

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Duke Energy:
Ohio, Inc., for Approval : Case No. 16-0576-EL-POR
of Its Energy Efficiency :
and Peak Demand Reduction :
Program Portfolio Plan. :
- - -

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 Monday, February 27, 2017.

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Monday Morning Session,

February 27, 2017.

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

Good morning, all. This is the hearing in Case No. 16-576-EL-POR, being the Application of Duke Energy Ohio, Inc., for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan. My name is Dick Bulgrin. I am the Attorney Examiner assigned by the Commission to conduct the hearing this morning.

And let's start with appearances of the parties. For the company.

MS. WATTS: Thank you, your Honor, and good morning. On behalf of Duke Energy Ohio, Amy B. Spiller and Elizabeth H. Watts, 139 East Fourth Street, Cincinnati, Ohio.

EXAMINER BULGRIN: All right. Why don't we just go around the horn here. Ms. Leppla.

MS. LEPLA: Miranda Leppla for the Ohio Environmental Council and Environmental Defense Fund, 1145 Chesapeake Avenue, Suite I, Columbus, Ohio 43212.

MS. FLEISHER: Good morning. Madeline

1 Fleisher for the Environmental Law & Policy Center,
2 21 West Broad Street, Suite 500, Columbus, Ohio
3 43215.

4 MR. DOVE: Robert Dove of the Law Office
5 of Robert Dove at P.O. Box 13442, Columbus, Ohio
6 43213, for Natural Resources Defense Council at 20
7 North Wacker Drive, Suite 1600, Chicago, Illinois
8 60606.

9 MR. PERKO: On behalf of the Ohio
10 Manufacturers' Association, Kimberly W. Bojko and
11 James D. Perko with the law firm Carpenter Lipps &
12 Leland, 280 North High Street, Suite 1300, Columbus,
13 Ohio 43215.

14 And I have also been asked to make the
15 appearance of Angela Paul Whitfield also on behalf of
16 Carpenter Lipps & Leland, and I will be making an
17 appearance for The Kroger Company.

18 EXAMINER BULGRIN: Okay. Mr. Healey.

19 MR. HEALEY: Good morning. Representing
20 the residential customers of Duke Energy Ohio,
21 Christopher Healey on behalf of Bruce Weston, Ohio
22 Consumers' Counsel, 10 West Broad Street, Suite 1800,
23 Columbus, Ohio 43215. Thank you.

24 EXAMINER BULGRIN: Ms. Mooney.

25 MS. MOONEY: On behalf of the Ohio

1 Partners for Affordable Energy, I'm Colleen Mooney,
2 Post Office Box 12451, Columbus, Ohio.

3 EXAMINER BULGRIN: Mr. Parram.

4 MR. PARRAM: Good morning, your Honor.
5 On behalf of the Ohio Hospital Association, Rick
6 Sites, regulatory counsel for the Ohio Hospital
7 Association, 155 East Broad Street, 3rd Floor,
8 Columbus, Ohio 43215 and also the law firm of Bricker
9 & Eckler, Attorneys Matthew Warnock, Dylan Borchers,
10 and Devin Parram, 100 South Third Street, Columbus,
11 Ohio 43215.

12 EXAMINER BULGRIN: Mr. Jones.

13 MR. JONES: Good morning, your Honor. On
14 behalf of the staff of the Public Utilities
15 Commission of Ohio, Attorney General Mike DeWine,
16 Assistant Attorney General Natalia Messenger and John
17 Jones, 30 East Broad Street, Columbus, Ohio 43215.

18 EXAMINER BULGRIN: Okay. Thank you.

19 Anybody else?

20 MS. WATTS: Your Honor, I was asked to
21 enter an appearance on behalf of Industrial Energy
22 Users of Ohio as well.

23 EXAMINER BULGRIN: Thank you. Okay.
24 Just preliminarily I've got, I believe, pending
25 motions to intervene by the Interstate Gas Supply,

1 Inc., by Industrial Energy Users - Ohio, by the Ohio
2 Hospital Association, by the Natural Resources
3 Defense Council and by the Environmental Defense Fund
4 and the Ohio Environmental Council. And all of those
5 motions will be granted. Oh, and Consumers' Counsel.
6 I am not sure whether officially we granted you
7 reading through, but you are granted.

