, your Honor. The
10 Office of the Ohio Consumers' Counsel would call
11 Richard Spellman.

12 (Witness sworn.)

13 EXAMINER BULGRIN: Please be seated.
14 Thank you.

15 MR. STINSON: May I approach, your Honor?

16 EXAMINER BULGRIN: Yes.

17 - - -

18 RICHARD F. SPELLMAN
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Stinson:

23 Q. Good morning, Mr. Spellman.

24 A. Good morning.

25 Q. Could you please state your full name and

1 business address for the record.

2 A. Richard F. Spellman, 1850 Parkway Place,
3 Marietta, Georgia.

4 Q. I placed in front of you what's been
5 marked as OCC Exhibit Nos. 9A, 9B, and 9C. Can you
6 identify Exhibit 9A, please.

7 A. Yes. This would be my direct testimony
8 filed on behalf of the Ohio Consumers' Counsel in
9 this docket on September 13.

10 Q. And could you identify Exhibit 9B,
11 please.

12 A. Yes. This would be my supplemental
13 direct testimony filed on behalf of the Office of the
14 Ohio Consumers' Counsel on January 10, 2017.

15 Q. And were those two testimonies prepared
16 by you or under your direct supervision?

17 A. Yes, they were.

18 Q. Do you have any revisions or
19 modifications to OCC Exhibits 9A or 9B?

20 A. Yes. I have revisions to my supplemental
21 direct testimony and Exhibit 9C presents a list of
22 those revisions.

23 Q. Thank you. If I would -- if I were to
24 ask you the questions in your testimonies, would your
25 answers be the same as revised?

1 A. Yes.

2 Q. And are those answers true and accurate
3 to the best of your knowledge?

4 A. Yes, they are.

5 MR. STINSON: At this point, your Honor,
6 I would tender the exhibits for admission and tender
7 Mr. Spellman for cross-examination.

8 EXAMINER BULGRIN: Okay. Just so I'm
9 clear, OCC Exhibit 9A is the direct, 9B is the
10 supplemental, and 9C is a list of -- that has not
11 been filed in this case.

12 MR. STINSON: It's not been filed.

13 EXAMINER BULGRIN: Is a list of changes.
14 All righty. They will be so marked.

15 (EXHIBITS MARKED FOR IDENTIFICATION.)

16 EXAMINER BULGRIN: And who's up for
17 cross? Ms. Kolich.

18 MS. KOLICH: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Ms. Kolich:

22 Q. Good morning, Mr. Spellman.

23 A. Good morning.

24 Q. My name is Kathy Kolich and I represent
25 the companies in this case and I will be asking you

1 some questions this morning, so if at any time you
2 don't understand the question, feel free to ask me to
3 rephrase it. I will be more than happy to do so.
4 Otherwise, I will assume you understood the question.

5 A. Okay.

6 Q. Now, you've got 9A -- OCC 9A and 9B in
7 front of you?

8 A. Yes.

9 Q. And those are your direct and
10 supplemental testimonies respectively, correct?

11 A. Yes.

12 Q. And I believe they -- you were asked
13 whether they were prepared at your direction or under
14 your supervision.

15 A. Yes.

16 Q. Did you draft your testimony?

17 A. Yes.

18 Q. So the views reflected in your
19 testimonies are yours.

20 A. Yes.

21 Q. Now, I have got some general housekeeping
22 issues to take care of. On page 12, line 13 of your
23 direct testimony which is 9A.

24 EXAMINER BULGRIN: What was that again?

25 MS. KOLICH: Page 12, line 13.

1 EXAMINER BULGRIN: Thank you.

2 Q. Are you there?

3 A. Yes, I am.

4 Q. You use the term "exemplary utility
5 performance." Do you see that?

6 A. Yes, I do.

7 Q. And how would you define that term?

8 A. I would define it two ways. One, if you
9 look at the footnote, I've provided a citation to the
10 "National Action Plan for Energy Efficiency" and
11 it -- that report talks about in general what our
12 exemplary performance would be.

13 And then the other criteria I had in mind
14 are the ones that are listed in the "Green Rules" and
15 that lists all the criteria that programs should
16 have. I believe there are 13 or so criteria in the
17 rules. And those, I would say that if you follow or
18 exceed all of those criteria that that would be
19 exemplary.

20 Q. Okay. Now, you and I, in deposition,
21 agreed to call those the "Green Rules." When you
22 refer to the "Green Rules," you are talking about the
23 Ohio Administrative Code, specifically the
24 regulations the Commission has related to energy
25 efficiency with a citation of 4901:1-39-01 in

1 sequence?

2 A. Yes.

3 Q. And you've got two sets of testimony,
4 some of which is repeated -- some of your testimony
5 is identical in both sets. So when you use the term
6 "exemplary performance" in your original testimony,
7 and you use that same term in your supplemental
8 testimony, you mean the same thing?

9 A. Yes.

10 Q. Now, you also refer to profits in the
11 context of shared savings. When used in the context
12 of shared savings, are you referring to the money
13 that the companies would receive through the shared
14 savings mechanism?

15 A. Yes.

16 Q. And then if you could turn to page 53 of
17 your supplemental testimony.

18 MR. STINSON: What page was that,
19 Counsel?

20 MS. KOLICH: 53. I am jumping around
21 here a little bit to get the housekeeping things
22 done.

23 Q. And line 23 -- 22 actually down there at
24 the bottom.

25 A. I'm there.

1 Q. Okay. You state that "The Commission has
2 never allowed shared savings for programs like the
3 historic mercantile customer program...." Do you see
4 that?

5 A. Yes.

6 Q. Okay. And then up above on line 19 of
7 page 53, you refer to the ESID program and the
8 mercantile customer programs. Do you see that?

9 A. Yes.

10 Q. And I believe in your deposition I asked
11 you the same question. When you are talking about
12 the mercantile customer program and the historic
13 mercantile historic programs, you are using those
14 terms interchangeably?

15 A. Yes.

16 Q. Now, the companies' baselines, I didn't
17 get a chance to look at your corrections, but I
18 believe the OCC Exhibit 9C --

19 A. Yes.

20 Q. -- deals with issues related to the
21 companies' calculation of the baselines?

22 A. Yes.

23 Q. And, again, I haven't had a chance to
24 compare this, but are you just updating these numbers
25 to reflect the changes made in Ms. Mullins's Exhibit

1 DJM-A2?

2 A. Yes.

3 Q. And with that update, do you have any
4 reason to dispute the calculations that Ms. Mullins
5 made?

6 A. No, no.

7 Q. Now, "customer opt-outs," are you
8 familiar with that term?

9 A. Yes, I am.

10 Q. All righty. And you would have no way of
11 knowing how many of the companies' customers will
12 elect to opt out of the companies' revised plans,
13 would you?

14 A. No. I would agree with you that I
15 wouldn't.

16 Q. Okay. And on page 9, line 15 of your
17 original testimony, you indicate "FirstEnergy failed
18 to achieve the amount of energy savings required by
19 statute." Do you see that?

20 A. Yes.

21 Q. And when I deposed you in December, you
22 indicated you did not know the reason the companies
23 failed to achieve those targets; is that right?

24 A. That is correct.

25 Q. And when I deposed you last week, I asked

1 you if you still didn't know why the companies failed
2 to achieve their targets in 2010. Do you recall
3 that?

4 A. I do.

5 Q. And you indicated you still didn't know;
6 is that correct?

7 A. I did.

8 Q. And if I asked you that today, do you
9 know today why the companies failed to achieve those
10 targets in 2010?

11 A. No, no.

12 Q. And I believe you indicated during your
13 deposition that you were retained by OCC on May 19,
14 2016; is that right?

15 A. Yes.

16 Q. Are you familiar with the OCC objections
17 that were filed in this case?

18 A. Yes.

19 Q. And as I understand it, you actually --
20 you didn't actually draft the objections; is that
21 right?

22 A. That's correct.

23 Q. Do you know who did?

24 A. OCC Counsel.

25 Q. As I understand it, you provided

1 technical support related to the shared savings
2 mechanism; is that right?

3 A. Correct.

4 Q. Did you provide any other support on any
5 other issues?

6 MR. STINSON: Objection, your Honor. The
7 objections are not a part of the record in this case.
8 They have not been introduced.

9 MS. KOLICH: If you recall yesterday,
10 questions were presented to Mr. Miller regarding
11 whether he considered the objections when designing
12 the plan. So I am just trying to understand.

13 EXAMINER BULGRIN: I'll overrule. You
14 can answer.

15 A. I provided technical support to the OCC
16 that included reviewing the companies' application,
17 identification of key issues, information on how
18 other states are addressing the same issues, data
19 analysis. I would say those are the four main
20 categories of my technical support.

21 Q. Did you provide any tables or analyses,
22 tables that would show up in the objections?

23 MR. STINSON: I am going to object, your
24 Honor, as well on the basis of attorney-client
25 privilege to the extent we are getting into

1 conversations between Mr. Spellman and Counsel.

2 MS. KOLICH: I didn't ask about the
3 content of conversations. I just asked if he
4 provided any tables for the objections.

5 EXAMINER BULGRIN: Perhaps you could
6 rephrase.

7 MS. KOLICH: Sure.

8 Q. (By Ms. Kolich) Mr. Spellman, did you
9 perform any analyses that resulted in tables that
10 were included in the OCC objections?

11 MR. STINSON: Same objection, continuing
12 objection, your Honor, on this line of questioning
13 with respect to what Mr. Spellman provided Counsel.

14 EXAMINER BULGRIN: I am going to overrule
15 that. You can answer if you know.

16 A. No. I honestly don't recall.

17 Q. Okay. I'm moving on now.

18 A. Okay.

19 Q. Now, on your résumé included in RFS-1
20 that's attached to your testimony, you indicate on
21 page 2 that you are the Program Manager, the
22 Statewide Evaluator in Pennsylvania; is that right?

23 A. That's correct.

24 Q. And you actually are still the Statewide
25 Evaluator until the end of February; is that correct?

1 A. That's correct.

2 Q. And as I recall, you described some of
3 your roles as the Statewide Evaluator and one of them
4 was to review all aspects of program implementation;
5 is that right?

6 A. Let me ask to clarify that. Are you
7 referring to my -- to my résumé that's in my
8 supplemental? Or my direct?

9 Q. Are they different?

10 A. I don't know. I don't know. I just want
11 to know which one you are referring to. Usually I
12 update my résumés, so I just want to make sure.

13 Q. I am not sure which one I looked at.

14 A. I want to look at the same one you are
15 looking at.

16 Q. I would have been looking at your
17 supplemental testimony, page 2, your No. 1 item under
18 President, GDS Associates.

19 A. I'm there.

20 Q. Okay. So according to your resume you
21 were the program -- were and still are the Program
22 Manager for --

23 A. Correct.

24 Q. Thank you. Let me finish the sentence
25 for the record.

1 A. Sorry.

2 Q. -- the Pennsylvania SWE.

3 A. Yes.

4 Q. And if I recall, you explained to me
5 during deposition that one of your roles as the SWE
6 was to review all aspects of program implementation
7 related to the EE programs in Pennsylvania; is that
8 correct?

9 A. I think that's a fair characterization.

10 Q. And another role was to make
11 recommendations to the Pennsylvania Public Utilities
12 Commission for any improvements or modifications to
13 the utilities' PDR programs before the Commission.
14 Is that another role?

15 A. Yes.

16 Q. And did you also provide technical
17 support to the Commission on -- and provide various
18 analyses related to the utilities' EE and PDR
19 programs?

20 A. Yes. In fact, I have been doing that
21 since 2009.

22 Q. Now, start-up costs, in your original
23 testimony on page 61, line 13, could you pull that
24 up?

25 A. Uh-huh. I'm there.

1 Q. On line 13 you state the programs will
2 cost -- collectively the programs will cost consumers
3 over \$115 million during 2017 to 2019. Do you see
4 that?

5 A. Yes.

6 Q. And that estimate of program costs was
7 related to the plans as originally filed in this
8 case; is that right?

9 RICHARD F. SPELLMAN

10 being previously duly sworn, as prescribed by law,
11 was examined and testified further as follows:

12 DIRECT EXAMINATION

13 By Ms. Kolich:

14 A. Yes.

15 Q. And then you go on to say this is an
16 increase of over \$10 million as compared to the
17 previous portfolio plan. Do you see that?

18 A. Correct. Adjusted for inflation.

19 Q. Right. So if I do my math right, the
20 prior -- or the previous portfolio plan's estimated
21 costs would have been \$105 million; is that right?

22 A. Well, I remember I provided an exhibit on
23 this and I don't have that in front of me. I mean I
24 provided a data response. And I recall that the
25 Excel spreadsheet that I provided showed the costs

1 adjusted for inflation and then took the difference
2 between the two and I just don't remember what the
3 inflation adjusted number was for the prior period.

4 Q. Right.

5 A. So I just don't have that with me, but my
6 understanding -- my recollection from that workpaper
7 was that when you took the difference of the two, it
8 was 10 million.

9 Q. Okay. Which is fine.

10 A. Okay.

11 Q. That's close enough for purposes of what
12 I need to ask you. So you are aware that the revised
13 plans have lower budgets than what were originally
14 filed -- than were included in the plans as
15 originally filed.

16 A. Yes, I am.

17 Q. And do you know how much that is?

18 A. You mean what the difference is?

19 Q. Do you know approximately what the total
20 budget for the revised plans are?

21 A. It's in the appendix to the settlement to
22 the stipulation, the numbers. I don't remember what
23 the number is off the top of my head.

24 Q. Would you agree with me, subject to
25 check, that it's approximately 90 million per area?

1 A. So you're talking about just the --
2 subject to check, sure.

3 Q. Okay. So your methodology for
4 calculating the start-up costs, value of \$10 million,
5 would no longer be valid given the changes in the
6 budget calculations; is that right?

7 A. That's right. In fact, we talked about
8 that during my deposition. And what I said, that
9 whole issue would have to be reconsidered if it were
10 talking about the -- the revised filing.

11 Q. Right. That was going to be my next
12 question. And you haven't done that analysis.

13 A. I have not.

14 Q. Okay. If you'll turn to page 4, line 15
15 of your supplemental testimony.

16 A. I'm there.

17 Q. Where you talk about the three-prong
18 test. And on line 20 -- actually on page 5, line 20,
19 you refer to a three-prong test for evaluating the
20 reasonableness of the proposed settlement. Do you
21 see that?

22 A. Well, I think you lost me there.

23 Q. Did I give you the wrong page? Page 4.

24 A. Aha, that makes more sense.

25 Q. My apologies.

1 A. Well, actually, line 20 doesn't say
2 anything about the three-prong test.

3 Q. Wait a minute.

4 MR. KELTER: Is this supplemental?

5 THE WITNESS: Yeah, I am in my
6 supplemental.

7 MR. KELTER: Page 4, line 20. I have
8 one.

9 Q. Right.

10 A. Well, mine says "The shared savings
11 mechanism should only be approved."

12 EXAMINER BULGRIN: Take a look at this.

13 THE WITNESS: I guess the page numbering
14 on mine is different. This one looks better.

15 MR. STINSON: Your Honor, can I approach
16 and make sure he has the correct --

17 THE WITNESS: I have the right --

18 MS. FLEISHER: Mr. Spellman, I think that
19 was your direct.

20 THE WITNESS: I was in the wrong one.
21 I'm sorry about that.

22 EXAMINER BULGRIN: I will take that one
23 back then.

24 A. Okay. Now, I see where you are at. I'm
25 there. Yes, to answer your question.

1 Q. Okay. And now I need the question
2 reread, please.

3 A. Hopefully my "yes" was the right answer
4 to the question.

5 (Record read.)

6 A. Yes.

7 Q. Okay. But I need to refer you back to
8 page 4 because I misspoke. So let's get it straight.
9 On the bottom of page 4, line 20, where you refer to
10 the three-prong test, you have a footnote notation,
11 No. 2, and you cite to the Consumers' Counsel versus
12 PUC. Do you see that?

13 A. Yes.

14 Q. And you didn't read the entire case that
15 you cite there, did you?

16 A. No. As I said in my deposition, I did
17 not.

18 Q. And you don't know what the Court said
19 about the three-prong test, do you?

20 A. Only to the extent that these are the
21 three prongs. Other than that, I don't have any
22 additional information.

23 Q. And these -- your reference to these are
24 the three prongs are the items listed on lines 1
25 through 6 of page 5?

1 A. Right.

2 Q. Okay. Let's go to the first prong at the
3 top of page 5. And according to your testimony, the
4 three-prong test requires that in the first prong the
5 settlement be the product of serious bargaining among
6 capable, knowledgeable parties; is that correct?

7 A. Correct.

8 Q. You don't know if the Commission has
9 provided any guidance as to what criteria they use
10 when determining whether there's been serious
11 bargaining among capable parties?

12 A. Correct.

13 Q. And do you believe this prong has been
14 met with regard to serious bargaining?

15 A. No.

16 Q. You were not privy to any of the
17 settlement conversations, were you?

18 A. No.

19 Q. And your Counsel did not reveal the
20 specifics -- specific nature of the settlement
21 discussions with you, did he?

22 MR. STINSON: Objection, your Honor.
23 Attorney-client privilege.

24 EXAMINER BULGRIN: Sustained. You don't
25 have to answer that.

1 MS. KOLICH: I didn't hear the ruling.

2 EXAMINER BULGRIN: Sustain the objection.

3 Q. Did you talk to any of the other parties
4 that were in the settlement discussions?

5 A. No.

6 Q. So prong 2, that one says that the
7 settlement, as a package, must benefit customers and
8 the public interest. Do you see that?

9 A. Yes, I do.

10 Q. And what are the guidelines the Ohio
11 Supreme Court uses to determine whether prong 2 has
12 been met?

13 A. I don't know.

14 Q. How about the guidelines the Commission
15 uses to evaluate that prong?

16 A. I don't know what the Commission says,
17 but I know what my testimony lays out, why I believe
18 it -- that the settlement is not in the public
19 interest.

20 Q. Do you have a copy of the settlement
21 stipulation?

22 A. I do.

23 Q. Could you get that out, please.

24 A. I've got it.

25 Q. You are ahead of me.

1 A. For once.

2 Q. And if you could turn to page 4 of the
3 settlement stipulation, it would be Roman V, "Terms
4 and Conditions."

5 MS. KOLICH: And for the record, this
6 document has been identified and admitted as Joint
7 Exhibit 1.

8 A. I'm there.

9 Q. And you've read this document; is that
10 correct?

11 A. I read the part -- I've reviewed the
12 whole document, but I focused on the portion of it on
13 page 9 that dealt with the shared savings mechanism.

14 Q. Okay. Would you agree with me that
15 sections -- subsections A through T set forth and
16 summarize the terms and conditions that the parties
17 agreed to in the settlement?

18 A. Yes.

19 Q. And as I understand it, a review of these
20 terms and conditions to determine whether they are
21 beneficial to customers or in the public interest was
22 beyond the scope of your contract; is that right?

23 A. Correct.

24 Q. So you have done no analysis along those
25 lines; is that correct?

1 A. Correct.

2 Q. And you have no opinion on whether, for
3 example, prioritizing the LED lights versus the CFL
4 lights listed in subparagraph A is good or bad for
5 customers?

6 A. Correct.

7 Q. If you look at prong 3 of your testimony
8 on page 5 of the supplemental testimony.

9 A. Thank you.

10 Q. It would be line 5. Yes?

11 A. Yes.

12 Q. And that one requires an analysis of
13 whether the settlement package violates any important
14 regulatory principle or practice; is that right?

15 A. Correct.

16 Q. Now, in your deposition you indicated
17 that you believed that the principal violation -- or
18 the key violation from a regulatory standpoint in
19 your opinion was that the settlement violates the
20 equity-among-classes principle; is that correct?

21 A. That's correct.

22 Q. And the only other principle you
23 identified was that it violated the principle of cost
24 effectiveness -- excuse me, cost effectiveness; is
25 that right?

1 A. Correct.

2 Q. Do you have a copy of the company's
3 revised plans with you?

4 A. Yes. That's attached to the Settlement
5 Agreement.

6 Q. Yes, it would be at Exhibit B, I believe.

7 A. Yes, so I do have that with me.

8 Q. Okay. Bear with me one minute. In the
9 interest of time I'll come back to that. We'll come
10 back to that. I just need to direct you to a certain
11 table in there and I thought I had it with me. So
12 we'll come back to prong 3.

13 So let's go on to line 8, right there
14 below that where you state, "In addition to these
15 criteria," with the three prongs we just discussed,
16 "the PUCO sometimes considers whether the signatory
17 parties to the settlement represent a diversity of
18 interests." Do you see that?

19 A. I do.

20 Q. Okay. And in support of that statement,
21 you cite to the Columbus Southern Power order issued
22 by the Commission in Case No. 11-351-EL-AIR, correct?

23 A. Correct.

24 Q. You didn't read that case at all, did
25 you?

1 A. Correct.

2 Q. And you state that sometimes the PUCO
3 requires this criteria to be met; the diversity of
4 interest. Do you know when the Commission requires
5 it?

6 A. No.

7 Q. And you don't know what factors the
8 Commission considers when determining whether a
9 diversity of interests exists, do you?

10 A. Well, we actually talked about that
11 during my deposition. And I gave examples of what
12 diversity would be, and the primary example I gave,
13 if you had 10 parties to a case and you only had one
14 sign and nine didn't, that would indicate to me you
15 didn't have a diversity of interest.

16 So, you know, I believe, sure, there are
17 lots of other examples, but I think that, you know,
18 the Commission would look at whether there was broad
19 support from a number of parties and various
20 interests and perspectives and would take that into
21 account in its decision whether to approve the
22 stipulation or settlement.

23 Q. But as far as Commission entries and
24 orders dealing with the issue of diversity of
25 interest, you don't know if they actually indicated

1 in one of their orders what criteria the Commission
2 uses.

3 A. I have not done any cataloging of past
4 orders to track that.

5 Q. Okay. Now, if you could turn to page 70,
6 line 20 of your supplemental testimony.

7 A. Was that line 7?

8 Q. 70. 7-0.

9 A. I am on page 70. You said page 70?

10 Q. I am having trouble hearing you.

11 A. Page 70.

12 MR. STINSON: Can we have the reference
13 again, please, page.

14 MS. KOLICH: Page 70, line 20.

15 A. On 20, okay.

16 Q. Okay.

17 A. I'm there.

18 Q. Okay. And the question asks, up on that
19 line 18, "Is the settlement supported by parties with
20 diverse interests?" Do you see that?

21 A. Yes, yes, I do.

22 Q. And you indicated "No" on line 20; is
23 that right?

24 A. That's correct.

25 Q. Now, you indicate that several

1 environmental parties and others signed the
2 settlement. And the Environmental Law and Policy
3 Center, when I asked you about that in deposition,
4 you indicated that you had never heard of the ELPC;
5 is that right?

6 A. Correct.

7 Q. And you didn't know what ELPC's mission
8 statement was.

9 A. Yeah. I hadn't heard of them until I
10 read the stipulation. And I said I would like to
11 know more about them.

12 Q. Did you read the stipulation after our
13 deposition?

14 A. Well, I think you showed it to me. I
15 think you showed me the signatory.

16 Q. Oh, the signature page. I got you.

17 A. Yeah, I got it from you.

18 Q. I gotcha. So other than hearing their
19 name on the signature --

20 A. Right.

21 Q. -- when I went over the signature page,
22 you had never heard of ELPC.

23 A. Correct.

24 Q. Okay. And you had never seen any
25 information on ELPC.

1 A. Correct.

2 Q. And if I recall, you never heard of Ohio
3 Environmental Council either.

4 A. Correct.

5 Q. And you are not familiar with what they
6 do.

7 A. No.

8 Q. And you don't know who, at the time I
9 asked you, you didn't know who the Ohio Power -- Ohio
10 Partners for Affordable Energy was, did you?

11 A. Correct.

12 Q. And you don't know who they help.

13 A. Correct.

14 Q. And I also asked you about IGS, and you
15 indicated that you didn't know anything about IGS at
16 the time either, did you?

17 A. Right. But I also indicated I did know
18 about Environmental Defense Fund, Natural Resources
19 Defense Council, EnerNOC, Kroger, the FirstEnergy
20 companies. So some of them I'm familiar with; some
21 of them I am not. It doesn't surprise me.

22 Q. Right. And another one you didn't know
23 about was Energy Management Solutions; isn't that
24 right?

25 A. That's correct.

1 Q. And on the top of page 71, line 2 --
2 well, start at the end of line 1, you indicate the
3 Industrial Energy Users - Ohio did not sign the
4 settlement. Do you see that?

5 A. Right. And then -- let's see, right. I
6 see that.

7 Q. Right. Is that still your opinion today?

8 A. Well, I remember you showed me the
9 revised signature page so -- and I am looking at the
10 signature page right now. The signature page has a
11 list of signatory parties and then it has a list of
12 non-opposing parties who signed that they weren't
13 opposing, but not signing to support, so it wasn't a
14 signatory.

15 And then the only parties -- it's my
16 understanding the only parties that haven't signed
17 one way or the other are the Office of Consumers'
18 Counsel, the PUCO staff, and the Ohio Hospital
19 Association.

20 Q. So just to make sure we're clear, you
21 agree with me that Industrial Energy Users of Ohio
22 signed the stipulation as a non-opposing party?

23 A. I believe that's the case. I believe
24 that's the case based upon the revised signatory page
25 you showed me.

1 Q. Okay. Now back to page 5, line 8 of your
2 supplemental testimony. And we are going to go back
3 up to the first prong, kind of have a prong A -- 1A
4 and 1B. We talked about 1A. But if you will see
5 there, in addition to the settlement being a product
6 of serious bargaining, the bargaining has to be among
7 capable, knowledgeable parties. Is that your
8 understanding?

9 A. Yes.

10 Q. And do you have any reason to believe
11 that the parties involved in the settlement
12 discussions were not knowledgeable and capable?

13 A. Well, I only can speak obviously to the
14 parties that I know, and I would say all of the
15 parties that I know that I've listed are very
16 knowledgeable and very capable.

17 Q. You listed the companies too, right?

18 A. I did.

19 Q. Yes?

20 A. In fact, I have a good-working
21 relationship with them as a -- as an evaluator
22 overseeing them in Pennsylvania.

23 Q. Good. Okay. Let's switch gears --
24 before we switch, I have got what I need to finish up
25 the three-prong test. So if you recall when you were

1 talking about the violation of important regulatory
2 principles, the -- you list two of them; the second
3 of which was dealing with you felt it violated the
4 cost-effectiveness principle. Is that a fair
5 characterization?

6 A. Right. From the perspective of using the
7 Market Potential Study.

8 Q. Using the Market Potential Study for what
9 purpose?

10 A. We talked about this in my deposition.
11 The companies' original filing that I examined didn't
12 have the level of detail we needed to figure out
13 which programs were cost-effective or not
14 cost-effective. So we went back to use the
15 companies' Market Potential Study which I did have
16 that detail. And my original testimony from
17 September identifies the programs that weren't
18 cost-effective. And my new -- the January testimony
19 talks about that issue as well. So the
20 identification of, you know, which programs aren't
21 cost-effective was based upon the Market Potential
22 Study.

23 Q. Okay. And we are going to get to the
24 program level analysis of whether it's cost-effective
25 a little later. But just to make sure I understand,

1 you're not claiming that the -- the companies' plans
2 at a portfolio level are not cost-effective.

3 A. Correct.

4 Q. They all have TRCs above 1?

5 A. Yeah. And I think the main issue with
6 respect to the shared savings mechanism is that, you
7 know, I find the concept that the company has
8 proposed of including all programs for the purposes
9 of counting kilowatt-hour savings, on the one hand,
10 not consistent with their application of the
11 calculation of the shared savings mechanism where
12 they exclude non-cost-effective programs.

13 And so when I talk about violating the
14 principle of cost effectiveness is that there ought
15 to be symmetry in the shared savings mechanism. If
16 you are going to count the savings from those
17 programs, then they should be included in the shared
18 savings mechanism because to do otherwise is not
19 symmetrical. So it's from that point of view that I
20 bring up the cost-effectiveness issue.

21 Q. Okay.

22 MS. KOLICH: Your Honor, I move to strike
23 everything beyond the answer to my original question
24 which was you're not claiming that the plans are not
25 cost-effective in a portfolio level -- portfolio

1 level.

2 MR. STINSON: Your Honor, I believe
3 that's a broad question.

4 EXAMINER BULGRIN: I am going to deny it.

5 Q. Okay. Shifting gears to the stakeholder
6 process. On page 64 of your original testimony, you
7 discuss stakeholders.

8 EXAMINER BULGRIN: I'm sorry. 64 of the
9 original?

10 MS. KOLICH: Original.

11 A. I'm there.

12 Q. Okay. Now, in the stakeholder process,
13 you didn't attend any of the stakeholder meetings
14 personally, did you?

15 A. That's correct.

16 Q. And do you know if the companies held any
17 technical conferences related to the plans when they
18 were originally -- prior to them being originally
19 filed?

20 A. My understanding -- and this is discussed
21 on page 64 of my testimony -- is they presented
22 presentations on their plans to stakeholders on
23 February 9 and March 22.

24 Q. Okay. And those are the only two you are
25 aware of.

1 A. Those are the only two that I am aware
2 of.

3 Q. Okay. Now, you were retained after the
4 plans were -- the original plans were filed, but did
5 you make any recommendations for modifications to the
6 revised plans before they were filed?

7 A. I did not.

8 Q. And as you just indicated, you noted
9 there were two -- at least two meetings; the February
10 meeting and the March meeting. Were there handouts
11 provided in those meetings?

12 A. Hold on just a second. I want to go back
13 to the prior question just for a second. When you
14 asked that question, did you say did we make -- did I
15 make any recommendations before the plans were filed
16 or the revised plans were filed?

17 Q. Before the revised plans were filed.

18 A. Ah, okay. And the revised plans were
19 filed in December?

20 Q. Yes.

21 MR. STINSON: If I could have a
22 clarification as to made recommendations to whom or?

23 MS. KOLICH: Made recommendations to
24 company personnel.

25 Q. Did you have any conversations with the

1 companies and make recommendations as to how you
2 might make changes to the plans outside of the --
3 outside of the testimony you already filed?

4 A. There is three questions there. I guess
5 the first one is did I make any recommendations and I
6 would say, yes.

7 Q. I tell you what, I'll strike all of that
8 and ask one question at a time.

9 EXAMINER BULGRIN: Thank you.

10 A. Thank you.

11 Q. Okay. My question is, did you make --
12 did you have any conversations with company personnel
13 and make any recommendations to company personnel?

14 A. I didn't have any conversations. The
15 only recommendations would be in my September
16 testimony.

17 MS. KOLICH: Your Honor, I move to strike
18 everything beyond I didn't make any recommendations.

19 A. You said the company personnel.

20 EXAMINER BULGRIN: I am going to overrule
21 that. But can we move on? Go ahead and finish your
22 statement.

23 THE WITNESS: I'm done.

24 EXAMINER BULGRIN: Okay.

25 Q. Now, on page 64, line 15, you indicate

1 that you reviewed two presentations that FirstEnergy
2 prepared. Do you see that?

3 A. Yes.

4 Q. One was dated February 9 and the other
5 March 22, correct?

6 A. Correct.

7 Q. Okay. Now, do you know if the members of
8 the stakeholder group received those presentations
9 prior to the meetings?

10 A. I don't know.

11 Q. And on page 65, you describe the
12 March 22 -- page 65, line 11, you describe the
13 March 22 presentation. Do you see that?

14 A. Yes. Yes.

15 Q. And you state that the program
16 descriptions remained brief and the info in the
17 presentation is substantially less detailed than the
18 info in the -- the information in the application.
19 Do you see that?

20 A. Yes.

21 Q. Now, since you didn't participate in the
22 share -- the stakeholder meetings, you wouldn't know
23 the level of detail that the companies provided
24 verbally in the stakeholder meetings, would you?

25 A. I would agree with that.

1 Q. Now, would you please turn to your
2 testimony at page 64, line 20.

3 A. And I assume we are in my September?

4 Q. We are still in the same testimony that
5 we were just referring to.

6 A. Okay.

7 Q. Now, I am going to start with the word
8 "basic." Make sure I have this right. So starting
9 with the word "basic" on line 11 of page 65 -- wait,
10 wait, wait. I'm a little fuzzy today. I'm sorry.
11 Page 64, line 20.

12 A. Okay.

13 Q. I want to make sure I have got your
14 testimony right here. "...basic information on
15 potential aspects of the 2017 to 2019 Portfolio,
16 including (a) identifying the 800,000 megawatt-hour
17 target, (b) deadlines, (c) a list of best practices,
18 (d) several bullet points describing what the MPS
19 would accomplish, (e) 12 pages of charts with brief
20 descriptions (some as short as one sentence) of
21 potential sub-programs, and (f) 11 pages of charts
22 listing measures, without any description, from
23 FirstEnergy's previous portfolio and some measures
24 that FirstEnergy was considering for its 2017 to 2019
25 Portfolio." Is that correct so far?

1 A. Yes.

2 Q. And then -- it goes on to say, "The
3 presentation does not include material information on
4 proposed costs, program design, or cost recovery
5 mechanisms. Furthermore, as FirstEnergy acknowledged
6 at the beginning of the presentation, the information
7 contained therein was 'preliminary,' "intended to
8 provide generally descriptive information," and
9 "subject to change." Is that an accurate read of
10 your testimony?

11 A. I think it's a verbatim read.

12 Q. Yes. And I would note for the record
13 that -- and this is a publicly-filed document that I
14 was not reading from his testimony. I was reading
15 from page 40 of the OCC objections. So if I recall,
16 I asked you at the beginning of your cross, whether
17 you drafted your testimony. Do you recall that
18 question?

19 A. I do.

20 Q. And you answered that you did. And when
21 I asked you who drafted the objections, you indicated
22 that Counsel for OCC drafted the objections. Do you
23 recall that?

24 A. Yes, I do.

25 Q. So who drafted what's found in your

1 testimony that I just read?

2 A. I drafted that description because I had
3 the presentation and I reviewed it and made a summary
4 of what was in the presentation.

5 Q. When was your testimony -- original
6 testimony filed?

7 MR. STINSON: Objection. The document
8 speaks for itself, your Honor.

9 EXAMINER BULGRIN: You can answer if you
10 know what the date is it was filed.

11 A. It looks like it was filed on
12 September 13.

13 Q. Okay. And it's your testimony that
14 your -- and it's your testimony here today that your
15 prefiled testimony filed in September was drafted by
16 you, but is verbatim with the objections filed by OCC
17 in June.

18 MR. STINSON: Objection. Asked and
19 answered.

20 EXAMINER BULGRIN: Sustained.

21 Q. Let's move on to cost cap. On -- these
22 will all be -- these references will all be to your
23 supplemental testimony.

24 A. Okay.

25 Q. On page 6, line 5. You indicate that the

1 settlement in this case should include a cost cap; is
2 that right?

3 A. Which? This is the new testimony.
4 Sorry.

5 Q. It gets confusing, I know.

6 A. Can you give me that page number again?

7 Q. Sure. It's page 6, line 5.

8 A. Okay. "Yes" is the answer to that
9 question.

10 Q. Okay. Now, if you are going to have a
11 cost cap, do you believe that the cap should be
12 developed at the same time the targets are
13 established; the energy efficiency targets that the
14 company's projecting?

15 A. I think that's one way that it could be
16 done. It doesn't have to be done that way, but it is
17 certainly one way that it could be done.

18 Q. And as far as you know, Ohio has no
19 statutory requirement for a cost cap; is that right?

20 A. That's my understanding.

21 Q. But are you aware -- do you know if the
22 statute creates the energy efficiency and peak-demand
23 reduction targets that the companies are required to
24 achieve?

25 A. The statute does state what those

1 reductions should be.

2 Q. And they are set out for a number of
3 years in advance; is that right?

4 A. That's correct.

5 Q. And on page 14 of your testimony,
6 line 19.

7 EXAMINER BULGRIN: Supplemental
8 testimony?

9 MS. KOLICH: Everything related to cost
10 cap will be supplemental.

11 Q. On line 19, you indicate that except for
12 the use of the 2015 data for all three years of the
13 plan period, you agree with staff's proposed formula
14 for determining the cost cap; is that right?

15 A. I do.

16 Q. Okay. Now, you haven't spoken to
17 Mr. Donlon about the cost cap.

18 A. I have not.

19 Q. And have you spoken to anybody else at
20 the Commission about this issue?

21 A. I have not.

22 Q. And on page 15, line 16, you indicate
23 "rate stability has been a key principle for rate
24 design over the long-term." Do you see that?

25 A. Yes, I do.

1 Q. Okay. Now, how do you define "rate
2 stability"?

3 A. Well, you know, actually the footnote I
4 provided, the "Bonbright" gives a long description of
5 rate stability, but it's basically to keep rates
6 stable over time without a lot of volatility. So I
7 would say, you know, to avoid large swings,
8 percentage increases, or decreases in rates over the
9 long term. That's how I would define it.

10 Q. Okay. Do you know if the companies are
11 currently in a rate freeze?

12 A. I do not.

13 Q. Do you know what the overall residential
14 rate is for customers in Ohio Edison's service
15 territory?

16 A. I have that information, but I couldn't
17 tell you what it is off the top of my head.

18 Q. Do you know approximately?

19 A. No.

20 Q. Okay. How about CEI?

21 A. No.

22 Q. Toledo Edison?

23 A. No.

24 Q. Do you know those rates for those
25 companies for either the industrial or commercial

1 customers?

2 A. No. I did look at those in that EIA
3 database we discussed during my deposition. I have
4 all that information. I just don't recall the
5 numbers.

6 Q. Okay. Would you happen to know what the
7 current level of rider DSC is for any of the three
8 companies?

9 A. No. I looked for it, but couldn't easily
10 find it. It's -- apparently, if you Google "Ohio
11 Edison DSC rate rider" it doesn't come up in the
12 first 100 responses. So I made an effort to find it,
13 but I haven't located it yet.

14 Q. So would that be for all three classes of
15 customers? You didn't find it for any of the
16 customer classes?

17 A. It didn't pop up.

18 Q. Okay. So I assume you wouldn't know what
19 the rider DSC was back in 2012.

20 A. No, no.

21 Q. Or in 2014?

22 A. Oh, no, no. I don't know what the DSC
23 rider is in any year.

24 Q. Okay. Do you know if only energy
25 efficiency and peak demand reduction costs flow

1 through rider DSC?

2 A. No.

3 Q. So you don't know anything about the
4 structure of rider DSC.

5 A. No.

6 Q. And in Ohio you didn't do any trend
7 analysis on the company -- the levels of rider DSC
8 over the years, have you?

9 A. No. The only information I looked at was
10 from Witness Donlon of the companies' -- of the PUC
11 staff where he talks about trends in the DSM rider
12 and that it had been -- was the largest rider of all
13 riders and he was concerned about the rate of
14 increase. Other -- that's the only information I've
15 seen.

16 Q. Okay. So you are basically relying on
17 Mr. Donlon's testimony related to impacts on rates.

18 A. Well, in terms of the rate of increase in
19 the rider, I think that was what he was concerned
20 about that it's been growing and becoming larger and
21 larger and was now the largest riders. So my
22 understanding was he was concerned about the size of
23 the rider and as well as the rate impacts. So, yeah,
24 I am relying on his -- his testimony.

25 Q. Okay. Now, are you aware that the

1 companies have estimated what they believe the
2 acquisition costs are under the revised plans?

3 A. Yes.

4 Q. And do you know what that value is?

5 A. 16 cents, I think it was about 16 cents.

6 Q. Would you happen to know what the
7 estimated acquisition costs are for AEP?

8 A. Well -- oh, estimated, no.

9 Q. Duke Ohio?

10 A. No.

11 Q. Dayton?

12 A. No.

13 Q. And did you happen to review the
14 companies' estimates -- estimated costs of the
15 various programs included in the revised plans for
16 reasonableness?

17 A. I didn't perform any detailed analysis of
18 the components of the costs in each program.

19 Q. And you have no opinion on what the cost
20 of the plan proposed by the companies should cost, do
21 you?

22 A. Well, my answer is the same as in my
23 deposition in terms of is that -- is the 16 -- is
24 your question is the 16-cent acquisition cost
25 proposed by the company -- do I have an opinion on

1 that? Is that your question?

2 Q. No.

3 A. Maybe you can ask your question again.

4 Q. Sure. Do you have any opinion on what
5 you believe the companies' revised plans should cost
6 as proposed?

7 A. I haven't done any detailed analysis, but
8 the number that they are proposing of 16 cents in my
9 opinion, without having done a detailed analysis, is
10 a reasonable number and well within the ballpark of
11 other utilities in the region.

12 Q. On page 15, line 18, you indicate that
13 you believe that staff's proposal provides for a
14 reasonable relief valve.

15 A. Yes.

16 Q. And that relief valve would trigger
17 should the companies find that they can't -- they
18 don't believe they will be able to hit their
19 statutory targets; is that right?

20 A. Right. If they believe they can't meet
21 their statutory savings requirements, the companies'
22 proposal provides a reasonable relief valve, yeah, I
23 agree with that. Is that what you asked me?

24 Q. The companies' proposal --

25 A. I'm sorry. The staff -- if the -- my --

1 my testimony says that if the company finds that they
2 would not be able to meet the statutory savings
3 requirements within the annual cost cap, that the
4 staff's proposal provides a reasonable relief valve.

5 Q. Okay. And that relief valve would be to
6 come to the Commission and ask for an amendment of
7 their statutory targets.

8 A. Correct.

9 Q. So if the companies find that they cannot
10 hit their targets with the amount of money allocated
11 to them or capped out under the staff's cap which is
12 80.1 million, correct?

13 A. Correct.

14 Q. Okay. So if the companies, let's say, in
15 2017 find that they cannot hit their statutory
16 targets, say, in October of this year, and if they
17 continue to spend to try to hit those targets, is it
18 your understanding that the companies will not
19 recover that amount that's above the \$80 million?

20 A. Well, my -- I am going to give an answer
21 identical to the deposition in that that situation
22 will not happen and this is why --

23 Q. That was a different scenario but.

24 A. Well, I don't think that that's a
25 realistic scenario and I said that during my

1 deposition and I am going to stick with that because
2 what I said in my deposition was that the companies
3 and the interested parties and the Commission follow
4 the progress of the spending and savings on a daily
5 basis. The company has data on this and in many
6 cases real time. So there's no reason that they
7 should get to October, oops, you know, we are going
8 to run out of money.

9 I think based on my experience around the
10 country that utilities, interested parties, and
11 commissions, they follow these things very closely.
12 Because of the technology we have, they won't get
13 into a situation like that because people are doing
14 their job and they are prudent and they are acting in
15 the best interest of their customers.

16 They are going to know well before
17 October whether there is a problem. I think that
18 it's an unrealistic scenario to say, well, we are in
19 October and we messed up. That's -- that is a
20 worst-case scenario. I guess the only thing worse is
21 if they came in December 30, but I truly believe that
22 is a -- one of these improbable scenarios and that
23 there are many mechanisms that exist to deal with
24 those. And there are examples from other states that
25 have these mechanisms and the parties work very

1 closely together so you don't end up in a situation
2 like that.

3 MS. KOLICH: Your Honor, I move to strike
4 that entire response as nonresponsive. First of all,
5 the scenario he described was not a scenario I
6 presented to him, specifically. He is referring to
7 one that he discussed in his deposition that was
8 different.

9 EXAMINER BULGRIN: I am going to
10 overrule.

11 MS. KOLICH: Overruled?

12 EXAMINER BULGRIN: Yes.

13 MS. KOLICH: Okay.

14 Q. Well, why don't we get back to the
15 scenario I asked, regardless whether you believe it
16 could happen or not. If the companies spend more
17 money than they are allowed under the rate cap,
18 whether they can hit their targets or not, but they
19 have to spend money more so than is allocated under
20 the rate cap. Do you understand that scenario?

21 MR. STINSON: I am going to object to
22 that scenario, your Honor. It assumes facts not in
23 evidence.

24 MR. OLIKER: It's a hypothetical.

25 EXAMINER BULGRIN: Yeah, I am going to

1 overrule the objection. Had you finished? I am not
2 sure.

3 MS. KOLICH: No. So we are going to just
4 strike that and I am going to start over.

5 EXAMINER BULGRIN: Thank you.

6 Q. Okay. Whether you believe it's a --
7 whether you believe this could happen or not, and I
8 am not even going to say they can't hit their targets
9 and they discover in October. Let's say they are
10 allocated \$80.1 million, and in October they are out
11 of money, and they are going to spend more money and
12 try to continue the programs.

13 Is it your understanding that the
14 differential between what the Commission -- what the
15 cost cap is and what the actual spend is above that,
16 that differential, is it your understanding that the
17 companies will not be able to recover that? Or --
18 will the companies, under your proposal, be able to
19 recover that differential?

20 A. No. And this is a hypothetical, right?

21 Q. Yes.

22 A. Okay. In this hypothetical, my
23 hypothetical response is that -- two sentences. If
24 the company takes no action and to request, you know,
25 relief from the Commission and that would include

1 emergency rate relief, the company takes no action
2 and it decides that, and it goes forth with the
3 programs and doesn't ask for relief from the
4 Commission, then, yes, it wouldn't -- it would not
5 get -- be able to recover.

6 Second sentence is that of course any
7 prudent company or utility would ask for either
8 emergency rate relief or a relief under this
9 provision of the shareholder incentive.

10 Q. On page 16, line 16, you state staff's --
11 are you there?

12 A. Yes.

13 Q. Sorry. You state that staff's 3 percent
14 cost cap would likely give FE ample opportunity to
15 achieve its statutory minimum savings. Do you see
16 that?

17 A. Yes.

18 Q. But you don't know for a fact that the
19 companies will be able to hit that target with the
20 staff's proposed cost cap, do you?

21 A. I don't know with 100 percent certainty,
22 but I have done more research on that issue since we
23 last talked.

24 Q. And I have no questions about your
25 additional research before you.

1 A. Okay.

2 MR. STINSON: Well, your Honor, I think
3 he can finish the question -- finish his answer.

4 MS. KOLICH: You can ask him on redirect,
5 but I have no questions about additional research
6 done.

7 EXAMINER BULGRIN: That's fair.

8 MR. STINSON: I don't think he should be
9 cut off, your Honor. He can finish. She can make
10 your --

11 MS. KOLICH: If I don't, I am going to
12 have a record that's going to be padded quite a bit.

13 EXAMINER BULGRIN: You can ask on
14 redirect if you feel it's necessary.

15 Q. (By Ms. Kolich) Let's go to your
16 testimony where you discuss your state comparisons.
17 I believe it starts on page 18 of your supplemental
18 testimony. And, actually, we'll take them a little
19 out of order, so we will start with Texas on page 19,
20 line 5.

21 A. Hold on. Okay.

22 Q. All right. So on line 5 you indicate
23 that during the calendar year 2015, the 10
24 investor-owned utilities in Texas saved a total
25 564,689,053 kilowatt-hours on an annual basis. Do

1 you see that?

2 A. Yes, I do.

3 Q. And in support of that, you cite to
4 footnote 18 which is a report prepared by Tetrattech;
5 is that correct?

6 A. That's correct.

7 Q. Okay. Now, were you involved in the
8 development of that report with Tetrattech?

9 A. No.

10 Q. Do you know the source of the data that
11 Tetrattech used when accumulating and reporting these
12 numbers?

13 A. All I know is that Tetrattech is the
14 statewide evaluator, so I don't know the precise
15 source, but it would be from their evaluations. They
16 do the evaluations for the utilities, those 10
17 utilities in Texas. So I assume it's from their
18 evaluation work that they did for that particular
19 year, 2015.

20 Q. But that's an assumption on your part.

21 A. That's right.

22 Q. So basically you are just relying on the
23 information you read in the Tetrattech report.

24 A. That's correct.

25 MS. KOLICH: Your Honor, I would move to

1 strike lines 4 through 10 of his testimony on the
2 grounds that it's hearsay. I have no opportunity to
3 cross-examine the witnesses who prepared that report.
4 I have no idea what assumptions they made. I have no
5 idea whether the -- the comparison between what they
6 did from a TRM standpoint or other standpoint is
7 comparable to what we do in Ohio and I have no way of
8 asking questions about it.

9 MR. STINSON: Your Honor, that's a
10 publicly-available report before the Texas
11 Commission. It's entitled to weight in his
12 testimony.

13 MS. KOLICH: I couldn't find it. Did you
14 say it was a public report?

15 EXAMINER BULGRIN: This is a
16 publicly-filed report?

17 THE WITNESS: Yes. It's available on the
18 internet.

19 EXAMINER BULGRIN: Okay.

20 THE WITNESS: That's where I got it.

21 EXAMINER BULGRIN: Off a Texas website?

22 THE WITNESS: Boy, I would have to go see
23 whose it was, but it's -- I found it on the internet.
24 I don't remember the website link off the top my
25 head.

1 MS. KOLICH: Well, your Honor, where is
2 the cite to the -- where is the citation to the
3 internet? Because I looked all over for this report
4 and I could not find it.

5 THE WITNESS: I would be glad to take
6 that as a Data Request and provide that.

7 EXAMINER BULGRIN: Yeah, I was going to
8 have you, say, have Counsel file whatever is the
9 appropriate link is for that report. So I am going
10 to overrule your motion.

11 MS. KOLICH: Okay.

12 Q. (By Ms. Kolich) Mr. Spellman, are you
13 familiar with Frontier Associates, LLC?

14 A. I am -- I am familiar with that firm.

15 Q. You are?

16 MS. KOLICH: I have a document, your
17 Honor, it's a 14 -- 14-page document entitled "Energy
18 Efficiency Accomplishments of Texas Investor-Owned
19 Utilities Calendar Year 2015" that I would like --
20 that I would like marked as Company Exhibit 7. May
21 we approach the witness?

22 EXAMINER BULGRIN: Yes. Okay. This will
23 be marked Company Exhibit 7.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 A. I'm there. Sorry, I didn't realize you

1 were waiting on me.

2 Q. I wanted to make sure you had time to
3 look at the report and be -- have you seen this
4 report?

5 A. I have not.

6 Q. Mr. Spellman, would you look at page 5 --

7 MR. STINSON: Your Honor, I object to
8 further questions on this. There was not a proper
9 foundation laid for examination and the witness has
10 stated he hasn't seen the report.

11 MS. KOLICH: Your Honor, I am using it
12 strictly for impeachment purposes and it's just a
13 demonstration that there's another report out there
14 that is not consistent with the report that I have
15 yet to see from Tetratech.

16 MR. STINSON: Your Honor --

17 EXAMINER BULGRIN: Could we at least know
18 where this report came from?

19 MS. KOLICH: From Frontier Associates,
20 LLC. I would have to -- could we take a 5-minute
21 break and I'll check with the people who found it for
22 me?

23 MR. STINSON: Your Honor, it's still
24 irrelevant because the witness has testified he does
25 not have knowledge of it. There is no foundation for

1 this document.

2 EXAMINER BULGRIN: I think if we allow
3 one report, we need to allow the parts on both sides.

4 MR. STINSON: The difference,
5 Mr. Spellman is familiar with the report in his
6 testimony. If FirstEnergy wanted to admit a document
7 into this record, they can do this through their own
8 witness rather than through my witness who has no
9 knowledge of the report.

10 MS. KOLICH: I haven't moved for its
11 admission, and it is used strictly to impeach an
12 expert witness with another -- with a report that
13 other experts may rely on.

14 MR. STINSON: It's the same issue with
15 respect to me addressing questions with Mr. Spellman
16 on cross-examination; once it's in the record, it's
17 in the record. I object to further questions on the
18 report for lack of foundation.

19 EXAMINER BULGRIN: I will tell you what,
20 let's take about 5 minutes here. How much more time?

21 MS. KOLICH: I have got quite a bit.

22 EXAMINER BULGRIN: Okay. So we will
23 probably end up breaking for lunch at some point
24 then?

25 MS. KOLICH: Yeah.

1 EXAMINER BULGRIN: All right. 5 minutes.

2 (Recess taken.)

3 EXAMINER BULGRIN: Okay. Let's go back
4 on the record.

5 And I believe there is a pending motion
6 regarding Company Exhibit 7. Ms. Kolich, do you want
7 to explain where this came from? You're seeking only
8 to use this --

9 MS. KOLICH: For impeachment purposes.

10 EXAMINER BULGRIN: For impeachment
11 purposes only. So I am going to allow you to do that
12 if you can kind of give us -- let us know where this
13 came from.

14 MS. KOLICH: Sure. During the break I
15 was informed that this Company Exhibit 7 is publicly
16 available on the internet at www.Texasefficiency.com.

17 MR. STINSON: And if I could be heard
18 just a last time, your Honor.

19 EXAMINER BULGRIN: Sure.

20 MR. STINSON: This is a proper document
21 to consider in rebuttal, not now, so I continue my
22 objection.

23 EXAMINER BULGRIN: Duly noted.

24 MS. KOLICH: I didn't hear that.

25 EXAMINER BULGRIN: I noted his objection

1 and I am overruling it.

2 MR. STINSON: My objection, Kathy, this
3 is a proper document for rebuttal and I want to
4 continue my objection.

5 MS. KOLICH: I have a response, but since
6 you overruled him, I will stop.

7 EXAMINER BULGRIN: Let's move forward.

8 MS. KOLICH: Okay.

9 Q. (By Ms. Kolich) Mr. Spellman, do you have
10 what's been marked as Company Exhibit 7?

11 A. Well, mine isn't marked, but yes, I
12 believe I have.

13 Q. It's the "Energy Efficiency
14 Accomplishments of Texas Investor-Owned Utilities."

15 A. Yes.

16 Q. Okay. If I could have you turn to page 5
17 of that report.

18 A. I'm on page 5.

19 Q. Okay. And on the far left column there
20 is a list of 10 utilities. Are those the same 10
21 utilities that you referred to in your testimony?

22 A. Subject to check.

23 Q. Okay. And looking at that table on
24 page 5, the second column says "Funds Expended."
25 That would be the costs incurred by the applicable

1 utility; would that be right?

2 A. Could you clarify that and tell me funds
3 expended for what?

4 Q. This would be, as Table 3 says, "Program
5 Expenditures and Reported/Verified Savings for 2015"
6 with a footnote that says it's provided in each
7 utility's energy efficiency plan and report for
8 calendar year 2015. So all savings are reported at
9 the meter. So I'm asking you if you would agree with
10 me the second column, "Funds Expended," would be the
11 costs incurred by the indicated utility for energy
12 efficiency programs.

13 A. I would not agree with that.

14 Q. What do you think it is?

15 A. If you read carefully on page 5, it
16 describes that these are for standard offer programs.
17 And the type -- it says that the utilities offer
18 different types of standard offer programs. And it
19 talks about how the following sections describe the
20 different types.

21 And if you turn to page 6, it gives the
22 breakdown of the different types, and you will notice
23 in the top, Figure 4, it says demand reduction
24 programs. This would be for kW savings. 68 percent
25 of it comes from load management, not energy

1 efficiency.

2 So the part of the chart that's for
3 residential standard offer programs, commercial, I
4 don't know what "HTR SOP" is, but low-income
5 weatherization, those would be energy efficiency.
6 Solar photovoltaics, I am not sure if that's energy
7 efficiency or generation. But I guess the problem I
8 see is that I think the expenditures are -- some of
9 them are for energy efficiency, but it's obvious that
10 some of them are for load management programs.

11 Q. So in your testimony where you refer to
12 your values of .114 on line 9.

13 A. That's only for the energy efficiency
14 piece. So what I did was I segregated out the things
15 that were load management. I excluded load
16 management in the kW reductions from load management
17 from my calculation. I only included the energy
18 efficiency. So what you have here is an
19 apples-and-oranges comparison.

20 Your report includes energy efficiency
21 and demand -- and load management, and the report
22 that I used only looked at energy efficiency. So you
23 really can't compare the two.

24 Q. When comparing, apples to apples, between
25 the costs incurred in Texas and the costs that would

1 be incurred in Ohio, in Ohio we have peak-demand
2 reduction requirements; is that right?

3 A. Well, I would have to go back to the
4 statute. My understanding of the statute is there --
5 you have that 1 percent reduction, and I have been
6 thinking that we have been talking about energy
7 efficiency. But I guess I would have to look at the
8 statute to make sure.

9 Q. Well, if you are going to compare
10 acquisition costs by state, you should include the
11 same components, shouldn't you?

12 A. Yes.

13 Q. Okay. So if Ohio -- if Ohio has a
14 peak-demand reduction requirement and -- well, the
15 total -- the plan that's before the Commission and
16 the budgets include peak-demand reduction; is that
17 right?

18 A. Yes, because the title of the application
19 is "Energy Efficiency and Peak Demand Reduction
20 Programs."

21 Q. Right. So if you are going to compare
22 the acquisition costs by state or compared to the 16
23 cents that Mr. Miller has estimated, you would
24 include the peak-demand reduction costs.

25 A. Well, I guess what you asked me was

1 should the comparison be done consistently and my
2 answer was yes. So that if you're only looking at
3 the acquisition costs for energy efficiency, it
4 should be done the same -- your calculation should be
5 done the same way. And typically in doing
6 comparisons across states or utilities, those -- the
7 energy efficiency is compared on a cost per
8 first-year kilowatt-hour savings and the demand
9 response is compared on a dollars per kilowatt basis.

10 Q. I understand that, but when you are
11 looking at -- strike that.

12 MS. KOLICH: Your Honor, given that we've
13 not seen the Tetrattech report and it is a
14 publicly-available document, I would ask that the
15 Commission take administrative notice of it.

16 EXAMINER BULGRIN: Sure.

17 Q. Okay. In your testimony, line 4, let me
18 find the page number for you. Texas, so it would be
19 on page 19.

20 A. Okay.

21 Q. Okay. We're there. In your analysis you
22 don't know how the Texas PUC determines the cost of
23 the O&M, do you?

24 A. Give me a second here. No.

25 Q. And you also don't know if there is a --

1 if the ceiling includes any values for peak-demand
2 reduction, do you?

3 A. No.

4 Q. And you don't know if it includes any
5 provisions for shared shavings incentive payments?

6 A. No.

7 Q. And on -- of your 564 million
8 kilowatt-hour number on line 7, you don't know what
9 percentage of annual sales that equates to, do you?

10 A. No.

11 Q. And the data you are providing is for
12 calendar year 2015; is that correct?

13 A. That's correct.

14 Q. And you have no projected costs for the
15 savings for the period 2016 through 2019, do you?

16 A. Correct.

17 Q. And you did no such analysis, did you?

18 A. Correct.

19 Q. Okay. Let's go to Wisconsin on page 20.

20 Do you know if the State of Wisconsin has deregulated
21 its generation service?

22 A. I believe that it has.

23 Q. And do you have -- do you have any
24 knowledge as to what the average rate the residential
25 customer pays in Wisconsin?

1 A. No.

2 Q. Do you know the wholesale auction
3 clearing prices for generation that would be
4 delivered into Wisconsin?

5 A. No.

6 Q. On page 20, line 15 you make reference to
7 "Focus on Energy." Do you see that?

8 A. Yes.

9 Q. This -- that's a statewide public
10 benefits program that is run by a quasi-governmental
11 agency; isn't that right?

12 A. Correct.

13 Q. And that program is not run by Wisconsin
14 utilities.

15 A. Funded by them but implemented through
16 the quasi-governmental agency.

17 Q. Right. Do you know if the only funding
18 for "Focus on Energy" is provided by the utilities?

19 A. To the best of my knowledge, that's the
20 only source of funding is the utilities.

21 Q. Do you know that for certain?

22 A. 90 percent certainty.

23 Q. Do you have a copy of your deposition
24 transcript? It would be your second one.

25 A. I do.

1 Q. Would you pull up page 284.

2 A. Okay.

3 Q. Okay. Starting on line 4, it reads:

4 "And do you know if the 'Focus on Energy' programs
5 are funded solely by the utilities or do they have
6 other sources of funding for that program?" And your
7 answer on line 8 was?

8 A. Oh. At that time I didn't know.

9 Q. Okay. And you don't know if the
10 Wisconsin utilities have a mandatory EE target, do
11 you?

12 A. I have to look that up. Find the right
13 volume. I don't know.

14 Q. When you -- when you did your analysis
15 regarding Wisconsin, I guess it's actually on page 21
16 where you talk about the numbers, was that based on
17 an assumption that Wisconsin's generation was
18 regulated or deregulated?

19 A. It wasn't based on any assumption with
20 respect to that.

21 Q. Wouldn't whether they are regulated or
22 deregulated have any impact on your analysis?

23 A. Well, let me think this through. I think
24 the point I was trying to make is here is a utility
25 that had saved .8 percent of statewide electricity

1 sales at a cost less than 1.2 percent of electric
2 utility annual operating revenues. So I don't see
3 why that assumption would matter one way or the
4 other.

5 MS. KOLICH: Okay. So could you just
6 have that question reread, please. Or the answer.

7 (Record read.)

8 Q. Okay. That "less than 1.2 percent"
9 estimate that you referred to, that would be only if
10 the utilities were the sole source of funding for
11 "Focus on Energy," wouldn't it?

12 A. Let's see, can you repeat that question?

13 Q. Sure. You stated that the utilities
14 were -- or the focus on utilities program -- "Focus
15 on Energy" program was able to achieve a certain
16 level of savings at 1.2 percent of revenues, total
17 sales; is that right?

18 A. Okay. So -- give me a second on that
19 one. I don't think so, and this is why, the law --
20 the act says that you only can spend 1.2 percent of
21 electric utility annual operating at the maximum. So
22 let's just take an example where -- where the "Focus"
23 program gets that amount of money from the utilities,
24 spends it, and savings, .8 percent, if let's say
25 there was another source of funding, another source

1 of fundings, I don't know, from the Federal
2 Government, and, I don't know, \$100 million, then
3 what the utility -- I mean the -- they still would
4 have spent 1.2 percent of electric utility annual
5 operating revenues to cover the utility's share of
6 the cost of those programs.

7 So I don't think that you are correct. I
8 think that the -- if they are allowed 1.2 percent and
9 they spend 1.2 percent, it stays 1.2 percent even if
10 there is \$100 million put in by the Federal
11 Government.

12 Q. Do you know if Wisconsin has mandatory
13 peak-demand reduction targets?

14 A. I don't know off the top of my head.

15 Q. And do you know if any of the costs
16 related to -- well, do you know if they have a shared
17 savings incentive mechanism in place in Wisconsin?

18 A. I actually have that data, so let me look
19 it up. I printed out the table this time so I could
20 read it. For the programs that are proposed and run
21 by the utilities, which there are some, they do have
22 a shared savings. Well, I will call it a performance
23 and they can earn a rate of return equivalent to new
24 capital investments or propose other shared savings
25 mechanisms such as decoupling, lost revenue,

1 recovery, et cetera. That's in the -- the AC -- one
2 of the ACEEE reports we provided in a data response.
3 So the utilities can propose such shared savings
4 mechanisms.

5 Q. And the shared savings mechanism you
6 described for Wisconsin is different from that
7 included in the revised plans; isn't that right?

8 A. Well, the ones I mentioned, but my
9 understanding they can propose any shared savings
10 mechanism, so they could propose coupling, they could
11 propose a mechanism like you have here in Ohio. They
12 could propose one like exists in other states. So it
13 doesn't limit them to any specific type of shared
14 savings.

15 Q. Right. Do you know which one is in
16 effect today?

17 A. No, I don't.

18 Q. So let's switch to Pennsylvania on
19 page 18. Now, correct me if I am wrong, but I
20 believe PA is into their Phase III of their EE
21 program; is that correct?

22 A. Yes.

23 Q. And Phase III covers June 1, '16 through
24 5-31-20; is that right?

25 A. Let me think about that. I think it's

1 through '21, it's a five-year, five-year phase.

2 Q. And Phase II just ended at the end of
3 '16; is that correct?

4 A. It ended May 31st of 2016.

5 Q. Oh, that's right.

6 A. And the final reports will be completed
7 by February 28.

8 Q. Okay. And Phase I was the period June 1
9 '09 to May 31, '12.

10 A. '13.

11 Q. '13. Oh, yeah. And except for Phase I
12 where the utilities' targets were established by
13 statute; is that right?

14 A. Yes.

15 Q. Except for Phase I, the Commission now
16 establishes the statute -- or the energy efficiency
17 targets and peak-demand reduction targets for the
18 utilities; is that right?

19 A. Correct.

20 Q. And, in fact, as the SWE, you would have
21 had a lot of involvement in the development of those
22 targets, wouldn't you?

23 A. Yes.

24 Q. And when establishing those targets, I
25 believe in your deposition you told me you did a

1 rigorous analysis to take into account the
2 characteristics of each service area; is that right?

3 A. Yes.

4 Q. And you created EE baseline studies for
5 each utility?

6 A. Yes.

7 Q. And you performed on-site visits to a
8 random sample of residential and commercial
9 customers?

10 A. Yes.

11 Q. And you performed EE potential studies
12 and demand response potential studies for each
13 utility?

14 A. Yes.

15 Q. And you collected a tremendous amount of
16 data on measures, cost savings, and useful lives; is
17 that right?

18 A. Yes.

19 Q. And you did technical analysis of what
20 utility costs had been in the past and what they
21 would be likely to be going forward; is that right?

22 A. Yes.

23 Q. And all of this took you about a year; is
24 that right?

25 A. Yes.

1 Q. Now, do you know if the Ohio staff did a
2 similar analysis in Ohio before establishing the cost
3 caps being proposed in -- in Ohio?

4 A. I think we talked about this in my
5 deposition last week. And my answer would be similar
6 to last week is that my understanding is they didn't
7 do that full-blown type of analysis, that they did a
8 less substantial data analysis of data they had for
9 the programs here in Ohio, reviewed information --
10 energy efficiency and demand response demand savings
11 information from the companies.

12 And Mr. Donlon's testimony says based
13 upon a review at sort of that level of analysis, they
14 felt comfortable with their -- that the utilities
15 here in Ohio -- or at least FirstEnergy utilities
16 could achieve the statutory savings benchmarks within
17 a 3 percent cap. So that's my understanding of what
18 the staff did.

19 Q. Now, besides -- and are -- are you
20 familiar with Mr. Donlon's most-recent testimony?

21 A. Yes.

22 Q. And besides him indicating in his
23 testimony that he looked at a prior status report, I
24 didn't see any reference to reviewing all of the data
25 you just talked about, so could you point me to where

1 Mr. Donlon says that? Because if I recall, you said
2 you relied on his testimony and had not spoken to
3 him.

4 A. I have to find the right volume.

5 EXAMINER BULGRIN: Let's go off the
6 record for a minute.

7 (Discussion off the record.)

8 EXAMINER BULGRIN: Mr. Stinson, we are
9 back on.

10 MR. STINSON: Yes, your Honor. I was
11 just going to raise the objection, the
12 cross-examination is beyond the scope of
13 Mr. Spellman's direct testimony when he is being
14 asked questions about Mr. Donlon's testimony and
15 analyses.

16 MS. KOLICH: Your Honor, I will withdraw
17 the question.

18 EXAMINER BULGRIN: Thank you.

19 MS. KOLICH: We'll move on.

20 Q. (By Ms. Kolich) Now, on line 13 -- I'm
21 sorry, give me a second here. Yes, on line 13,
22 page 18, you state that during the period 2009 to
23 2013, utilities in Pennsylvania were able to achieve
24 the kilowatt-hours savings of approximately 1 percent
25 while spending less than 2 percent of sales statutory

1 spending cap. Do you see that?

2 A. Yes.

3 MS. KOLICH: Your Honor, I would like to
4 have marked as an exhibit Company Exhibit 8.

5 EXAMINER BULGRIN: Company 8, yes.

6 MS. KOLICH: Yes. Company Exhibit 8.
7 It's the cover page of the Pennsylvania
8 Implementation Order in case docket number
9 M-2014-2424864. Public meeting held June 11, 2015.
10 It's a multi-page document that includes the cover
11 page, the table of contents of the full order, and
12 then the relevant portions of that order in its
13 entirety on the subject that I will be asking
14 questions about.

15 EXAMINER BULGRIN: Okay.

16 Q. And when you get the document,
17 Mr. Spellman, would you turn to page 57, and I am
18 going to be talking about the chart that's on the top
19 of page 57.

20 EXAMINER BULGRIN: Okay. This is marked
21 Company Exhibit 8.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MS. KOLICH: Yes.

24 MR. STINSON: Your Honor, at this point,
25 too, I would object on the basis of only having a

1 partial document here. We should have a full
2 document for him to be reviewing.

3 MS. KOLICH: Your Honor, I kept in the
4 relevant portions of the order, but we have a full
5 copy for the witness and OCC, if they desire to have
6 one, but it's a very voluminous report and to make 20
7 copies of something where I am going to cross on two
8 pages.

9 EXAMINER BULGRIN: Yeah, I agree.

10 MS. KOLICH: We tried to save money.

11 MR. STINSON: If they have the whole
12 document, I prefer the whole document be included as
13 part of the record then.

14 EXAMINER BULGRIN: Well, I will take
15 administrative notice of the entire document; how's
16 that? This is publicly filed and available.

17 MS. KOLICH: It's a Commission order.

18 EXAMINER BULGRIN: Thank you.

19 MR. KELTER: It's a final order, right?

20 MS. KOLICH: Yes. Well, Implementation
21 Order. Yes, it's the Implementation Order.

22 Q. Okay. Mr. Spellman, are you on page 57?

23 A. Yes, I am on page 57.

24 Q. Okay. Do you recognize this table
25 included in the Commission order?

1 A. Yes, because we talked about it during
2 the deposition last week.

3 Q. And as the SWE, did you have any input
4 into the data that's included on this table?

5 A. Yes.

6 Q. And just so I understand the table and we
7 are on the same page, the far left column is a list
8 of the Pennsylvania utility -- electric utilities,
9 also known as electric distribution companies, EDCs,
10 that -- that have more than 100,000 customers in the
11 state; is that correct?

12 A. Yes.

13 Q. And column 2 is the spending cap for each
14 of those EDCs; is that right?

15 A. Yes.

16 Q. And PECO's budget cap is significantly
17 higher than the others, and I recall during
18 deposition you explained that that was because PECO's
19 rates are quite a bit higher than the other
20 utilities?

21 A. Yes, that's correct.

22 Q. And column 3, "Program Acquisition Costs
23 First Year Saved," that would be the estimated
24 acquisition costs for each of the respective EDCs; is
25 that right?

1 A. Yes.

2 Q. And what is column 4?

3 A. Those 2020, my understanding -- my
4 recollection is that would be what you could save --
5 what you will have saved on a cumulative annual basis
6 by the end of year five of what they call Phase III.
7 So that would be the amount of savings on an
8 annualized basis from all the installations of energy
9 efficiency projects that have been completed through
10 May 31st of 20 -- it says 2020, but it's actually
11 May 31st of 2021, I believe. But it's a five-year
12 period.

13 Q. And the final column on the far right,
14 what does that portray?

15 A. That is column 4 -- let's see, column 4
16 divided by the forecast that existed for a 12-month
17 period. It's not quite calendar year 2010, but it's
18 what they are required to use as the baseline. It's
19 essentially a forecast for the year that was done for
20 the year 2010 back in 2009.

21 Q. Okay. So if I wanted to determine the
22 average percentage of savings achieved on an annual
23 basis, since the data is over a five-year period, I
24 would have to divide the number in the far right
25 column by 5; is that right?

1 A. Right. I want to point out this would be
2 for that forecast period. So this would be going
3 forward over that five-year period.

4 Q. Right. And if I did the math right and
5 if you agree with me, subject to check, if I divided
6 each of those percentages in the far right side by 5,
7 West Penn Power would be .52, PPL would be .76, Penn
8 Power would be .66, PECO -- I'm sorry, Penelec would
9 be .78, PECO would be 1, and Met-Ed would be .8 and
10 Duquesne would be .62?

11 A. Subject to check, yes.

12 Q. So except for PECO, all of the other EDCs
13 achieved less than 1 percent savings under the
14 Pennsylvania statutory caps; is that correct?

15 A. No, because you used past tense. You
16 said "achieved." They're forecasted to achieve less
17 than 1 percent.

18 Q. Okay. With that correction.

19 MR. STINSON: Could I have the question
20 reread, please.

21 (Record read.)

22 MR. STINSON: Asked and answered, your
23 Honor.

24 EXAMINER BULGRIN: Overruled. I think he
25 has already answered it.

1 MS. KOLICH: Do you want to break, or
2 should I go on to the next state?

3 EXAMINER BULGRIN: If this is a good
4 place to break, let's do it now. An hour? Hour and
5 a half? Let's be back at 1:00.

6 (Thereupon, at 12:01 p.m., a lunch recess
7 was taken.)

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1 Tuesday Afternoon Session,
2 January 24, 2017.

3 - - -

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

6 Ms. Kolich.

7 MS. KOLICH: Thank you, your Honor.

8 Could you read back the last question I
9 asked. I believe it was regarding Pennsylvania.

10 (Record read.)

11 - - -

12 RICHARD F. SPELLMAN
13 being previously duly sworn, as prescribed by law,
14 was examined and testified further as follows:

15 CROSS-EXAMINATION

16 By Ms. Kolich:

17 Q. Mr. Spellman, if you could go to page 21,
18 line 12, where we talk about Maine.

19 A. I'm there.

20 Q. You beat me again. In your testimony on
21 page 21 regarding Maine, you reference the Maine
22 Trust and that's a public benefits organization
23 which, like in Wisconsin, is run by a
24 quasi-governmental organization?

25 A. Yes.

1 Q. And it runs the EE programs for the State
2 of Maine; is that correct?

3 A. Yes.

4 Q. And the state utilities have no
5 energy-efficiency targets, do they?

6 A. Correct.

7 Q. Is the Trust funded by the state
8 utilities?

9 A. Yes.

10 Q. Does the Trust receive funding from any
11 other sources?

12 A. Yes. As I mentioned in my deposition, I
13 know that they also get funding at least from the
14 Regional Greenhouse Gas Initiative also known as
15 RGGI. There may be other sources as well.

16 Q. Okay.

17 MS. KOLICH: Your Honor, I have a
18 document, it's a multi-page document; actually, it is
19 84 pages long. It's captioned "Efficiency Maine
20 Fiscal Year 2015 Annual Report" that I would like
21 marked as Company Exhibit?

22 EXAMINER BULGRIN: 9.

23 MS. KOLICH: 9. May we approach?

24 EXAMINER BULGRIN: Yes.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 A. I've got it.

2 Q. Okay. Mr. Spellman, do you recognize
3 this document?

4 A. Yes. In fact, it's -- it looks like --
5 it's the fiscal year 2015 annual report from the
6 efficiency Maine Trust. The same as my -- as noted
7 in my footnote 27 on page 22 of my testimony.

8 Q. Okay. And I would ask that you turn to
9 page 9 of that report. And specifically Table 2,
10 "program Funding Sources."

11 A. I'm -- Table 2, correct?

12 Q. And if you see at the top there's a
13 column named -- labeled "Program" and then several
14 other columns across to the right. "Electric System
15 Benefits Charge," do you see that one?

16 A. Yes, I do.

17 Q. And that's the source at that
18 utilities -- the funding from the utilities?

19 A. I think column 1 is the funding from the
20 utilities. Well, okay. Column 1 -- well, there is
21 several columns, right? So column 1 has the funding
22 provided by the Electric System Benefits Charge, and
23 then there are 1, 2, 3, 4, 5, 7, 8 other columns with
24 other funding sources, including the Regional Green
25 House Gas Initiative.

1 Q. So you would agree with me that all of
2 those categories at the top of -- at the top of
3 Table 2 are funding sources for the -- for the Maine
4 Trust?

5 A. Yes, but not -- not all of them are
6 funding sources for the electric energy efficiency
7 programs.

8 Q. Do you know which ones are not?

9 A. Well, I know that, for example, column 3
10 is Natural Gas Conservation Fund and those are only
11 used for natural gas programs. So the -- under the
12 first column, the Electric System Benefit Charge
13 funds the funding that comes from electric utilities.
14 My understanding those only go for programs that save
15 electricity and then there is a separate fund
16 provided by the natural gas companies for programs
17 that are directed at natural gas agencies.

18 Q. Okay. Let's look at Table 3 on page 11
19 of that report.

20 A. Okay.

21 Q. In column 1 there is a list of programs.
22 Do you see that?

23 A. Yes, I do.

24 Q. And are those programs that are offered
25 by the Maine Trust?

1 A. Well, let me see what it -- I didn't
2 write this, so let me see what it says. I guess
3 there's no statement that introduces the table.

4 Okay. Here it is. Table 3, underneath
5 Table 3 there is a paragraph that describes what the
6 table presents. So it says Tables 3 and 4 apply -- I
7 guess, you know, illustrate the total energy savings
8 and lifetime avoided costs associated with each of
9 the programs administered by the Trust in fiscal year
10 2015. So those -- those are the costs for each of
11 the programs. It's not clear to me, I guess, if
12 those are just for the -- I guess those are for the
13 electric programs, okay. So those costs are for the
14 electric programs.

15 Q. Okay. And looking at your line 2 on
16 page 22, you reference "electric energy efficiency
17 programs save 224,341,112 kilowatt-hours...." Do you
18 see that?

19 A. Right. And that -- let's see, is my
20 testimony.

21 Q. Yes.

22 A. And I reference Table 3.

23 Q. First column at the bottom.

24 A. So my testimony number and the number on
25 Table 3 are the same.

1 Q. So the programs that you are referring to
2 as far as generating the savings are the same as
3 those set forth in this report we are looking at?

4 A. Yes.

5 Q. Okay. And in the next column, that would
6 represent the one we were just talking about, that's
7 the annual kilowatt-hours savings for each of those
8 programs individually; is that right?

9 A. In column 2.

10 Q. On the individual.

11 A. Correct. I assume those are incremental
12 annual kilowatt-hours savings for fiscal year 2015.

13 Q. Okay. And if you look down at the
14 bottom, we just discussed that that would be the
15 total kilowatt-hours savings and that matches what
16 you've referred to in your testimony.

17 A. Yes.

18 Q. Okay. Now, if you look at column 4 which
19 is "Efficiency Maine Costs," do you see that?

20 A. Yes.

21 Q. And those are the costs related to the
22 programs listed there; is that right?

23 A. Well, let's see what it says. So those
24 are the Trust's costs. There is a lot of definitions
25 here. So as far as I know based upon this report, it

1 says those are the Trust's costs, not necessarily the
2 utility's costs. So those -- it says those are the
3 costs to the Efficiency Maine Trust. Okay?

4 Q. Right. But they are listed related to
5 the programs, are they not?

6 A. Yeah, I think -- yes, the difference is
7 that the numbers in that column apparently include
8 all sources of funding, not just what the utilities
9 contributed. As far as I know, the utilities only
10 contributed \$15.2 million.

11 Q. And where do you -- where did you get
12 that number?

13 A. It's on Table 26 in the same report. So
14 Table 26. Is just further on in the report.

15 MS. FLEISHER: Page 60.

16 THE WITNESS: Okay. Thank you.

17 A. First line in Table 26, "Systems Benefits
18 Charge" and it says 15,189,657, and I rounded it in
19 my testimony to 15.2 million.

20 Q. Right. And that's the amount paid
21 through the System Benefits Charges; is that right?

22 A. By electric utilities.

23 Q. Right. That does not necessarily
24 correlate to the total costs of the programs though,
25 does it?

1 A. Sure. I agree with that.

2 Q. So assuming -- strike that.

3 Okay. So if you will now -- if you would
4 now go to page 19 of your testimony.

5 A. Okay.

6 Q. We are going to discuss Illinois. Now,
7 are you there?

8 A. I'm almost there.

9 Q. Okay. I beat you this time.

10 A. I'm there.

11 Q. You don't know if the Illinois statute
12 establishes the targets for the state's utilities, do
13 you?

14 A. Well, give me a second here. No, and the
15 reason I don't know that is because a new law was
16 just passed within the past 60 days and I have not
17 had an opportunity to read that whole statute.

18 Q. How about the old law?

19 A. I wouldn't know that either.

20 Q. Okay. And you don't know if the cost
21 caps include a provision for shared savings, do you?

22 A. Give me a second. No, I don't.

23 Q. And that -- would your answer be the same
24 with regard to whether it includes PDR cost,
25 peak-demand reduction cost?

1 A. That would be correct.

2 Q. On the top of 20 you talk about
3 2.015 percent of retail electric rate. Let me see if
4 I can find you a page reference.

5 A. Page 20?

6 Q. Oh, line 2, sorry. Do you see that?

7 A. Yes, yeah.

8 Q. Now, do you know if we are talking about
9 2.015 percent of a retail base rate or a -- rates
10 including riders?

11 A. I don't know. Whatever it says in the
12 statute.

13 Q. Okay. And on line 8, page 20, you
14 indicate that Ameren expended 16.6 cents to achieve
15 1.1 percent of total annual kilowatt-hour sales. Do
16 you see that?

17 A. Yes, I do.

18 Q. But as I understand, you do not calculate
19 what the acquisition costs would be for 1 percent,
20 did you?

21 A. That's correct.

22 Q. On line 6 you indicate that Ameren saved
23 385,286 megawatt-hours?

24 A. Yes, I do.

25 Q. Do you see that?

1 A. Yes.

2 Q. And that's during the period June 1,
3 2014, through May 31, 2015; is that right?

4 A. Correct.

5 Q. Okay. And on line 8 you state that
6 that -- this represents 1.1 percent of 2015 actual
7 kilowatt-hours sales; is that right?

8 A. Yes.

9 Q. Now, and then you have a footnote 22; is
10 that right?

11 A. That's right.

12 Q. And that's based on Ameren Illinois 2015
13 calendar year sales?

14 A. That's correct.

15 Q. Okay. So you're comparing -- you're
16 comparing the amount of megawatt-hours saved during a
17 fiscal year ending in May of '15, May 31, '15, to
18 sales revenues for a period that ends calendar year
19 2015; is that right?

20 A. Well, not sales revenues, but
21 kilowatt-hours, kilowatt-hours sales. Yeah, so one
22 set of data is for the 12 months ending May 31, 2015.
23 And then your retail sales that are mentioned in the
24 footnote for the 12 months ending December, 2015.

25 Q. Okay. If you would go to RFS-4,

1 specifically page 2 of 3.

2 A. I'm there.

3 Q. Now, down at the bottom you reference
4 Michigan in your narrative. Do you see that?

5 A. Oh, give me a second here. You asked me
6 about Illinois, but then does it reference Michigan
7 or do you want me to go to Michigan?

8 Q. No, no, I'm sorry. I want you to go to
9 RFS-4.

10 A. I'm there.

11 Q. And on page 2 down at the bottom you have
12 got a state listed as Michigan.

13 A. Okay.

14 Q. Okay.

15 A. Yeah.

16 Q. The state up north.

17 A. I'm sorry. I thought you were still in
18 Illinois.

19 MR. KELTER: It's not a real state.

20 A. Actually, we are in Ohio. Go ahead. I'm
21 with you now.

22 Q. And as you state in your first sentence,
23 "This section describes cost caps in effect...before
24 new legislation was enacted during late 2016," is
25 that right?

1 A. Yes.

2 Q. So after 2016, your description set forth
3 for Michigan, as you describe the law, is no longer
4 applicable; is that right?

5 A. Right, because it changed, and I just
6 didn't have time to put in the new -- whatever the
7 new provision is. So I wanted to make sure this
8 exhibit was updated to reflect there was a new law in
9 place and that the description I was providing was in
10 effect prior to late 2016.

11 Q. Okay. And on the top of page 23 of your
12 testimony, you talk -- well, actually on page 23 you
13 talk about the States of Florida and New York; is
14 that right?

15 A. That's correct.

16 Q. And both of those states are listed as
17 states that have implemented cost caps through
18 regulatory commission, regulations, or rules; is that
19 right?

20 A. Yes.

21 Q. Okay. Now, in Florida on page 23, you
22 indicate -- in Florida the Commission establishes
23 both the goals and budgets; is that correct?

24 A. That's my -- I mean, yeah, and that's
25 from the Florida Energy Efficiency Conservation Act.

1 Q. Okay. But in Ohio, statutes establish
2 the EE targets, right?

3 A. That's correct.

4 Q. So the scenario in Florida is different
5 from that in Ohio.

6 A. That's right. In fact, my testimony, I
7 tried to make that clear that the first five examples
8 I provide are for states with cost caps. Let's see
9 what do they call that, that were enacted through
10 legislation. And then my Question 18 says can you
11 provide examples of states that have done it through
12 regulatory commission regulations.

13 Q. Okay.

14 A. So it was intended just to show that this
15 has been done a number of times in different ways in
16 different states.

17 Q. Okay. And you don't know if Florida
18 utilities are currently under a cost cap, do you?

19 A. I don't.

20 Q. And you have no knowledge as to how
21 Florida determined -- Florida determines either the
22 cost cap or the targets, do you?

23 A. Well, other than what's written in the
24 Florida energy conserve -- Energy Efficiency
25 Conservation Act that's still in effect, I haven't

1 been involved recently in those proceedings. I think
2 I mentioned in my deposition it was five years ago,
3 so I'm not aware of what may have been decided in the
4 latest round of proceedings.

5 MS. KOLICH: Could I have my question
6 reread, please.

7 (Record read.)

8 Q. And your answer there was you have no
9 knowledge of that?

10 A. No. Let me say it again. I have
11 knowledge of how it's been done in the past up
12 through the most-recent proceedings that I wasn't
13 involved in. So from, like I would have to look at
14 the dates, but two-thousand -- you know, the prior
15 five-year period I was directly involved with
16 consulting to the Commission, so I had direct
17 knowledge of exactly how it was done. But then they
18 had new hearings within the last I would estimate 18
19 months and I was not involved in that. So I have
20 knowledge of how it has been done in the past.

21 Q. But you don't know how it's done today.

22 A. That's correct.

23 Q. And you don't know what the average
24 acquisition cost is for the Florida utilities, do
25 you?

1 A. Well, other than the -- than through the
2 information -- I'm familiar with what they have filed
3 with the Energy Information Administration for
4 calendar year 2015. I prepared an exhibit and that's
5 been provided. Other -- other than the data they
6 report to EIA for calendar year 2015, I don't. So I
7 am not aware of what they are forecasting, for
8 example.

9 Q. Are you aware of what they are today?

10 A. No. I am only aware of what they were in
11 calendar year 2015.

12 Q. At the bottom of 23 you talk about the
13 State of New York. And on line 10 you indicate that
14 the New York Public Service Commission issued an
15 order establishing explicit energy efficiency budgets
16 and targets for 2016. Do you see that?

17 A. Yes.

18 Q. But you don't know what those targets
19 are, do you?

20 A. Correct.

21 Q. And you don't know the level of the caps,
22 do you?

23 A. Correct.

24 Q. So you have no idea what the acquisition
25 costs are, correct?

1 A. I only have knowledge of the acquisition
2 costs for calendar year 2015.

3 Q. And nothing forecasted for the period
4 that the plans here will be in effect?

5 A. Correct.

6 Q. Do you know if New York has a peak-demand
7 reduction target?

8 A. I don't know.

9 Q. Do you know if New York allows for shared
10 savings incentive payments?

11 A. I actually do, so let me pull that out.
12 Yeah, that's in my Exhibit RFS-2, page 1, the third
13 state down is New York and it explains at least there
14 have been in effect shared savings incentives and it
15 explains what the incentive pool is. So I'm aware
16 that at least 2012 to 2015 they were going forward.
17 The Commission did not vote to require those, so
18 there's no requirement for shared savings incentives
19 going forward.

20 Q. After 2015?

21 A. Well, yes, after 2015.

22 Q. On page --

23 A. Yeah.

24 Q. I'm sorry. I didn't mean to cut you off.

25 A. No. I'm done.

1 Q. On page 68 of your testimony -- wait a
2 minute.

3 MR. STINSON: I'm sorry, can I have that
4 page, please?

5 MS. KOLICH: Yeah. I want to make sure
6 I'm in the right testimony. Hang on.

7 Q. Yes. On page 68, line 11 of your
8 supplemental testimony.

9 A. I'm there.

10 Q. You indicate that there are two
11 low-income programs included in the companies'
12 revised plans; the "Community Connections" and the
13 "Low-income New Homes." Do you see that?

14 A. Yes.

15 Q. And Community Connections on line 13, you
16 note this program is administered by Ohio Partners
17 for Affordable Energy. Do you see that?

18 A. Correct.

19 Q. Are you aware of how OP&E, Ohio Partners
20 for Affordable Energy, was awarded the contract in
21 the Community Connections program?

22 A. No.

23 Q. And just to make sure we're on the same
24 page, you are not proposing that the low-income
25 programs included in the revised plans be rejected by

1 the Commission, are you?

2 A. No.

3 Q. On page 70 -- page 70, line 9.

4 A. Okay.

5 Q. You indicate that low-income programs
6 should be reevaluated and approved so as to reach
7 more low-income customers. Do you see that?

8 A. Yes.

9 Q. In your opinion, what areas of the
10 programs need to be improved?

11 A. Well, my recollection is fundamentally in
12 their reach so that they would be redesigned so they
13 would -- you would get more participation.

14 Q. Right. So which aspects of the programs?

15 A. I didn't come up with that. I think I
16 was proposing that as an effort that should be
17 undertaken by the company. So I didn't make -- you
18 know, in fact, my testimony goes on in lines 10
19 through 13 to recommend that the company would work
20 with the collaborative group to develop the programs
21 so that would reach substantially more low-income
22 customers.

23 So I didn't, in my testimony, say here is
24 the answer and this is what they should do. I said
25 they ought to get together with a collaborative and

1 come up with those solutions.

2 Q. Okay. On page 65 of your supplemental
3 testimony, line 18, you indicate that you believe
4 that the following residential programs are not
5 cost-effective under the TRC test and you list them
6 as the "Direct Load Control, Behavioral, Audits and
7 Education, School Education, HVAC, and Smart
8 Thermostat." Let's exclude low income for now. Do
9 you see that?

10 A. Yes, I do.

11 Q. Now, as I understand it, you define
12 programs differently from how the companies do; is
13 that correct?

14 A. Yes. And we covered that in the first
15 deposition.

16 Q. Right. And just to make the distinction,
17 the companies sometimes call programs "subprograms"
18 that you refer to as "programs."

19 A. Correct.

20 Q. Is that right?

21 A. Yes.

22 Q. Okay. For purposes of this discussion I
23 am not going to make the distinction. I am going to
24 just use the word -- the term generically as
25 "programs."

1 A. Okay.

2 Q. Unless I otherwise specifically say so.

3 A. Okay.

4 Q. Now, can we agree that the Commission
5 rules could not require individual measures to be
6 cost-effective?

7 A. Well, let me -- we went through this in
8 my deposition too. You said the Commission rules?

9 Q. Commission rules.

10 A. Okay. Okay. Total resource costs, I am
11 just reading from the rules. Page 3, "'Total
12 resource cost test' means an analysis to determine
13 if, for an investment in energy efficiency or
14 peak-demand reduction measure or program...the
15 present value of the avoid...." It gives the
16 definition of the TRC.

17 Now, we have to see if you have to have
18 the TRC -- does every measure or program of TRC. So
19 you probably can refer me to that faster than I can
20 get there, but, okay. Here we go. Okay. Then under
21 "Program Portfolio Plan" it says that each utility
22 has to design a comprehensive energy efficiency and
23 peak-demand reduction portfolio, including a range of
24 programs to encourage their cost effectiveness.

25 Okay. So it's under Section (B).

1 "...each program proposed within a program portfolio
2 plan must...be cost-effective, although each measure
3 within a program need not be cost-effective.

4 However, an electric utility may include a program
5 within its program portfolio plan that is not
6 cost-effective when that program provides substantial
7 nonenergy benefits."

8 So the answer to your question is that
9 every program has to be cost-effective, although each
10 measure within the program need not be
11 cost-effective.

12 Q. Okay. Now, I'm not saying that you agree
13 with the way the companies define "programs" and I
14 know we have talked about this in your deposition as
15 well, but if you assume the companies' definition of
16 "programs," all programs, except for the low-income
17 programs, included in the portfolio plans pass the
18 TRC test; is that right?

19 A. Well, you know, I don't know off the top
20 of my head except subject to check.

21 Q. Now, you list school education as one of
22 the programs that you believe is not cost-effective.
23 But you are not recommending the companies not spend
24 any money on customer education, are you?

25 A. Well, no. Let me make clear my answer on

1 this. All I am saying is that if the company is
2 going to include something that's non-cost-effective,
3 in its calculation of whether it meets the statutory
4 benchmark, then it shouldn't exclude that from the
5 shared savings calculation. It ought -- they ought
6 to be symmetrical.

7 So I don't think -- I guess I would have
8 to look, find, review my testimony, but I think I am
9 saying if you are going to include non-cost-effective
10 programs in your calculation of the savings, then it
11 ought to be included in the shared savings mechanism.
12 And then if you are going to exclude it from the
13 calculation of the savings, then you ought to exclude
14 it from the shared savings mechanism.

15 But you shouldn't -- the company
16 shouldn't be allowed to include the
17 non-cost-effective programs for the purposes of the
18 shared -- of the savings calculation and then
19 cherrypick and exclude it in shared savings.

20 Q. Understood. I wasn't talking in terms of
21 shared savings. I was just talking in terms of
22 portfolio.

23 A. You were asking me if I was recommending
24 that the schools program appears to be not
25 cost-effective, should not be run, and I want to make

1 a very clear answer that we're just saying if it is
2 going to be included and it's not cost-effective,
3 that it ought to be included in shared savings too.
4 My whole testimony deals with that issue, not -- you
5 shouldn't do the school education program. So it's a
6 very fine point and I think that -- that that's an
7 important distinction.

8 MS. KOLICH: I'm sorry? What was it?
9 Could that last part of his answer be reread, please.

10 (Record read.)

11 A. I just want to clarify that response
12 because I do say further on that actually I do say
13 that the direct load control, behavioral, audits and
14 education, HVAC, and smart thermostat programs are
15 not cost-effective and do not provide substantial
16 nonenergy benefits and should be removed from the
17 portfolio. So I guess I should correct my former
18 response because of, in the end, I did come down on
19 them, they shouldn't be required to pay for those
20 programs.

21 Q. Okay. So, but you don't include school
22 education in that list; is that right?

23 A. Well, let me look at this. Let's see,
24 give me just a second. I think that's correct if
25 audits and education is different, yes, that's right.

1 So the list that I would recommend not be continued,
2 including direct load control, behavioral, audits and
3 education, HVAC, and smart thermostats are the ones
4 that are not cost-effective and should not -- and
5 should be removed.

6 Q. Okay. In fact, with regard to education,
7 you believe that education and outreach should be an
8 integral part of an utility-administered EE program,
9 don't you?

10 A. Yes. And, in fact, I said that in my
11 deposition, and the point I made there that they
12 ought to be an integral part of every plan and that
13 they can be included -- let's say you are doing a
14 commercial and industrial prescriptive --
15 commercial/industrial prescriptive and custom program
16 and education and outreach would make perfect sense
17 to have that as a component of such a program.

18 Q. And would you agree with me that HVAC
19 energy efficiency programs have been around for
20 decades?

21 A. I would.

22 Q. And would HVAC programs -- and it is a
23 moving target these days because the baselines are
24 changing and you have no federal standards?

25 A. I guess you would have to show me the

1 evidence for that.

2 Q. Do you have your first deposition
3 transcript?

4 A. I do.

5 Q. Would you pull up page 106, line 13.

6 A. Okay. Let's see, 106.

7 Q. Are you there?

8 A. Yes, I am.

9 Q. Okay. And as part of your response you
10 say, "And I realize it's a moving target because the
11 baselines are changing, and you have new federal
12 standards." And in response you are referring to the
13 HVAC program as indicated on line 10; is that right?

14 A. Yeah. I just want to see what I was
15 saying -- what the context was.

16 Q. Sure.

17 A. Well, I think the context was -- let's
18 see. There was a question and I gave an answer. The
19 question was have I seen, you know, direct load
20 control programs, behavioral programs, education,
21 school education, HVAC, smart thermostats, have I
22 seen those types of offerings in other portfolio
23 plans. And my answer was yes.

24 Q. Right.

25 A. And then I guess your question was, well,

1 which programs had I seen, and I gave the answer of
2 I've seen HVAC programs, I've seen audit programs.
3 So yes, I agree, I said -- let's see, HVAC programs
4 have been around for decades and can be run cost
5 effectively. And it's a bit of a moving target
6 because the baselines are changing and you have no
7 federal standards. So I agree that -- I still agree
8 with that.

9 Q. And in fact, on the bottom of page 105,
10 line 25, you start a sentence and say, carrying over
11 to 106, "You see audits and education usually as a
12 component integrated into program delivery"; is that
13 right?

14 A. That's right, yep.

15 Q. Now, as the SWE in Pennsylvania, you are
16 pretty familiar with the various utilities' EE
17 programs?

18 A. Yes.

19 Q. Before the Commission?

20 A. Correct.

21 Q. Do you know if the FirstEnergy
22 Pennsylvania companies included an HVAC subprogram in
23 their most-recently approved Pennsylvania plans?

24 A. No, because I wasn't involved in
25 reviewing it. The most-recently approved were for

1 Phase III, and I have had no involvement in reviewing
2 the plans that were submitted by the FirstEnergy
3 companies for Phase III.

4 Q. Did you review the FirstEnergy companies'
5 Phase II plans?

6 A. Yes.

7 Q. And do you know if they included HVAC
8 program -- subprogram in those programs?

9 A. I don't recall.

10 MS. KOLICH: Your Honor, the Phase II
11 plans are public documents on the docket of the
12 Pennsylvania Public Utilities Commission and they are
13 readily available, and I am trying to get the docket
14 number for it, but I would ask the Commission take
15 administrative notice of that plan as approved by the
16 Commission in the Pennsylvania case.

17 EXAMINER BULGRIN: Okay.

18 MS. KOLICH: I will produce for the
19 record that case number.

20 EXAMINER BULGRIN: Good.

21 Q. And as the SWE, you indicated that one of
22 your roles was to make recommendations to the
23 Commission, the Pennsylvania Commission, for
24 improvements or modifications to the PA utilities'
25 energy efficiency plans; is that right?

1 A. Yes.

2 Q. And as the SWE, did you recommend the
3 removal of the HVAC program in any of the
4 Pennsylvania utilities' plans that may have had them,
5 if you remember?

6 A. No, because those programs were
7 cost-effective.

8 Q. Okay. Now, moving on to shared savings.
9 In your testimony you've made a number of suggested
10 changes to the companies' proposed shared savings
11 mechanism, haven't you?

12 A. Yes.

13 Q. Okay. And in each one of the components
14 of those -- each one of those individual changes, the
15 result to the amount of savings the companies can
16 earn would be lower than if not adopted; is that
17 right?

18 A. In each one?

19 Q. Yes.

20 A. I don't think that's correct. But let
21 me -- let me just give you the example and then we
22 can discuss it. Well, I guess my recommendation
23 where I say that the cap ought to be -- I am trying
24 to find where I allocated the cap to the companies.
25 So the companies -- the cap is 10 million and, let's

1 see, I guess the recommendation -- the one aspect of
2 the change that I recommended were the cap be
3 allocated to the three companies by customer class
4 wouldn't necessarily change incentive amount. It
5 would make sure that it's distributed equitably
6 across the companies, but the companies would still
7 have an opportunity to achieve the 10 million.

8 So it's not clear to me that that
9 recommendation would necessarily lower what they
10 could earn. They would still have the opportunity to
11 earn 10 million, but they would have to meet the
12 targets by utility by customer class. So I don't
13 agree with that characterization. I would say some
14 other things have lowered it. I think the -- but so
15 my answer to your question would be no.

16 Q. On page 28, line 17 of your supplemental
17 testimony.

18 A. Okay.

19 Q. You indicate that the -- the companies'
20 incentive schedule violates the core principle of
21 customer class equity found in 4901:1-39-03 of the
22 Ohio Administrative Code. Do you see that?

23 A. Yes.

24 Q. Do you have that provision in front of
25 you?

1 A. Yes, I do.

2 Q. And looking at that regulation, it
3 provides, when developing programs for inclusion in
4 its program portfolio plan, an electric utility shall
5 consider the following criteria, and down further I
6 believe in No. 6 it includes equitable among all
7 classes; is that the provision you are referring to?

8 A. Yes, it is.

9 Q. And is it your testimony that a shared
10 savings mechanism is a program?

11 A. No. My testimony is that it's part of
12 the program portfolio plan.

13 Q. Dealing with the recommendation that you
14 mentioned earlier about the determination of
15 incentive tiers on a class basis, you don't know if
16 AEP calculates its incentive tiers on a class basis,
17 do you?

18 A. I don't.

19 Q. And how about Duke Ohio, do you know if
20 they do?

21 A. I don't.

22 Q. How about Dayton?

23 A. I don't.

24 Q. Now, regarding your proposed maximum
25 percentage in the tier for the incentive, you

1 recommended 8 percent max; is that right?

2 A. That's correct.

3 Q. Now, you would agree with me the amount
4 of incentives in shared savings mechanisms varies
5 widely across the country, doesn't it?

6 A. I would say I agree it varies.

7 Q. Widely?

8 A. I guess it depends on your definition of
9 "widely," but I would say this, that it's clear that
10 the percentages can be nothing, but I agree they
11 vary.

12 Q. You asked about the definition of
13 "widely." If you look on your deposition, first one,
14 page 70, line 5, you -- it's a direct quote, so you
15 indicated the shared savings program varies widely,
16 so I would ask you how you defined it.

17 A. You know, if you look at my Exhibit
18 RFS-2, you'll see that in some states there are no
19 incentives, like Pennsylvania. There are incentives
20 that are based on different mechanisms like as a
21 percent of program costs that might be 3 to 4 percent
22 of program costs like in Vermont. In Connecticut
23 they can earn up to like 8 percent of program costs.

24 So in -- and for shared savings
25 mechanisms like what's being proposed here in Ohio,

1 let's see, you know, I have information I guess in
2 the -- in Exhibit RFS-2, it gives examples of what
3 has been in place for AEP Ohio, Duke, and
4 FirstEnergy. So, you know, you can see that these
5 percentages for shared savings incentives can be as
6 high as I guess for Duke it's been maybe 15 percent
7 if they get 110 to 115 percent.

8 So they vary, but the variance isn't like
9 between 8 percent in one utility and 150 percent.
10 It's like 8 percent, 10 percent, 12 percent. It's
11 that magnitude. It's not like a factor of 10 or
12 something.

13 Q. Understood. Your metrics on RFS-2, I
14 believe you were just looking at that.

15 A. Yeah.

16 Q. Would you agree with me the shared
17 savings mechanism descriptions for each of the states
18 is quite lengthy?

19 A. You mean in the --

20 Q. If you looked at them in their entirety.

21 A. Yeah. What I would say is if you -- like
22 I give a summary description here. But if you
23 actually went to the website and looked up the
24 document, it could be pages and pages and pages so,
25 yes.

1 Q. On page 56, line 10, of your testimony,
2 you state that the actual savings from behavioral
3 programs are hard to measure. Do you see that?

4 A. Yes.

5 Q. So you would agree with me behavioral
6 programs do, in fact, generate savings.

7 A. Yes.

8 MS. KOLICH: Your Honor, could we take a
9 5-minute break to make sure I covered everything?

10 EXAMINER BULGRIN: Sure.

11 (Recess taken.)

12 EXAMINER BULGRIN: Okay. Let's go back
13 on the record.

14 Ms. Kolich.

15 MS. KOLICH: Thank you, your Honor. As
16 an administrative matter, I have those citations for
17 the administrative notice of the Pennsylvania
18 companies and their energy efficiency cases. Each
19 utility is required to have a separate docket number.
20 So the docket numbers for the FE companies will be
21 for Met-Ed, M as in -- all of these are "M" as in
22 Mary, -2012-233-4387; Penelec, M-2012-233-4392, Penn
23 Power is M-20122334395; and West Penn Power is
24 M-2012-233-4398.

25 EXAMINER BULGRIN: Thank you.

1 Q. And Mr. Spellman, we had a little
2 confusion talking about shared savings and
3 non-cost-effective programs and you gave me an
4 explanation as to what your position was on how
5 non-cost-effective programs should be dealt with in
6 the -- when dealing with the shared savings
7 mechanism.

8 Do you know if the overall program is
9 cost-effective as defined by the companies, but the
10 subprograms, for example, such as school education,
11 that may be as -- at the subprogram level
12 non-cost-effective, do you know if those -- those
13 subprogram cost-benefit results are netted when
14 calculating the TRC of the program?

15 A. Well, that was quite a question. I think
16 I already answered it. Well, I answered the first
17 part. And the first part of the question, if I got
18 it right, was do I know if the -- using the company's
19 definition of "program," are the programs
20 cost-effective. That was the first part and I think
21 I answered that already and I said subject to check,
22 right?

23 Q. Right.

24 A. And the next part of your question is, if
25 I understood correctly, would be if you dissect those

1 further and some things aren't cost-effective and
2 some things are, do they net against each other. Let
3 me make sure that was the question, the second part
4 of the question.

5 Q. Right. And actually, let me just ask it
6 again because it wasn't my intention to ask that same
7 question again that you referred to as your first
8 part.

9 If you've got -- if you have got several
10 subprograms and one happens to be below 1 in the TRC
11 calculation and another one happens to be above 1 in
12 the TRC calculation and both of those roll up to the
13 program level as defined by the companies. Do you
14 know if the results of the subprogram TRC -- TRCs are
15 netted as they roll up to the main program?

16 A. Well, as a general principle, if you roll
17 things together, the benefits roll together, the
18 costs roll together, what you end up with is like a
19 weighted average cost/benefit ratio. So the answer
20 would be if you roll things up, everything rolls, you
21 know, into -- you get a new sum of the benefits, new
22 sum of the costs, a new benefit/cost ratio and what
23 do you call it? Are things netted out? Yes.

24 MS. KOLICH: That's all I have, your
25 Honor.

1 EXAMINER BULGRIN: Thank you. No, no.

2 THE WITNESS: I have to get out of town
3 while I can.

4 MR. KELTER: You just started.

5 EXAMINER BULGRIN: I think there might be
6 an additional question or two.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Oliker:

10 Q. Good afternoon, Mr. Spellman. My name is
11 Joe Oliker. I represent IGS Energy or Interstate Gas
12 Supply, Inc. Just a few questions for you this
13 afternoon. I will try to keep it as short as I can.

14 I just want to talk about one specific
15 provision in your testimony. You discuss smart
16 thermostats, correct?

17 A. Maybe you can show me where I did.

18 Q. Specifically on page 65 and 66, you
19 recommend rejection of --

20 EXAMINER BULGRIN: Of the supplemental?

21 MR. OLIKER: Yes, of the supplemental
22 testimony.

23 EXAMINER BULGRIN: Thank you.

24 Q. Am I correct that you recommend rejection
25 of provisions in the portfolio plan that pertain to

1 smart thermostats?

2 A. We may have talked about that. Yes, on
3 page 67 and 68 there is a Question and Answer that
4 deals with that and smart thermostats was one of the
5 programs that were determined to be not
6 cost-effective and should be removed from the
7 portfolio.

8 Q. Okay. And the basis for your
9 recommendation is that you allege that the smart
10 thermostat provisions failed the TRC test, correct?

11 A. Yeah, that was -- in fact, we give --
12 yes.

13 Q. And your testimony is based upon
14 statistics in the Market Potential Study, correct?

15 A. Correct.

16 Q. And let me know if I read this correct.
17 On page 66, line 3, you state, "And nothing in the
18 Settlement suggests that these programs are now
19 cost-effective," correct?

20 A. 66, line 3?

21 Q. Yes.

22 A. Correct.

23 Q. And would you agree that the Market
24 Potential Study did not include in the calculation of
25 the TRC test for smart thermostats any related

1 natural gas savings?

2 A. I don't know.

3 Q. And would you agree that a point
4 contained in the stipulation and recommendation is
5 that the smart thermostat provision will be
6 recalculated to include related natural gas savings,
7 if you know?

8 A. You know, I didn't focus on that but,
9 subject to check, I'll agree to that.

10 Q. And would you agree that the approximate
11 rebate level for smart thermostats is around \$100 per
12 unit?

13 A. I don't know.

14 MR. OLIKER: Could I have one minute?

15 EXAMINER BULGRIN: Sure.

16 MR. OLIKER: And may I approach the
17 witness, please?

18 EXAMINER BULGRIN: Sure.

19 MR. OLIKER: Make sure I don't give up my
20 copy. Make sure I keep my notes. I'm sorry that I
21 only have about nine or so copies. I was cognizant I
22 was sitting next to the environmental parties.

23 MS. WILLIAMS: Motion to strike from the
24 record.

25 MR. KELTER: Everything is my fault.

1 EXAMINER BULGRIN: Are we making this an
2 exhibit?

3 MR. OLIKER: We can. Let's mark it as
4 IGS Exhibit 1, your Honor.

5 EXAMINER BULGRIN: Okay.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. When you have an opportunity,
8 Mr. Spellman, is the document that's been marked as
9 IGS Exhibit 1, recognizing yours don't have any
10 markings on it, would you agree it does have a
11 marking in the upper left-hand corner that says
12 "Office of the Ohio Consumers' Counsel"?

13 A. I would agree with that.

14 Q. And is it the "Consumers' Fact Sheet"?

15 A. Yes.

16 Q. And it says "Easy Ways to Save Energy and
17 Money," correct?

18 A. Yes, it does.

19 Q. And would you agree in the bottom of the
20 document it says, "A properly set programmable
21 thermostat can save homeowners \$100 to \$180 per year
22 if they maintain those settings"?

23 A. I also note, at least the version I have,
24 has a copyright of 2016, so I'm assuming it was
25 published during -- it looks like it was February 17,

1 2016, according to the last digits on page 2. So I'm
2 assuming that would be correct -- their estimate as
3 of about a year ago.

4 MR. STINSON: Well, your Honor, I am
5 going to object for foundational purposes. There is
6 a lack of foundation here that this witness is aware
7 of or seen this document before.

8 MR. OLIKER: Your Honor, I would first
9 note he is a little late. He has already answered
10 the question. But, in addition to that, this is a
11 public document, it is a statement against interest,
12 it is a party admission, it is readily verifiable.

13 EXAMINER BULGRIN: Enough.

14 MR. OLIKER: Thank you, your Honor.

15 EXAMINER BULGRIN: Overruled.

16 THE WITNESS: One more, one more.

17 MR. OLIKER: I had a long list.

18 Q. Just to close the loop on this, would you
19 agree that a programmable thermostat is effectively a
20 dumb version of a smart thermostat?

21 A. Yes.

22 Q. And so, a smart thermostat has all of the
23 optionality of a programmable thermostat except for
24 additional options such as demand response and
25 auto-away options and things of that nature?

1 A. Correct.

2 MR. OLIKER: And I think those are all
3 the questions I have. Thank you very much,
4 Mr. Spellman.

5 THE WITNESS: You're welcome.

6 EXAMINER BULGRIN: Not yet.

7 MS. FLEISHER: I have a few questions. I
8 just have three or four questions.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Fleisher:

12 Q. Mr. Spellman, is it okay if I am sitting
13 here?

14 A. Yes.

15 Q. I will make it quick.

16 A. I'll hold this up.

17 Q. Mr. Spellman, my name is Madeline
18 Fleisher. I represent the Environmental Law & Policy
19 Center. I'm excited, you know, that you want to find
20 out more about our organization.

21 A. I do.

22 MR. STINSON: Madeline, if you could
23 speak up.

24 MS. FLEISHER: Certainly. Happy to do
25 that.

1 Q. Mr. Spellman, I believe you have a copy
2 of the "Green Rules" with you.

3 A. Yes, I do.

4 Q. And can you turn to provision, just go
5 with 39-03 which is the program planning
6 requirements.

7 A. I am there.

8 Q. Okay. And going down to subpart (B), are
9 you familiar with the program design criteria listed
10 there?

11 A. Yes, I am.

12 Q. And there are 13 of them, correct?

13 A. That's right.

14 Q. And in your supplemental testimony you
15 reference criterion No. 6, equity among customer
16 classes, on page 28, correct?

17 A. Correct.

18 Q. And your supplemental testimony does not
19 address any of the other 12 listed criteria, correct?

20 A. Well, the only one that it does,
21 cost-effectiveness, I believe.

22 Q. Okay. With --

23 A. Which is No. 1.

24 Q. With respect to program design?

25 A. Yes.

1 Q. Okay. And where is that in the --

2 A. I think we just talked about it, that
3 the -- oh, page 65 and 66, for example. I talk about
4 the program -- the residential programs that are not
5 cost-effective. And then the other place, let's see,
6 on pages 67 and 68 I talk about programs that should
7 be removed because they are not cost-effective and
8 they do not provide substantial energy benefits, so
9 that's why I am saying my supplemental testimony also
10 addresses cost-effectiveness as well.

11 MS. FLEISHER: Okay. Fair enough.

12 That's all I have, your Honor. Thank you.

13 EXAMINER BULGRIN: Okay. Thank you.

14 Ms. Williams

15 MS. WILLIAMS: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Williams:

19 Q. Mr. Spellman, hi. Samantha Williams,
20 Natural Resource Defense Council. I just have a few
21 questions to follow-up on the cost cap conversation
22 you had with Counsel for the companies.

23 A. Okay.

24 Q. So just to clarify, and then I understand
25 your testimony, you are not aware, correct, you

1 testified you are not aware whether Florida utilities
2 are currently under a cost cap, correct?

3 A. Correct.

4 Q. You also testified that you had
5 previously been a consultant for the Florida Public
6 Service Commission, correct?

7 A. Yes.

8 Q. As a result, you have knowledge of how
9 programs were approved in the past?

10 A. In the past.

11 Q. Okay. Can you give the approximate years
12 when you were consultant?

13 A. Yeah. The -- let's see, it would have
14 been in the -- the round of the proceedings before
15 this one, so I think it was in the 2008, '9, '10 time
16 period.

17 Q. Okay. So in that 2008, '9, '10 period
18 when you were a consultant for the Florida PSC, are
19 you aware -- you are not aware, are you, of any
20 dockets in which the Florida PSC did, in fact,
21 establish a cost cap on efficiency spending programs?

22 A. They didn't separate any separate docket
23 on that. My recollection is they set the saving
24 targets for each of those utilities, and after they
25 did that, utilities had to come in with plans to meet

1 those targets. And as I recall, if I recall
2 correctly, the Commission had to approve those plans
3 and the budgets that were included. I don't recall
4 that there were -- there was a cost cap set other
5 than what they -- the utilities submitted in the
6 plans, so there wasn't a separate cost cap.

7 Q. Would -- would you characterize what you
8 are calling a -- I believe you said there is not a
9 separate cost cap for those program plans. Would it
10 be better to characterize that as a budget for those
11 portfolios?

12 A. Yes, yes.

13 Q. And you do agree there is a difference
14 between a budget on efficiency and a --

15 A. Yes.

16 Q. -- program --

17 A. Absolutely.

18 Q. -- versus a cost cap?

19 A. Yes.

20 Q. Moving to New York, I just want to
21 clarify your testimony on that. You had testified as
22 to the 2015 order that established programs for 2016,
23 correct?

24 A. Yeah. Maybe you can refer me to that
25 page.

1 Q. That's on page 23 of your supplemental
2 direct testimony.

3 A. I'm there.

4 Q. Thank you. So I just wanted to clarify
5 that in that New York Public Service --

6 A. Hold on just a second.

7 Q. I will wait for you.

8 A. I thought I was there.

9 Q. That's page 23.

10 A. Right.

11 Q. So clarifying again to your knowledge,
12 you're testifying as to the 2015 docket. So in that
13 2015 docket, the New York Public Service Commission
14 did not, in fact, establish a cost cap on efficiency
15 programs for that 2016 year; is that right?

16 A. Well, hold on a second. You know
17 something, I guess my testimony on that page 23
18 doesn't address that. I mean it doesn't say one way
19 or the other, so I don't know.

20 Q. So just to make sure that the record is
21 clear on this then, Mr. Spellman, to your knowledge,
22 there is not, in fact, a cost cap in that 2015 PSC
23 order, correct?

24 A. I don't actually -- let's see. Well,
25 what I do know is there were exclusive energy

1 efficiency budgets and targets, that's what I said in
2 my testimony. What I don't know is if those budgets
3 were cost caps to -- so I don't know -- I don't know
4 if there were ramifications that the utilities spent
5 over that budget.

6 MS. WILLIAMS: Could I have my last
7 question reread. I just want to clarify whether the
8 response was indeed responsive. Thank you.

9 (Record read.)

10 A. I said I didn't know.

11 Q. Okay. Fair enough. And then one last
12 question for you, beyond that 2014 -- sorry, 2015 New
13 York PSC order, are you aware of any other New York
14 PSC dockets in which there was a particular
15 percentage cost cap applied to energy efficiency
16 portfolios?

17 A. Okay. Hold on a second. I don't know.

18 MS. WILLIAMS: Thank you. Nothing
19 further.

20 EXAMINER BULGRIN: Very good.

21 Redirect?

22 MR. STINSON: If we could have --

23 EXAMINER BULGRIN: Oh, Ms. Mooney, sorry.

24 MS. MOONEY: I have just a few questions.

25 EXAMINER BULGRIN: Okay.

1 - - -

2 CROSS-EXAMINATION

3 By Ms. Mooney:

4 Q. Good afternoon, my name is Colleen
5 Mooney. I am an attorney for Ohio Partners for
6 Affordable Energy, and I am also glad you would like
7 to find out more about it.

8 I just want to ask you a few questions
9 from your page 69 of the supplemental testimony where
10 you're talking about the competitive bid for the
11 low-income program. And specifically where you have
12 the -- the Question 72, where you have the quote from
13 the PUCO staff testimony, and then you have that one
14 sentence in quotations from line 7 through line 9.
15 Do you see that?

16 A. Yes, I do.

17 Q. Okay. And then you have a sentence,
18 "Competitive bidding is the best way to achieve
19 maximum savings for customers at the lowest cost."
20 And that sentence is not in quotes. Are you
21 referring back to the testimony of Mr. Scheck or did
22 you just want to quote a cliché there at the end of
23 your sentence?

24 A. Well --

25 MR. STINSON: Objection as to form, your

1 Honor. Could I have the question reread? I think
2 it's compound, as well.

3 MS. MOONEY: Well, I can split it up or I
4 can just reask it.

5 EXAMINER BULGRIN: Yes, if you would
6 rephrase.

7 Q. The sentence on line -- that starts on
8 line 9 and line 10, is that a continuation of
9 something that Mr. Scheck said?

10 A. Not to my knowledge.

11 Q. So that's your testimony --

12 A. Yes.

13 Q. Without -- and what was the basis for you
14 to say that?

15 A. Well, there's several things. I guess my
16 experience working in the energy efficiency field
17 since 1977, that both working for a utility and as a
18 contractor, that the way to get the best ideas and
19 the best prices, the most innovation, is to bid
20 something out like that, so that you have
21 competition.

22 And I think that encourages people to
23 sharpen their pencils, give best prices, put their
24 best minds on the problem and provide a scope of work
25 that, you know, scopes of work that FirstEnergy can

1 review and score and pick the best of the best.

2 The second thing is I noticed, walking
3 through the halls here today, the PUC's mission
4 statement interestingly includes as part of its
5 mission statement that it wants to provide safe and
6 reliable electric rates to consumers in Ohio, but
7 also to provide it in a way that promotes a
8 competitive environment. So it seems to be included
9 in the mission statement out in the hallway that the
10 PUC has.

11 So I think there are a lot of things that
12 point to competitive bidding as the best way to do
13 business; to ensure you are getting high quality, the
14 best price, the best ideas, and innovation.

15 Q. And then -- and then you go further, the
16 next question you basically describe what you would
17 propose as the competitive bidding process?

18 A. Correct.

19 Q. And are you -- do you have information
20 regarding what potential bidders would be interested
21 in FirstEnergy's low-income program?

22 A. Well, I haven't looked into that myself,
23 but I'm aware of putting conservation service
24 providers that specialize in that type of work. And
25 I would be happy to provide a list of such firms if I

1 was asked to do so.

2 Q. Of conservation -- you're aware of
3 conservation providers that would provide low-income
4 program services in the FirstEnergy Service
5 territory?

6 A. Correct.

7 Q. You're aware of that?

8 A. I certainly -- well, let's put it -- make
9 myself clear here. I haven't done any independent
10 research on that. I know of firms across the United
11 States who do that type of work anywhere in the
12 United States. And I would be happy to provide that
13 information if I were asked to do so.

14 Q. Could you name, like, one firm or one
15 competitive bidder that you know of that would be
16 prepared to bid on a low-income program in
17 FirstEnergy Service's territory?

18 A. You know, what I would prefer to do is
19 provide a list, after I have had a chance to vet it
20 and think through it, and give a response that is
21 solid, and I mean I just haven't -- that wasn't in my
22 scope of work, but I think I would certainly want a
23 chance to put pen to paper and think of it a little
24 bit before I give you a snap response on that.

25 Q. So, but when you prepared this testimony,

1 you did not have any particular bidder in mind; is
2 that correct?

3 A. That's correct. And I didn't think I
4 needed to.

5 MS. MOONEY: Okay. That's all I have.

6 EXAMINER BULGRIN: Okay. Anything more?
7 Redirect?

8 MR. STINSON: If we could have a moment,
9 your Honor.

10 EXAMINER BULGRIN: Sure.

11 (Recess taken.)

12 EXAMINER BULGRIN: Let's go back on the
13 record.

14 Mr. Stinson.

15 MR. STINSON: Just one question.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Stinson:

19 Q. Mr. Spellman, I think it was on page 67
20 of your testimony.

21 EXAMINER BULGRIN: The amended?

22 Q. Supplemental.

23 EXAMINER BULGRIN: Supplemental.

24 Q. And you were discussing I think in
25 response to questions by Ms. Kolich about which

1 non-cost-effective programs should be excluded. And
2 my recollection is you did not recommend that the
3 school programs be excluded. Can you give me the
4 reason why?

5 A. Right. You know, I think the schools
6 programs are very important. Educating young people,
7 you know, K through 12, about the importance of
8 energy efficiency and its benefits is an important
9 part of the energy-efficiency effort and it's the
10 best place to start is when people are young and
11 teaching them. Rather than give them a fish, you
12 want to teach them how to fish, and so that's why we
13 did not recommend that that be excluded.

14 MR. STINSON: Thank you.

15 Nothing further, your Honor.

16 EXAMINER BULGRIN: Very good. I think
17 you are excused.

18 THE WITNESS: All right. Thank you.

19 EXAMINER BULGRIN: And we have pending --

20 MS. KOLICH: Your Honor, could I move for
21 the admission of Company Exhibits 8 and 9?

22 EXAMINER BULGRIN: Yes. One second.
23 Make sure I have these right. I believe we have to
24 admit OCC Exhibit 9A, B, and C.

25 THE WITNESS: Who do these go to?

1 EXAMINER BULGRIN: You can just leave
2 them right there.

3 THE WITNESS: Okay.

4 EXAMINER BULGRIN: Any objections to OCC
5 Exhibits 9A, 9B, 9C or the Company Exhibits 8 and 9?
6 And I think I already took administrative notice of
7 7, so.

8 MS. KOLICH: No. 7 I was using for
9 impeachment purposes only and I wasn't -- I had
10 committed to you I wouldn't, but I will be happy to
11 introduce it.

12 EXAMINER BULGRIN: No. 8 and 9, any
13 objections? They will be so admitted.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 EXAMINER BULGRIN: And IGS Exhibit 1.

16 MR. STINSON: Just for the reasons
17 already stated, your Honor.

18 EXAMINER BULGRIN: You are overruled. We
19 are going to admit this.

20 MR. OLIKER: Thank you, your Honor.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 MS. FLEISHER: FirstEnergy, the
23 Companies' Exhibit 7, is neither admitted nor is it
24 administrative notice taken?

25 EXAMINER BULGRIN: Right.

1 MS. FLEISHER: Okay. Thank you.

2 EXAMINER BULGRIN: We did take
3 administrative notice.

4 Okay. Staff, do you need additional
5 time?

6 MR. JONES: Yes, your Honor. If I could
7 just have a few minutes.

8 EXAMINER BULGRIN: Yeah. Let's take a
9 break to quarter to 3, I guess. Is that right?
10 3:45.

11 MR. HEALEY: 2:45.

12 EXAMINER BULGRIN: 2:45? 2:45.

13 (Recess taken.)

14 EXAMINER BULGRIN: Let's go back on the
15 record.

16 Mr. Jones.

17 MR. JONES: Yes, your Honor. Could I
18 have the amended testimony of Patrick Donlon marked
19 as Staff Exhibit 1, please for the record.

20 EXAMINER BULGRIN: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. JONES: Mr. Donlon, can you please
23 state your --

24 EXAMINER BULGRIN: Mr. Donlon, will you
25 please stand and swear.

1 (Witness sworn.)

2 EXAMINER BULGRIN: Be seated. Thank you.

3 THE WITNESS: Do you want this OCC stuff
4 here?

5 - - -

6 PATRICK DONLON

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

9 DIRECT EXAMINATION

10 By Mr. Jones:

11 Q. Can you please state your name for the
12 record, please?

13 A. Patrick Donlon.

14 Q. Where are you employed?

15 A. The Public Utilities Commission of Ohio.

16 Q. And what is your job title and
17 responsibilities?

18 A. I'm the Director of the Rates and
19 Analysis -- Analysis Department within the PUCO and I
20 oversee all aspects of the Rate Analysis Department.

21 Q. And did you submit prefiled testimony in
22 this case?

23 A. I did.

24 Q. And would you please identify what's
25 before you marked as Staff Exhibit 1.

1 A. My amended testimony within this case.

2 Q. And was that testimony prepared by you or
3 at your supervision?

4 A. Yes.

5 Q. And do you have any changes or additions
6 to make to that testimony?

7 A. I do.

8 Q. And could you please direct us where?

9 A. Page 8.

10 Q. Okay.

11 A. Starting on line 159, the last sentence,
12 starting with, "The" and carries onto lines 160 to
13 161, removing that sentence that says "The table
14 below shows the amended shared savings trigger" and
15 deleting the table.

16 Q. Okay.

17 A. And then the same page, starting at
18 line 174, after "for" it should say "not exceeding."
19 And then it should be a period after "mandate."
20 Striking the rest of that sentence that continues
21 onto 17 -- line 175.

22 Q. Okay.

23 EXAMINER BULGRIN: Can you give me that
24 again? I'm sorry.

25 THE WITNESS: Do you want to see this?

1 Q. Okay. So just to be clear -- just to be
2 clear for the record for everyone, you're deleting,
3 on page 8, at line 159, beginning with "The table
4 below shows the amended shared savings trigger" and
5 you are deleting then the table below that, going
6 down to 161, all that is removed.

7 And then on line 174, after the word
8 "for" you're inserting the word "not" so it will
9 read: "For not exceeding the mandate." And then
10 deleting the remainder of that sentence. Is that
11 correct?

12 A. Correct.

13 Q. Okay. Now, with those changes in mind,
14 with the exception of those changes you just made, if
15 I were to ask you the same questions contained in
16 your prefiled testimony, would your answers be the
17 same?

18 A. Yes.

19 MR. JONES: Your Honor, I move for the
20 admission of Staff Exhibit 1, subject to
21 cross-examination, and offer Mr. Donlon for
22 cross-examination.

23 EXAMINER BULGRIN: All righty. Start
24 with the company then.

25 MR. GLADMAN: Thank you, your Honor.

1 Michael Gladman for the FirstEnergy
2 companies.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Gladman:

6 Q. Good afternoon, Mr. Donlon.

7 A. Good afternoon.

8 Q. Beyond the cost cap and reduced shared
9 savings trigger, you did not, in your testimony,
10 offer any criticism of the stipulation; is that
11 right?

12 A. There is, just clarifying, I think in
13 Question 28 on which program should not count towards
14 the shared savings calculation. But other than that,
15 no.

16 Q. And you do not, in your testimony, take
17 issue with the companies' individual energy
18 efficiency programs, correct?

19 A. We do not address it. Staff is not
20 taking a position on that, correct.

21 Q. And you do not, in your testimony, take
22 issue with the individual budgets that the companies
23 are proposing for any of the programs, correct?

24 A. Staff is not taking a position there.

25 Q. And also, in your testimony, you do not

1 indicate that staff did any analysis of the cost it
2 would take to actually implement the companies'
3 programs; is that right?

4 A. We do not state that in our testimony,
5 that is correct.

6 Q. Okay. And, in fact, you do not, in your
7 testimony, I believe, mention a single program that
8 is part of the companies' program portfolio plans; is
9 that right?

10 A. Again, we are not taking a position on
11 the individual programs.

12 Q. Fair enough. Is it accurate to say that
13 the Commission can only approve program portfolio
14 plans that are cost effective?

15 THE WITNESS: Can you restate that -- or
16 not restate it, I'm sorry, repeat that.

17 (Record read.)

18 A. That's my understanding of the rule, yes.

19 Q. And the programs within the program
20 portfolio plans -- bless you -- must also be
21 cost-effective unless they offer substantial
22 nonenergy benefits; is that also consistent with your
23 understanding?

24 A. Yes. Not all individual programs need to
25 be cost-effective, but as long as the program as a

1 total is, that's fine.

2 Q. Okay.

3 A. Is my understanding.

4 Q. Sure. And measures within the individual
5 programs, going down another layer, need not be
6 cost-effective; is that accurate?

7 A. I think that complies with Commission
8 precedent.

9 Q. Okay. And to determine whether program
10 portfolio plans in individual programs are
11 cost-effective, the Commission utilizes the TRC test?

12 A. Correct.

13 Q. And to be cost-effective under the TRC
14 test, a program portfolio plan or individual program
15 must save more in energy supply costs than the total
16 costs of implementing that plan or program; is that
17 accurate?

18 A. That sounds correct, yes.

19 Q. Okay. Fair to say that customers benefit
20 from cost-effective programs?

21 MR. HEALEY: I am going to object, your
22 Honor. That's vague as to "benefit."

23 EXAMINER BULGRIN: Well, you can answer.

24 A. What I would say is that, you know, for
25 the most part, staff does agree that there is a

1 benefit to energy efficiency programs, but that we
2 also must balance the risk of the costs.

3 Q. Sure. And I understand that's your
4 testimony. My question is a little bit different.
5 It's do you believe that customers benefit by the
6 implementation of a cost-effective energy efficiency
7 program?

8 A. And I would say that's dependent on the
9 bigger picture and as long as there is parameters
10 around it, then yes, but not solely.

11 Q. Okay. And when you say "parameters
12 around it," are you referring to things like cost?

13 A. Costs and cost cap, yes.

14 Q. Okay. Let me read this statement to you
15 and I am going to ask you if you agree with it.
16 "Because...energy savings must be cost-effective, by
17 definition, customers in the aggregate save money
18 when the Companies deliver energy savings
19 opportunities to their customers instead of energy.
20 To the extent the Companies accelerate the delivery
21 of cost-effective energy savings opportunities to
22 their customers, they will also accelerate the net
23 cost savings which customers enjoy. Thus every
24 kilowatt-hour of energy that can be displaced through
25 cost-effective energy efficiency programs is a

1 savings, not a cost, to the Companies' customers."

2 Do you agree with that statement?

3 MR. JONES: I object, your Honor. If he
4 can show where he is reading from that Mr. Donlon
5 could have an opportunity to read over that long
6 paragraph he just read from.

7 EXAMINER BULGRIN: Yeah. I'll sustain
8 that.

9 MR. GLADMAN: Okay. To address
10 Mr. Jones' objection, it's from the companies' ESP IV
11 March 31, 2016, Opinion and Order at 95, citing the
12 Companies' 09-1947 original portfolio plans case. So
13 with that clarification, would you agree with that
14 statement?

15 MR. JONES: I still -- the witness
16 doesn't have it before him.

17 MR. HEALEY: Can we read it to him again?

18 EXAMINER BULGRIN: Can we just take
19 administrative notice of that Opinion and Order?

20 MR. GLADMAN: And I am asking, your
21 Honor, if he agrees with that statement because it
22 goes to the question I just asked him. If it's a
23 reading problem, could I approach and show it to him?

24 EXAMINER BULGRIN: Sure.

25 MR. GLADMAN: I am glad to let him see

1 this page without my outline.

2 THE WITNESS: I will try not to read it.

3 Q. My team is apparently unconcerned that
4 you are going to see the next five questions, but
5 that's -- do you agree with that statement?

6 A. Not completely, no.

7 Q. Okay. The companies' filings in this
8 docket indicate that the program portfolio plans are
9 cost-effective on a portfolio basis, do they not?

10 THE WITNESS: I'm sorry. Can you reread
11 that, please?

12 (Record read.)

13 A. Yes.

14 Q. Okay. And your testimony does not
15 challenge the conclusion that the companies' program
16 portfolio plans are cost effective on that portfolio
17 basis, correct?

18 A. Staff is not taking a position there.

19 Q. And the companies' filings in this docket
20 also indicate, Mr. Donlon, that the individual
21 programs themselves within the plan are
22 cost-effective except for the low-income program; is
23 that correct?

24 A. Subject to check, sounds accurate.

25 Q. Okay. Your testimony does not challenge

1 that the companies low-income program offers, in
2 fact, substantial nonenergy benefits, does it.

3 A. Staff does not take a position on that.

4 Q. And, again, your testimony does not
5 challenge the conclusion that the companies' other
6 individual programs are cost-effective.

7 A. Correct. Staff does not take a position.

8 Q. Thank you.

9 Let's talk about your cost cap proposal.
10 Do you have your testimony in front of you?

11 A. I do.

12 Q. And again, we are referring only here,
13 just to make sure the record is clear, to your
14 amended testimony which replaced your original
15 testimony?

16 A. Correct.

17 Q. Take a look at page 3, lines 47 to 58 of
18 your testimony, please. I am going to read a portion
19 of it, ask if I have read it correctly, and then
20 follow-up on a few questions. You state, "The
21 Stipulation should include a methodology for the
22 Commission to use to control the costs of the energy
23 efficiency and peak demand reduction programs that
24 are developed and administered by the electric
25 distribution utilities (EDUs). Staff is therefore

1 proposing that the stipulation be modified to include
2 the implementation of an overall cost cap on the
3 program costs and shared savings incurred through the
4 Companies' energy efficiency portfolio plan." Did I
5 read that portion of your testimony correctly,
6 Mr. Donlon?

7 A. Yes, you did.

8 Q. Okay. And on page 3, lines 62 to 65, not
9 a quote, but you state in general that the overall
10 cost cap will be set at 3 percent of the figure
11 reported on the companies' FERC Form 1, page 300,
12 line 10; is that accurate?

13 A. Correct.

14 Q. Okay. And that 3 percent cap applies to
15 the sum of two components: First, all program costs;
16 and, two, pretax shared savings for a given plan
17 year; is that correct?

18 A. Yes. Just making sure the "pre" and
19 "after" were the correct way, so yes, it is.

20 And just to clarify the question before
21 that, I'm not sure if you said it or not, but it was
22 listed as the 2015 FERC Form 1, line 10.

23 Q. I appreciate that clarification.

24 On page 7, lines 139 through 141 of your
25 testimony, you also state that the revenues the

1 companies receive from PJM for bidding energy
2 efficiency resources in the RPM auction and credit
3 back to their customers will offset the cost cap; is
4 that correct?

5 A. Correct.

6 Q. So taken all together, the 3 percent cost
7 cap applies to, one, the sum of, one, all program
8 costs; two, pretax shared savings for a given program
9 year; minus PJM revenues that the companies receive
10 in credit back to the customers; did I get that
11 right?

12 A. Yes, you did.

13 Q. Are you aware that the companies are
14 committed to contributing \$6 million a year to OP&A's
15 Community Connections program in their ESP IV case?

16 A. I don't remember the exact dollar amount,
17 but I do remember something to that effect.

18 Q. Okay.

19 A. From the ESP.

20 Q. And would that amount be included in your
21 cost cap calculation?

22 A. If that amount is within this program and
23 program cost, then, yes.

24 Q. Okay. And not to kind of -- I appreciate
25 that response. Do you think that that kind of

1 contribution to OP&E's Community Connections
2 qualifies as a program cost? Do you have enough
3 information to make that judgment?

4 A. What I would say is if they -- if the
5 company put it into the energy efficiency portfolio
6 program and is seeking recovery through that program
7 for it, then, yes.

8 Q. Okay. Mr. Donlon, you would agree there
9 is no direct link between staff's cost cap proposal,
10 the calculation, and the companies' statutory energy
11 efficiency benchmarks?

12 A. Could you expand on what you mean by
13 "direct link"?

14 Q. Sure. Let me ask it a different way.
15 The cap you proposed is not used to calculate the
16 benchmarks.

17 A. Correct.

18 Q. And the benchmarks are not used to
19 calculate the cap.

20 A. They are not used to calculate, but it
21 was taken into account.

22 Q. But the actual mathematical formula we
23 just walked through doesn't have a benchmark
24 component.

25 A. Correct.

1 Q. Are you aware some jurisdictions, with
2 energy efficiency cost caps, calculate the benchmark
3 after setting the cost cap?

4 A. I have no reason to dispute that.

5 Q. Okay. Is that something you are actually
6 aware of? I appreciate that, but is that something
7 you are aware of? Have you looked into those other
8 jurisdictions to see if that's something other
9 jurisdictions do?

10 A. My staff has looked into a lot of
11 different items, so -- and I have been briefed on a
12 lot of them, but which ones specific, I'm not sure.

13 Q. So fair to say as you are -- I appreciate
14 that. Fair to say, as you are sitting here today,
15 you are not aware whether or not there are other
16 jurisdictions with energy efficiency cost caps that
17 calculate their benchmarks after setting the cost cap
18 first?

19 A. I am pretty sure there are, I just don't
20 want to tie myself down to saying yes absolutely.

21 Q. Okay. I appreciate that. And you may
22 not know, but since you said you are pretty sure, let
23 me ask you this: Do you know how that would work in
24 those jurisdictions, those jurisdictions where they
25 set the benchmark after setting the cap, how would

1 that be done?

2 A. Not intimately, no.

3 Q. On page 5, lines 105 through 107.

4 A. Page 5, you say?

5 Q. Yes.

6 A. Yes.

7 Q. You state that "...costs have been
8 escalating to the point that the rider in which
9 energy efficiency costs are collected has become one
10 of the highest riders on residential customers'
11 bills." Did I read that correctly?

12 A. Yes.

13 Q. And you are referring to rider DSE2 for
14 the FirstEnergy companies?

15 A. Yes.

16 Q. As part of making your determination that
17 a cost cap was necessary, did staff do any historical
18 analysis of the FirstEnergy companies' annual rider
19 DSE2 revenues?

20 A. We have reviewed some of those costs and
21 it's a little bit difficult to really do a true rider
22 trend analysis because the company forecasts many of
23 their costs. So if the forecast is inaccurate, then
24 there is a true-up afterwards. So in some cases, in
25 some given times, FirstEnergy's cost, I am pretty

1 sure it's actually been negative due to
2 over-forecasting in prior years.

3 Q. Okay. So you are hitting a point I was
4 going to get to in a couple of questions, but I'll
5 jump to that now. So the way this works that the
6 company makes projections approximately eight months
7 in advance of what the rider DSE2 revenues will be,
8 and they later reconcile with actual results. Is
9 that essentially how that works?

10 A. Yeah. I forget if FirstEnergy is eight
11 months or what exactly the period in the true-up
12 period is, but at least an annual true-up, yes.

13 Q. Okay. And that can make the rider
14 volatile as you are making the projections and
15 true-ups?

16 A. I'm sorry. Yeah. Shaking my head. Yes.

17 Q. Did you do any forecasts, and "you"
18 meaning you or your staff or your team, do any
19 forecast of rider DSE2 looking forward in determining
20 that a cost cap was necessary?

21 A. We -- to determine the cap, we looked at
22 a lot of different scenarios and different options to
23 determine a cap. Because of the fluctuation of the
24 specific rider and also some of the other costs that
25 go into the rider, we decided the methodology of

1 actually determining a cost cap based on rider costs
2 was not the most appropriate. So we kind of stopped
3 that analysis and didn't go too far into it because
4 we realized it wasn't a fair way to judge -- judge
5 what was going on within the energy efficiency world.

6 Q. Are you aware that each of the
7 FirstEnergy companies' rider DSE2 revenues declined
8 from 2014 to '15 then again from 2015 to '16?

9 A. Seeing as the company chose not to
10 continue their energy efficiency program in '15 and
11 '16, I would expect that to be, but it's still --
12 actually, right now -- as of October it was -- for
13 two of the utilities it was the fourth highest, and I
14 think Ohio Edison it was the fifth highest out of 16
15 riders.

16 Q. Okay. So just so I understand your
17 testimony, it is -- can you say that again? It's the
18 second-highest rider for one of the FirstEnergy
19 companies?

20 A. Fourth.

21 Q. Fourth highest?

22 A. Fourth for Toledo and Cleveland, and
23 fifth for OE.

24 Q. Okay. So when you said it's in your
25 testimony, lines 105 through 107 on page 5, you said

1 it's become one of the highest riders, that's the
2 reference to it's the fourth highest and the fifth
3 highest?

4 A. I would say top five. One of the
5 highest, yes.

6 Q. Fair enough. But to return to my
7 original question, are you aware actually that the
8 2014 to '15, they went down in '15 and '16, they
9 actually went down; you are not disputing that, are
10 you?

11 A. I would expect that seeing as the company
12 did not continue their energy efficiency portfolio
13 plan in '15 and '16.

14 Q. And that would make the FirstEnergy
15 companies different from, perhaps, AEP or Dayton
16 Power and Light in terms of the trends you might see
17 on their riders; is that fair to say?

18 A. Correct.

19 Q. Didn't the companies agree to a rate
20 freeze in the ESP IV case? Are you aware of that?

21 A. Base distribution rate freeze, yes.

22 Q. Okay. And does that freeze the overall
23 rates to standard customers at June 1, 2016, levels
24 for two years?

25 A. It freezes base rates, not over- -- not

1 overall rates to customers, no.

2 Q. Can we take -- let me ask you this: Did
3 the overall freeze that's agreed to in ESP IV also
4 impact the rider DSE2 revenues?

5 A. Not to my knowledge, no.

6 Q. Okay. So the freeze that was agreed to
7 in ESP IV would not have any impact on DSE2 to your
8 knowledge?

9 A. Not to my knowledge.

10 Q. Okay. Let's take a look at page 6, lines
11 113 to -14 of your testimony. Where you state that
12 "Staff reviewed many options for cost cap, searching
13 for the most appropriate percentage and baseline."
14 Did I read that portion of your testimony correctly,
15 Mr. Donlon?

16 A. Yes.

17 Q. Let's talk about the options that you
18 reviewed and the decisions you made. First, on
19 page 6, lines 115 to -16 of your testimony, you state
20 that "Staff evaluated that 3 percent would provide
21 price security for all ratepayers...." Did I read
22 that portion of your testimony correctly?

23 A. Yes.

24 Q. So fair to conclude that staff determined
25 that 3 percent was the most-appropriate percentage

1 for the cost cap?

2 A. Yes, we did.

3 Q. And did staff decide the percentage, the
4 3 percent, or the FERC baseline, the line 10 figure
5 that we'll talk about in a minute here, first?

6 A. I'm not sure necessarily what order. I
7 would -- I don't really remember which order it came
8 in through. There was a lot of discussions and
9 conversations, so. Might have determined one and
10 then came back to it and moved and changed. There is
11 a lot of discussion on how we would do this. So in
12 what order things happened --

13 Q. You just don't recall.

14 A. Right.

15 Q. Did staff do any forecasting or modeling
16 to determine whether a 3 percent cost cap would
17 provide price security?

18 A. You said modeling or analysis?

19 Q. Modeling or forecasting.

20 A. Forecasting. We projected out and looked
21 at what the portfolio plans as submitted were, so
22 we -- in a way we were using what the companies
23 forecasted out to do that, but we did not do our own
24 independent forecasting.

25 Q. So you relied on the companies'

1 forecasting, that's fair to say?

2 A. Yes.

3 Q. And did staff conduct any market
4 potential analysis to determine which technologies
5 the companies could offer at a 3 percent cap to
6 achieve the statutory benchmark?

7 A. Again, by using the companies' market
8 potential of all the market companies and looking at
9 historical trends of the company between '12 and '14
10 underspending their budget by 21 percent and
11 overcomplying by 50 percent, we felt that with those
12 items, the 3 percent was appropriate.

13 Q. Now, I will get to your reference to the
14 '12 to '14 plans in a minute, but since you brought
15 it up there, you said underspending by 21 percent and
16 overcomplying by 50 percent?

17 A. Yes.

18 Q. I appreciate that. Did -- fair to say
19 then that staff was comfortable relying upon the
20 Market Potential Studies and the projections of the
21 companies in their application and revised plans?

22 A. Based on staff's own knowledge and
23 expertise and the Market Potential Studies to
24 determine where we agreed, where we disagreed, yes, I
25 do.

1 Q. Okay. Any place in the Market Potential
2 Study where staff disagreed that you can recall?

3 A. Not off the top of my head.

4 Q. And, again, just to make sure the record
5 is clear, did staff project or model the companies'
6 future revenues, future energy efficiency costs or
7 future rider DSE2 charges beyond the companies' own
8 projections?

9 MR. JONES: Objection, asked and
10 answered.

11 MR. GLADMAN: I think it's a little bit
12 different question.

13 EXAMINER BULGRIN: I will overrule. You
14 can answer.

15 A. No, we did not.

16 Q. Did staff evaluate, Mr. Donlon, whether a
17 4 percent overall cost cap would also provide the
18 price security you refer to in lines 115 to -16 of
19 your testimony on page 7?

20 A. We reviewed various percentages.
21 However, we decided in this case that 3 percent was
22 by far the best.

23 Q. Okay. And fair to say, again, that staff
24 did not do any forecasting or modeling to determine
25 whether a 4 percent cost cap for the FirstEnergy

1 companies would provide price security?

2 A. I would caveat the exact same answer for
3 the 3 percent.

4 Q. Okay. So you relied upon the companies'
5 own submissions and filings and Market Potential
6 Study?

7 A. And staff's knowledge and historical
8 analysis.

9 Q. Okay. But no independent analysis beyond
10 that, fair to say?

11 A. Yes.

12 Q. Same question, if I were to ask you the
13 same question about a potential 5 percent cost cap
14 and whether it would provide price security, did
15 staff do any evaluation of that?

16 A. Same answer as the 3 and the 4.

17 Q. Mr. Donlon, let's talk about staff's
18 decision to use FERC Form 1 in its proposed cost cap
19 calculation, okay?

20 A. Okay.

21 Q. Is it fair to say that staff determined
22 that FERC Form 1, page 300, line 10, was the
23 most-appropriate baseline?

24 A. Yes.

25 Q. And if I say "line 10," will we know what

1 we are talking about here?

2 A. Yes.

3 Q. Okay. Thank you.

4 On page 4, lines 81 through 89 of your
5 testimony, you state that staff chose FERC Form 1,
6 page 300, line 10, because that number is, one,
7 publicly-available; and, two, expressed in total
8 dollars; and, three, represents a single number; and,
9 four, because using FERC reporting allows for
10 consistency among all the utilities in Ohio; is that
11 correct?

12 A. Yes, it is.

13 Q. And line 10 on FERC Form 1, page 300,
14 represents "total sales to ultimate customers" for
15 utilities; is that correct?

16 A. Yes.

17 Q. Would you agree with me there is
18 currently no law in Ohio that states that a utility's
19 EE/PDR plans cannot exceed a certain percentage of
20 that utility's total sales to ultimate consumers as
21 reported on FERC line 10?

22 MR. JONES: I would object, your Honor.
23 The witness is not an attorney. He is asking a legal
24 question.

25 MR. GLADMAN: Your Honor, he is being

1 offered as a regulatory expert. I am just asking if
2 he is aware of any law in the State of Ohio that says
3 this can't be done.

4 EXAMINER BULGRIN: You can answer.

5 THE WITNESS: Can you repeat the
6 question, please?

7 (Record read.)

8 A. I would say there is no law that requires
9 it or doesn't allow it.

10 Q. Okay. Are you aware of any other state
11 that uses FERC line 10 as part of a cost cap
12 calculation for energy efficiency portfolio plans?

13 A. I am not.

14 Q. Did staff consider any other annual
15 publicly-available figures expressed in total dollars
16 as the baseline for the cap other than FERC line 10?

17 A. Yes, we did.

18 Q. Okay. Which ones?

19 A. Off the top of my head, I don't remember.
20 We discussed many, many options over many weeks and
21 many meetings, so the specifics on ones we didn't
22 choose, I don't really remember.

23 Q. Not to press you too much, but can you
24 remember even one alternative for the baseline you
25 considered and rejected?

1 A. On a line like that, one would be total
2 bill, is one that I -- not total bill, but total cost
3 is one I know we discussed and decided it wasn't. As
4 for numbers in which lines, no, I don't.

5 Q. Total rider cost was rejected for the
6 reasons you explained a few minutes ago when we were
7 talking about rider DSE2?

8 A. Correct.

9 Q. Did staff have a predetermined spending
10 level or range in mind for the cost cap prior to
11 selecting FERC line 10 as the baseline?

12 A. I am not sure "predetermined" is a -- is
13 the right word, but I think we had some thoughts and
14 then we were trying to see what's reasonable, what's
15 not. So, yes and no, which is a bad answer for this,
16 but it's just kind of how the collaborative process
17 worked and brainstorming.

18 Q. Sure. And I understand there is a lot of
19 questions where "yes and no" is the answer. I
20 appreciate that honesty. You said you had some
21 thoughts. Again, this sort of goes back to where I
22 started again. How did this come together in an
23 order, but my question is really driving towards not
24 a specific number, but staff had some thoughts, this
25 is in the range of where we think this cost cap

1 should be, and then you guys found a way how this
2 formula makes sense to hit this kind of number; is
3 that the way it went?

4 MR. JONES: Objection. Asked and
5 answered. We covered this.

6 MR. GLADMAN: I don't think I have gotten
7 quite an answer.

8 EXAMINER BULGRIN: Yeah. I'll overrule.
9 You can answer.

10 A. I think that can be a very simplistic way
11 of describing it. Obviously there's a lot of nuance
12 to that, but I am not going to argue with you on
13 that.

14 Q. Okay. Just to be clear, you said that
15 could be a simplistic way of -- and I don't want to
16 misstate your testimony -- simplistic way of
17 describing the process that staff engaged in.

18 A. Relatively, yes.

19 Q. Mr. Donlon, on page 5, lines 96 through
20 100 of your testimony, you conclude that the
21 Companies can run their energy efficiency portfolio
22 and meet or exceed their statutory benchmark if
23 staff's proposed 3 percent overall cost cap is
24 implemented, correct?

25 A. Yes.

1 Q. And your conclusion for that is based
2 upon the companies' 2012 through 2014 annual status
3 reports for compliance under their prior plans,
4 correct?

5 A. Yes.

6 Q. And this was the reference you made a few
7 minutes ago to 2012 through '14?

8 A. Correct.

9 Q. Let's talk about how you use those 2012
10 to '14 plans. Fair to say you looked at the cost of
11 the old plans?

12 A. Yes.

13 Q. And including shared savings?

14 A. Actually, we did not take shared savings
15 into account in this.

16 Q. And did you look at the energy savings
17 under the old plans?

18 A. Yes.

19 Q. Did you calculate acquisition costs for
20 energy efficiency savings under the old plans?

21 A. Some of my staff may have. I think we
22 did. I think that's one of the ones that we looked
23 at from a "should we evaluate the cap on that" and we
24 decided that that wasn't the methodology we wanted to
25 use, so we moved away from it, so I don't remember

1 any specifics on that analysis.

2 Q. And just to be clear when we are talking
3 about acquisition costs, that's dollars spent per
4 kilowatt-hour saved? That's the metric known as
5 acquisition costs?

6 A. In this setting.

7 Q. Yes. And sometimes you see references to
8 "first-year acquisition costs"; are you familiar with
9 that as well?

10 A. I assume that would be the first year of
11 your program.

12 Q. And that's something you have heard of
13 before?

14 A. Yes.

15 Q. Did staff apply 3 percent to the
16 companies' old FERC line 10s from 2012 to '14 and
17 compare those to the companies' plan costs for those
18 years?

19 A. I am pretty sure my staff did, yes.

20 Q. And that analysis would tell you whether
21 the companies would have met the 3 percent cost cap
22 under prior plans, correct?

23 A. Yes.

24 Q. And that doesn't tell you specifically
25 whether or not the FirstEnergy companies could or

1 will meet the 3 percent cost cap under the 2017 to
2 '19 plans, correct?

3 A. It's a barometer to if they can, and the
4 biggest piece that stood out for staff was the
5 overcompliance in those years and where they fell in
6 the cost cap. So they did some barometer tests if
7 they could or not, yes.

8 Q. Mr. Donlon, did you perform or your team
9 perform any analysis of the companies' ability to
10 meet or exceed their statutory benchmarks for the
11 2017 through '19 plan period beyond assuming that the
12 companies' 2012 to through '14 results would prove to
13 be an accurate barometer?

14 THE WITNESS: Could you repeat that
15 question, please.

16 (Record read.)

17 A. Yes.

18 Q. What analysis did you perform?

19 A. Yeah, I am not sure exactly the
20 specifics, but we analyzed what some of the programs
21 were, and this was more of my staff than necessarily
22 me, and used our expertise in determining if we
23 thought they could -- the company could or not.

24 Q. Okay. You say you analyzed some of the
25 programs. Which ones did your staff analyze?

1 A. It was the overall portfolio and what
2 their assumptions were.

3 Q. And again, is this what you referenced
4 before that you looked at the companies' own
5 projections for the savings and costs under the
6 revised portfolio plans?

7 A. I'm sure that's similar to what they did,
8 yes.

9 Q. And I don't want to split hairs with you.
10 So you are sure that that's what they did? I want to
11 get your testimony here to the extent of your -- best
12 of your recollection. Do you know if that's what
13 they did or is that a supposition on your part?

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

16 EXAMINER BULGRIN: Overruled. You can
17 answer.

18 A. I know they evaluated the portfolio plan
19 and used their expertise in determining if they could
20 do it; the exact specifics of what and how they did
21 that, I don't know; I can't speak to.

22 Q. As part of your analysis of determining
23 whether or not the 2012 through '14 compliance or
24 overcompliance was an accurate barometer, was to
25 assume the conditions in the 2012 to '14 plan would

1 continue?

2 A. I think when you take and look at what's
3 happening across the state in all the portfolio plans
4 in that most of the utilities are underspending on
5 their budget and overcomplying, then yes, I think it
6 is a good barometer. And I think, again, with 21
7 percent under -- going dollar-wise 21 percent under
8 the budget and 50 percent overcompliance for those
9 three years, and technology continuing and costs
10 coming down on many projects, yes, I think they
11 can -- the company can achieve the mandate.

12 MR. GLADMAN: Okay. Can I have my
13 question read back? I appreciate the response. I am
14 not sure it's quite the question I asked.

15 (Record read.)

16 Q. What's your answer to that question?
17 Yes, you believe that?

18 A. I would say what I said --

19 MR. JONES: Objection. He answered that
20 question, your Honor.

21 MR. GLADMAN: I don't remember that I
22 quite got an answer to that one.

23 EXAMINER BULGRIN: Can you ask it one
24 more time?

25 Q. Let me try it a little bit different way.

1 Is it fair to say, Mr. Donlon, that you
2 assumed in concluding that the 2012 to through '14
3 plan period was a useful barometer for you, in your
4 language, that you concluded that the conditions that
5 existed during 2012 to '14 would either continue or
6 get better in terms of what it would cost to comply
7 with energy efficiency benchmarks?

8 A. I would say it's one of the major
9 components to our decision, yes.

10 Q. Is it possible that if a company
11 overcomplied in the past, it could reduce future
12 energy efficiency savings opportunities?

13 A. It is possible, but I do not believe we
14 are there yet.

15 Q. Okay. And have you done any analysis to
16 determine whether we've hit that tipping point in
17 terms of things getting more expensive and more
18 difficult to achieve in terms of energy efficiency
19 savings?

20 A. The staff relies on, you know, their
21 knowledge, their expertise, and the Market Potential
22 Studies, and staff does not believe we are at that
23 tipping point.

24 Q. Anything more specific you could point to
25 that influences staff's conclusion in that regard?

1 A. I think there is many things. I mean you
2 can take the example of why -- it's not an energy
3 efficiency thing, but just something most of us know
4 about. You look at T.V.s over time, you know they
5 are getting bigger and cheaper every single year. As
6 technology and items move up, often they become more
7 mainstream, costs come down. So I think it's just
8 the economic cycle.

9 Q. Mr. Donlon, are you aware that the
10 statutory benchmarks for the FirstEnergy companies
11 and the other utilities in Ohio doubled in 2021?

12 A. Subject to check, 2021, I believe is the
13 year that it goes to 2 percent, yes.

14 Q. And is that something that staff
15 considered in preparing its proposed cost cap; the
16 fact that the benchmarks would double in 4 years?

17 MR. JONES: Objection, your Honor. Not
18 relevant. We are talking about a plan year, '17 to
19 '19. He is talking about '21-'22.

20 MR. GLADMAN: I don't believe that the
21 cost cap is limited in duration unless I have
22 misunderstood Mr. Donlon's testimony.

23 MR. JONES: The plan is, your Honor, '17
24 to '19.

25 EXAMINER BULGRIN: I will overrule the

1 objection. You can answer.

2 A. Yes, we took that into account.

3 Q. And that would suggest at least a higher
4 cost cap if, assuming all else being equal, that is
5 if the benchmarks were going to double in 2021, the
6 cost cap might have been reduced; fair to say?

7 MR. JONES: I want to continue my
8 objection, your Honor, for the record.

9 Q. Let me ask that question a different way.
10 That wasn't a great question.

11 You said staff considered the doubling of
12 the benchmarks in '21 in terms of coming up with its
13 cost cap proposal. How did you consider that?

14 A. We knew it was out there and we
15 understand that the 2 percent mandate -- well, at the
16 time it was still a little bit -- when we were
17 discussing the cost cap, the legislation was actually
18 still out there being changed. It might have even
19 been approved before, I don't quite remember all the
20 timing, but we took that into consideration when we
21 were doing that.

22 However, this plan is for 3 years, so the
23 cost cap and the mechanism, you know, six year -- or
24 four years from now you wouldn't want to be using the
25 2015 FERC Form 1. So it's going to be, again,

1 analyzed in the next portfolio case of what the cost
2 cap would be and if 3 percent is still the right
3 percentage.

4 Q. Okay. So let me make sure I understand.
5 Is it staff's intention that the cost cap, as
6 proposed in this plan, would terminate at the end of
7 2019?

8 MR. JONES: Objection, your Honor. Calls
9 for speculation. We don't know, we're not in 2019 to
10 know what's going to go forward.

11 MR. GLADMAN: I am asking him if this
12 proposal terminates on its own terms in three years.

13 EXAMINER BULGRIN: Yeah. You can answer.

14 A. Well, as in my understanding -- staff's
15 understanding or maybe it's just mine, there wouldn't
16 be a portfolio plan at that time without a new
17 filing. So if you don't have a portfolio plan, why
18 would you have a cap? So I mean, I am not sure -- if
19 you have another portfolio plan, staff would
20 recommend that there still be another -- there be an
21 overall cap, but that would be another case and
22 another hearing.

23 Q. Okay. That's helpful. That gets me
24 closer to where I was trying to go with this. So
25 it's staff's intention to propose a new cost cap each

1 time that a utility files a new EE/PDR plan?

2 MR. JONES: I would object, your Honor.
3 We are beyond the scope here of his testimony, this
4 plan, this case.

5 EXAMINER BULGRIN: Okay. I'll sustain
6 that.

7 MR. GLADMAN: Okay. I'll move on.

8 Q. Would you agree, Mr. Donlon, that, over
9 time, achieving energy efficiency becomes more
10 difficult for a utility because prior programs and
11 measures have already captured much of the
12 easy-to-achieve energy efficiency?

13 A. I don't necessarily agree with that
14 premise. And, again, I will kind of go back to kind
15 of T.Vs. You bought a T.V. in 2007 that was a
16 47-inch flat screen for like \$2,000. Now you can buy
17 a 65-inch ultra HD for \$800. So, you know,
18 technology is moving. There is, you know, a claim
19 out there that there is a proverbial wall that you
20 will hit, but as technology and costs come on, and
21 costs go down, then maybe that wall doesn't hit.
22 That wall is always moving, so when that wall is hit
23 and when it isn't, is difficult to determine.

24 Q. Let me ask you this, would you agree that
25 the costs of lighting programs have gone up as the

1 standard energy efficiency has moved from CFLs to
2 LEDs?

3 A. I think that's debatable too.

4 Q. And what's debatable about that? You
5 don't know if the pricing has gone up from CFLs to
6 LEDs?

7 A. In particular, the current-draft TRM is
8 still out there that is a safe haven or safe harbor,
9 so that hasn't changed in a few years.

10 Q. So, yeah, TRM, as I understand, it has to
11 do with the amount of energy savings you can count,
12 correct?

13 A. Yes.

14 Q. But I am talking about the costs of that,
15 achieving that energy savings, and my question is, do
16 you know whether or not the costs of achieving
17 efficiency in lighting programs has gone up as the
18 standard has moved from CFLs to LEDs?

19 A. My understanding is LED costs have
20 drastically come down over the years.

21 Q. And are they still higher than CFLs?

22 A. That I do not know.

23 Q. Have you done any trend analysis as to
24 whether acquisition costs for energy efficiency are
25 trending up?

1 A. Again, we decided to not really use the
2 acquisition costs in our cost cap. So while some of
3 that analysis may have been -- may have been done by
4 staff, it wasn't into my testimony and in the cost
5 cap.

6 Q. Let's shift topics here. Let's take a
7 look at page 6, lines 124 through 127 of your
8 testimony. And there you state the companies may
9 request an amendment to their applicable benchmarks
10 under section 4128.66(A) (2) (b) of the Ohio Revised
11 Code if they are unable to meet the statutory
12 requirements within their projected budgets after
13 making "all possible adjustments." Does that
14 accurately state your testimony?

15 A. Yes, it does.

16 Q. Okay. And what adjustments are you
17 referring to when you say "all possible adjustments"?

18 A. Well, first of all, it would be the
19 banking. The company has significant banked energy
20 savings allowance. So before this provision was
21 enacted, staff would assume that the bank -- the
22 company would use their bank first.

23 Q. Okay. So that's a little bit different
24 question, is it not, when we are talking about
25 66(A) (2) (b), we are talking about making a request to

1 reduce the applicable statutory EE benchmarks,
2 correct?

3 A. Yes, but you were speaking to make --
4 after making all possible adjustments.

5 Q. Okay. And so -- so okay, so one of the
6 adjustments you are referring to here is draining
7 your EE bank; is that correct?

8 A. I am not sure "draining" is the proper
9 term, but using your bank, yes.

10 Q. Okay. Just trying to get an
11 understanding what you are thinking. Do you have to
12 deplete your bank completely before you are allowed
13 to seek a 4928.66(A)(2)(b) benchmark adjustment?

14 A. I think that would be a better question
15 for an attorney on the exact what you have to do, but
16 staff would recommend that, yes.

17 Q. Okay. And again, just to be fair, what I
18 am trying to get here, you've incorporated by
19 reference, have you not, 4928.66(A)(2)(b) in your
20 testimony, fair to say?

21 A. Correct.

22 Q. And I just want to get your understanding
23 of how this would operate. So a follow-up question,
24 would any of the adjustments that staff -- strike
25 that. Let me try again.

1 You referred to using the bank. Is there
2 any other possible adjustment that staff is referring
3 to before the companies can seek a 28.66(A)(2)(b)
4 benchmark adjustment?

5 A. I think what -- not I think. What you
6 are referencing there other than the bank is also
7 adjusting the portfolios, adjusting the individual
8 programs, you know, managing the portfolio to be able
9 to achieve the benchmark and just demonstrating that
10 the attempt happened.

11 Q. Okay. So before I follow up on that, is
12 there any other adjustment you are referring to
13 before we kind of break this down?

14 A. There's probably some that, you know,
15 can't happen that I am not thinking of off the top of
16 my head. I think while this is allowable, I do not
17 see it as being relevant to the next three years.

18 Q. Well, it's something that you've
19 considered and decided to put in your cost cap
20 proposal; fair to say?

21 A. Yes, it is -- and the reason it is in
22 there it is an option. We do not -- staff does not
23 believe this is an option that would need to be
24 enacted over the next three years.

25 Q. Sure. And I believe, and I can't

1 remember if it's you or Mr. Spellman -- did you read
2 Mr. Spellman's testimony by the way?

3 A. No, I did not.

4 Q. Okay. And you were here for portions of
5 his testimony; is that fair to say?

6 A. I was in the room. I was doing some work
7 while I was doing it, but, yes, I was in the room.

8 Q. Understood. Understood. Did you hear
9 him refer to 4928.66(A)(2)(b), this portion of your
10 testimony, as a potential relief valve for the cost
11 cap?

12 MR. JONES: I object, your Honor, as to
13 another witness's testimony by another party to this
14 case. Not relevant.

15 EXAMINER BULGRIN: Sustained.

16 MR. JONES: Beyond the scope of
17 Mr. Donlon's testimony.

18 Q. Mr. Donlon, one of the things you said
19 that an adjustment that the companies should have to
20 consider before seeking this relief under
21 4928.66(A)(2)(b) is adjusting the portfolio, correct?

22 A. Yes.

23 Q. And that is something that would require
24 Commission approval, would it not?

25 A. My understanding is that there is certain

1 amounts and certain levels they can adjust without
2 approval; certain levels. I think there's a trigger
3 where they have to seek approval.

4 Q. Okay. My understanding, correct me if I
5 am wrong, was that the staff had a certain level of
6 authority to reallocate program budgets, but if you
7 were actually changing the entire portfolio plan, the
8 Commission would have to approve that; is that not
9 correct?

10 A. I would say that I think it's semantics;
11 that we were off on our definitions. I was referring
12 to the reallocation of a change in the portfolio. So
13 I think we are on the same page, but we might have
14 been using different words.

15 Q. Okay. So just to be clear, you did
16 mention adjusting the programs, so that would make
17 sense in that context, but you also said one of the
18 potential adjustments you need to make before you
19 seek amendment to the benchmarks is to adjust the
20 portfolio plans themselves. Is that what you
21 intended to say or not?

22 MR. JONES: I object, your Honor. I
23 don't think that's facts in evidence. I think he has
24 misconstrued the testimony.

25 MR. GLADMAN: We can read it back?

1 EXAMINER BULGRIN: I'll sustain.

2 MR. GLADMAN: He said that. There was --

3 MR. JONES: I object, your Honor. He did
4 not say that.

5 MR. GLADMAN: I will ask him again just
6 to clarify.

7 EXAMINER BULGRIN: Yeah.

8 Q. Is one of the possible adjustments that
9 staff is contemplating before seeking the amendment
10 to the benchmarks is adjustment of the actual
11 portfolio plans?

12 A. That could be a possibility. I will say
13 that I don't think staff -- I keep saying "I don't
14 think." Staff did not -- we put this in, and I
15 actually like Mr. Spellman's comment of as
16 identifying a safety valve or relief valve on the
17 mandates in that the benchmark could actually, in
18 staff's opinion, the benchmark or the overall cap
19 would allow the company to be able to use this
20 section of the code as a safety valve.

21 As for the specific mechanisms and, you
22 know, adjustments, we did not spend too much time
23 discussing that as we don't think it's relevant in
24 this case that the company will have to hit that.

25 MR. GLADMAN: Your Honor, I am going to

1 move to strike that only because what's good for the
2 goose is good for the gander. If I am not allowed to
3 ask him about what Mr. Spellman's testimony was on
4 this point, I don't think he should be allowed to
5 parrot it.

6 MR. JONES: Objection, your Honor.
7 Within the scope of the question.

8 EXAMINER BULGRIN: Yeah. I'll sustain
9 your objection and overrule yours.

10 MR. GLADMAN: Thank you, your Honor.

11 Q. Mr. Donlon, are you familiar with
12 4928.66? If I am going to ask you questions, would
13 it be helpful for you to have a copy of that in front
14 of you?

15 A. It would.

16 MR. GLADMAN: May we approach the
17 witness, your Honor?

18 EXAMINER BULGRIN: Sure.

19 MR. GLADMAN: Sorry for the delay.

20 MR. HEALEY: I have a copy.

21 MR. GLADMAN: I am guessing everyone here
22 has a copy.

23 Q. So, Mr. Donlon, your testimony on page 6,
24 lines 124 through 127, references 4928.66(A)(2)(b),
25 correct?

1 A. Yes, it does.

2 Q. And if we take a look at that provision,
3 why don't I just read it and that will be easier.
4 It's not very long. It says, "The commission may
5 amend the benchmarks set forth in division (A)(1)(a)
6 or (b) of this section if, after application by the
7 electric distribution utility, the commission
8 determines that the amendment is necessary because
9 the utility cannot reasonably achieve the benchmarks
10 due to regulatory, economic, or technological reasons
11 beyond its reasonable control." Did I read that
12 correctly?

13 A. Yes.

14 Q. And that's the provision that you were
15 referencing in your testimony on page 6, lines 1 --

16 A. Correct.

17 Q. I'm sorry. I didn't mean to interrupt.

18 A. Sorry. I thought you were done.

19 Q. Just to complete the question. On lines
20 124 through 127?

21 A. Mine doesn't have page numbers, but
22 correct. Or -- oh, I'm sorry. My reference, yes.

23 Q. We are getting this messy. Let me try
24 that again.

25 A. Sorry.

1 Q. That provision that I just read from
2 4928.66(A) (2) (b) is the provision you've incorporated
3 by reference on page 6, lines 124 through 127, of
4 your testimony, correct?

5 A. Yes, it is.

6 Q. And that provision specifically mentions
7 regulatory, economic, or technological reasons as
8 reasons for seeking an amendment to the statutory
9 benchmark, correct?

10 A. Yes, it does.

11 Q. Okay. There are no other reasons beyond
12 that identified in that specific provision of the
13 Revised Code?

14 A. No, there is not.

15 Q. Okay. It doesn't say that if you fail to
16 meet a cost cap or energy efficiency that you are
17 permitted to seek statutory amendment of the
18 benchmarks.

19 MR. JONES: Your Honor, objection. The
20 statutory provision speaks for itself.

21 EXAMINER BULGRIN: Sustained.

22 Q. Do you believe that any portion of this
23 provision of 66(A) (2) (b) would permit the 1, 2, or 3
24 that's identified, regulatory, economic, or
25 technological reasons, would permit a request to

1 amend the statutory benchmarks due to a failure to
2 meet a cost cap?

3 A. Yes.

4 Q. And is that the economic provision?

5 A. Perhaps the economic, but more so the
6 regulatory, but economic would play into that. So I
7 think you could make a reasonable argument that
8 economic played into it. I think you could make a
9 reasonable argument that technological played into
10 it. And I would focus on regulatory. I guess that
11 would be from our standpoint. So I think all three
12 could play into the rationale behind it; regulatory
13 being the kind of anchor of that.

14 Q. How long would it take the Commission to
15 rule on the companies' request for a benchmark
16 amendment?

17 MR. JONES: Objection, speculation.

18 EXAMINER BULGRIN: Sustained.

19 Q. Does staff have a reliable sense of the
20 timing of such a request and how long that would
21 take? Any experience?

22 MR. JONES: Objection, your Honor.

23 EXAMINER BULGRIN: Sustained.

24 MR. GLADMAN: Can I ask the basis for
25 that? I am asking if he has any experience with how

1 long that would take.

2 MR. JONES: That's speculation, improper.

3 MR. GLADMAN: If he doesn't know, he can
4 say so.

5 MR. JONES: Improper.

6 EXAMINER BULGRIN: Okay. Go ahead and
7 answer.

8 A. Sorry. Seeing as no company has tried to
9 implement this, I don't think it would be accurate
10 for staff to sit here today and try and guess how
11 long it would take for the Commission to rule on a
12 piece of legislation that had never happened before.

13 Q. Does staff have a contemplated approach
14 for a company that would seek an amendment to the
15 benchmark under 4928.66(A)(2)(b) in terms of what
16 that company should do with its energy efficiency
17 plans while it's seeking that amendment?

18 A. What I would suggest any company do when
19 they have a filing or a concern is meet with staff as
20 early as possible when there is an issue and try and
21 discuss the possibility so we can get a quick resolve
22 of the issues. But I think that's something that
23 would need to happen if and when the company felt
24 they were needing to seek relief.

25 Q. Mr. Donlon, are you aware that Revised

1 Code 4928.66 provides for daily penalties if a
2 utility fails to meet its statutory benchmark
3 requirements?

4 A. I know there are, but if it's
5 specifically in this section, but I know there are
6 penalties, yes.

7 Q. Mr. Donlon, at page 6, lines 127 to line
8 -28, of your testimony, you also state that if the
9 companies were to seek an amendment of the benchmarks
10 under section 4928.66(A)(2)(b), "the EDU would not be
11 eligible for shared shavings when making such a
12 request." Do you see that portion of your testimony?

13 A. Yes, I do.

14 Q. Is there anything in Revised Code
15 4928.66(A)(2)(b) that says a consequence of seeking a
16 benchmark amendment under the statute is you cannot
17 seek shared savings?

18 A. Shared savings is a creation of the
19 Commission and, thus, is not referenced other than
20 one piece of what cannot be counted for shared
21 savings referenced in law.

22 Q. So shared savings, I believe there is a
23 reference in both the Administrative Code and Revised
24 Code; is that what you are referring to?

25 A. Yeah. It's just speaking of what can and

1 can't be counted in shared shavings, but shared
2 savings was a creation of the Commission.

3 Q. Okay. But fair to say that you are
4 attaching that interpretation to this portion of the
5 Revised Code?

6 A. No. I am saying that section is that the
7 staff would recommend to the Commission that if the
8 company or a company came in and sought relief under
9 that code, that staff would request that -- recommend
10 that shared savings not be eligible because the
11 Commission would determine if it was or not if law
12 does not speak to it.

13 Q. Okay. Mr. Donlon, let's talk about the
14 PJM component of the staff's proposed cost cap. On
15 page 7, lines 139 to -41 of your testimony, you state
16 "Revenues from PJM that the Companies receive for
17 bidding energy efficiency into the RPM Auction and
18 are credited back to customers through the rider can
19 offset the overall costs of the portfolio programs."
20 Did I read that portion of your testimony correctly?

21 A. Yes.

22 Q. Mr. Donlon, is it accurate to say that
23 the companies have no way of knowing what the revenue
24 figure will be for RPM auctions that have not yet
25 cleared?

1 A. For the --

2 Q. Well, let me ask you, for example, are
3 you aware that the base residual auction to be
4 conducted in May of this year is for delivery years
5 2020 through 2021?

6 A. So outside the portfolio period, correct?

7 Q. Yes.

8 A. Yeah, yes.

9 Q. Okay. And given that the companies had
10 most of their energy efficiency programs suspended as
11 you referenced earlier for 2015 and '16, would you
12 expect that that would result in lower PJM revenues
13 during this plan period 2017 through '19 since they
14 have little incremental resources to offer into the
15 PJM auctions those years?

16 MR. JONES: Objection, your Honor,
17 assumes facts not in evidence.

18 MR. GLADMAN: He testified as to what was
19 going on with the plans in 2015 and '16.

20 EXAMINER BULGRIN: I'll allow it.

21 A. I do not know what the company bid in or
22 didn't bid in. I will -- that would make sense from
23 a logical standpoint, but it was the companies'
24 choice to suspend their programs.

25 Q. Sure. Is it fair to say that -- fair to

1 say then if you didn't -- if you don't know exactly
2 what the PJM future revenues for the companies will
3 be, that's not something staff considered in
4 formulating its cost cap proposal?

5 A. This was -- the reason this is in there
6 is if staff is concerned with overall costs of
7 programs that are being passed back for customers to
8 pay, that if they are getting a credit for it, it's
9 only fair to the company to allow those revenues to
10 offset any cap so that is the reason that that's in
11 there is to try and be fair to the companies to
12 offset any revenues the customers are receiving.

13 Q. I appreciate that. Is it fair to say
14 though that the companies have no way of knowing what
15 the revenue figure will be for RPM auctions that have
16 not yet cleared?

17 A. For the auctions that are outside this
18 portfolio plan? Yes, they would not know what --
19 what those are for the -- at that time.

20 Q. And what about auctions within this
21 portfolio plan that have not yet cleared?

22 A. This is '17, '18, '19, so those have
23 already cleared. Other than the supplemental
24 auctions, they would have.

25 Q. Okay. Mr. Donlon, the companies' revised

1 program portfolio plans contain overall plan and
2 program budgets, correct?

3 THE WITNESS: I'm sorry. Can you please
4 reread that question.

5 (Record read.)

6 A. Correct.

7 Q. Okay. And the plan and program budgets
8 are set for the entire three-year duration of the
9 plans; that's fair to say, isn't it?

10 A. That's my understanding.

11 Q. And if the Commission approves the plans
12 as proposed, the companies could not then spend money
13 under the plans beyond those plan budgets without
14 further Commission approval; is that fair to say?

15 A. That's my understanding.

16 Q. And, in fact, if the companies wanted to
17 spend money above and beyond those budgets, they
18 would first have to file amended plans and seek
19 Commission approval; is that true?

20 A. That is my understanding.

21 Q. And so, in other words, once the
22 Commission approves the plans and corresponding
23 budgets, the companies have to stay within those
24 budgets, correct?

25 A. I know the company went over the budget

1 in 2012, I believe, so I think -- but, however, I am
2 not sure what happened to allow that to happen. So I
3 think there is ways they can get -- they can spend
4 more.

5 Q. Okay. Fair to say that the
6 Commission-approved budget serves as a cap on what
7 the companies can spend on their EE/PDR plans?

8 A. I would not reference it that way, no.

9 Q. You think a cap is somehow different than
10 a Commission-approved budget?

11 A. Yes.

12 Q. Let's talk about shared savings and the
13 proposed cost cap for just a minute. The
14 Commission's previous energy efficiency orders permit
15 the companies to -- the opportunity to recover shared
16 savings, correct?

17 A. Yes.

18 Q. And is it fair to say that a policy goal
19 behind permitting shared savings is to encourage the
20 utilities through financial incentives to exceed
21 their statutorily-mandated energy efficiency
22 benchmarks?

23 A. Keywords there being "exceed" as well as
24 I think the secondary piece is within a reasonable
25 cost.

1 Q. When a utility earns shared savings, it
2 means that customers are benefiting as well?

3 A. That gets into the participating
4 customers are benefiting and overall the way shared
5 savings is calculated, it takes the life of the
6 program and puts it into the present day, so
7 customers are paying that today to the company for
8 savings that will happen over time. So it's
9 debatable how much this customer is saving today,
10 particularly the nonparticipating customers when you
11 are front loading those costs from the life of the
12 project.

13 Q. Okay. You understand that in the --
14 well, let me strike that.

15 Are you familiar with the companies'
16 proposed shared savings mechanism for the 2017
17 through '19 portfolio plans?

18 A. Are you -- are you talking about the
19 trigger for '17 or how they calculate shared savings?

20 Q. The entire thing, the entire shared
21 savings mechanism.

22 A. So generally, yes.

23 Q. Okay. And are you aware that the
24 FirstEnergy companies have proposed the top incentive
25 tier of 13 percent of those adjusted net benefits as

1 their shared savings recovery?

2 A. Except for in '17.

3 Q. Well, you understand that the incentive
4 percentage in '17 actually stays at a top level of
5 13 percent as well, correct?

6 A. Meaning that you -- I think that's just
7 semantics of how we determine. I mean, really you
8 don't have to achieve -- you don't have to achieve
9 113 percent in '17 to get your full shared savings,
10 so I think I am getting the two confused. But for
11 '18 and '19, yes, I would agree with that.

12 Q. I appreciate that clarification. I am
13 not intending to get to the trigger reduction issue.
14 We will do that a little bit later here. We are in
15 agreement then for -- let's say for '18 and '19 that
16 the maximum percentage of shared -- the companies can
17 get of the adjusted net benefits is 13 percent,
18 correct?

19 A. Or \$10 million after taxes.

20 Q. Fair qualification. We will get to that
21 in a minute. The remaining 87 percent, subject to
22 caps, shared savings caps, are what goes to the
23 customers; that's a benefit to the customers,
24 correct?

25 A. Again, I think it depends on your

1 perspective, and I think there is some debate on the
2 fact it's all front load -- the dollars is -- the
3 dollars are front loaded to the company, and then the
4 consumers get that over time, so I am not sure
5 there's equal benefit to that.

6 Q. And sure. You are aware that part of the
7 mechanism is there is a calculation of adjusted net
8 benefits which you've correctly pointed out occur
9 over the -- in a lifetime of these energy efficiency
10 measures, correct?

11 A. Yes.

12 Q. And I am just trying to get the
13 percentage of the shared savings, that the percentage
14 of that adjusted net benefits, the most the companies
15 can get is 13 percent and the customers, even if it
16 is delayed over time, would get 87 percent; is that
17 fair to say?

18 A. That is the theory.

19 Q. Okay. Mr. Donlon, I think you've alluded
20 to this, but you are aware that the Commission has
21 established a cap on the shared savings the company
22 may earn from their energy efficiency programs?

23 A. Correct.

24 Q. And to kind of take this in order, under
25 the companies' 2013 to '15 energy efficiency order

1 that cap was \$10 million per year aftertax; is that
2 right?

3 A. Yes.

4 Q. And are you aware, Mr. Donlon, that the
5 Commission approved an increase of that shared
6 savings cap to 25 million per year aftertax but
7 stayed the effective date of that increase until the
8 companies are no longer receiving revenue under rider
9 DMR?

10 A. Correct.

11 Q. And the Commission approved an increase
12 of that cap to 25 million per year aftertax pursuant
13 to a stipulation, a third supplemental stipulation,
14 recommendation that was filed in the companies' most
15 recent ESP case?

16 A. Correct.

17 Q. Do you know if staff was a signatory
18 party to that third stipulation?

19 A. Staff was.

20 Q. You understand that the companies'
21 ability to earn shared savings is, as of today,
22 because of that stay language subject to a monetary
23 cap of \$10 million per year aftertax, correct?

24 A. Correct.

25 Q. Mr. Donlon, as we've discussed, under

1 staff's proposal the 3 percent overall cost cap would
2 apply to the sum of all program costs under the
3 EE/PDR plans and the pretax shared savings for any
4 given program year less the PJM offset; is that
5 accurate?

6 A. Yes.

7 Q. And staff's proposal means that the
8 companies' shared savings which are already capped at
9 \$10 million a year aftertax in any given year will be
10 subject to the 3 percent cost cap that the staff has
11 proposed as well?

12 A. Yes, subject to the DMR being collected
13 which is the \$10 million cap.

14 Q. Sure. And would you agree with me then
15 that the companies' ability to earn shared savings
16 stemming from its energy efficiency programs would be
17 double capped?

18 A. I'm not sure it is, but you -- I can see
19 how it can be viewed that way as well.

20 Q. Okay. Fair to say that the shared
21 savings, if the cost cap that staff is proposing is
22 approved, would be subject to both the cap in the ESP
23 case as well as staff's cap, correct?

24 A. Yes.

25 MR. GLADMAN: Okay. Do you want to take

1 a short break or keep going?

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

4 (Discussion off the record.)

5 (Recess taken.)

6 EXAMINER BULGRIN: Let's go back on then.
7 And Ms. Dunn.

8 MS. DUNN: Yes, your Honor. Under Rule
9 4901:1-39-04(E) the companies were required to post,
10 your Honor, legal notice of the hearing in this
11 matter. That did occur back in June 2016. I would
12 like to mark as Company Exhibit 10, the legal notices
13 for the case from June 2016. I have a copy if
14 someone wants to inspect it and ask that this be
15 admitted into evidence.

16 EXAMINER BULGRIN: Okay. And are you
17 actually requesting to file those as well?

18 MS. DUNN: Yes, I am going to leave a
19 copy to be filed.

20 EXAMINER BULGRIN: Okay. Great. Company
21 Exhibit 10?

22 MS. DUNN: Yes.

23 EXAMINER BULGRIN: Okay. It will be so
24 marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 EXAMINER BULGRIN: And I assume there is
2 no objections. So we will admit those, and you will
3 file them in the docket.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER BULGRIN: And that being said,
6 we will reconvene here tomorrow morning at 9 o'clock.

7 (Thereupon, at 4:16 p.m., the hearing was
8 adjourned.)

9 - - -

1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Tuesday, January 24, 2017,
5 and carefully compared with my original stenographic
6 notes.

7
8

Karen Sue Gibson, Registered
9 Merit Reporter.

10
11

Carolyn M. Burke, Registered
12 Professional Reporter.

13 (KSG-6305)

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Summary: Transcript in the matter of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company hearing held on 01/24/17 - Volume II electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.