8 MR. HEALEY: Thank you.

9 EXAMINER BULGRIN: Good to have you all
10 here. All right. Let's --

11 MS. MOONEY: Your Honor, was OPAC's
12 intervention granted?

13 EXAMINER BULGRIN: I think yours was.
14 Yes, it was.

15 MS. MOONEY: Okay. Thank you.

16 EXAMINER BULGRIN: Yes. Go ahead.

17 MS. WATTS: Thank you, your Honor.
18 First, I would like to mark as joint exhibits the
19 stipulation and recommendation that was filed in this
20 case on December 22 and the subsequent amended
21 stipulation as Joint Exhibits 1 and 2.

22 EXAMINER BULGRIN: All righty.

23 MS. WATTS: May I approach?

24 EXAMINER BULGRIN: Sure. And I won't
25 need copies of anything.

1 MS. WATTS: You will or will not?

2 EXAMINER BULGRIN: Will not.

3 MS. WATTS: Okay. Thank you. Does
4 anybody else need copies of these?

5 Darn, I've got a lot of wasted copy.

6 EXAMINER BULGRIN: We are going to mark
7 the original stipulation as Company Exhibit 1 -- or
8 Joint Exhibit 1 and the amended stipulation as Joint
9 Exhibit 2 or the other way around?

10 MS. WATTS: The stipulation -- the first
11 stipulation would be Joint Exhibit 1, and the amended
12 stipulation would be Joint Exhibit 2.

13 EXAMINER BULGRIN: Okay. I am really
14 asking that because I see it's already marked Joint
15 Exhibit 2 -- or 1 on there. Okay.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 MS. WATTS: Your Honor, is it your
18 preference documents that are docketed in the case
19 also be marked as exhibits; or if they are docketed,
20 do you deem those to be already part of the record?

21 EXAMINER BULGRIN: Yeah. The latter if
22 they are already docketed. Let's not create more
23 paper than we have to.

24 MS. WATTS: So, for example, the
25 application does not need to be marked and entered.

1 EXAMINER BULGRIN: We could mark it as an
2 exhibit, if you want, but I don't see any utility in
3 that so.

4 MS. WATTS: Okay. Unless anybody
5 disagrees I will dispense with that practice then.

6 MR. HEALEY: For what it's worth my
7 preference is to mark them for exhibits so we know
8 it's in the record. My understanding things that are
9 filed are not necessarily part of the record. They
10 are in the public record.

11 EXAMINER BULGRIN: Let's go through and
12 you won't need to submit the papers but we can at
13 least note for the record.

14 MS. WATTS: Okay. So, your Honor, we
15 would ask that the application in this proceeding be
16 marked as Duke Energy Ohio Exhibit 1.

17 EXAMINER BULGRIN: Okay.

18 MS. WATTS: And --

19 EXAMINER BULGRIN: And that was the
20 application filed?

21 MS. WATTS: On June 15, 2016.

22 EXAMINER BULGRIN: Okay.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. WATTS: And then the Market Potential
25 Study that was filed on August 15, 2016, we would ask

1 be marked as Duke Energy Ohio Exhibit 2.

2 EXAMINER BULGRIN: Okay.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. WATTS: And along with that exhibit
5 was an amended application that was filed on
6 October 14, 2016, we would ask that be marked as Duke
7 Energy Ohio Exhibit 3.

8 EXAMINER BULGRIN: Okay.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. WATTS: And then the testimonies we
11 can address as each witness takes the stand, if
12 that's.

13 EXAMINER BULGRIN: Sounds good. Okay.
14 Thank you.

15 MS. WATTS: So for its first witness Duke
16 Energy Ohio would call Timothy Duff.

17 (Witness sworn.)

18 EXAMINER BULGRIN: Please be seated.
19 Thank you.

20 MS. WATTS: May I approach, your Honor?

21 EXAMINER BULGRIN: Yes.

22 MS. WATTS: Your Honor, I would ask that
23 Mr. Duff's testimony be marked as Duke Energy Ohio
24 Exhibit 1.

25 EXAMINER BULGRIN: How about 4?

1 MS. WATTS: I'm sorry, 3.

2 EXAMINER BULGRIN: 4.

3 MS. WATTS: 4.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 - - -

6 TIMOTHY J. DUFF

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

9 DIRECT EXAMINATION

10 By Ms. Watts:

11 Q. Mr. Duff, do you have before you what's
12 been marked as Duke Energy Ohio Exhibit 4 just now?

13 A. Yes.

14 Q. And can you identify that document,
15 please.

16 A. It's my supplemental direct testimony
17 filed on January 4.

18 Q. And did you yourself write this
19 testimony?

20 A. Yes.

21 Q. And is everything contained in that
22 testimony true and accurate to the best of your
23 knowledge?

24 A. Yes.

25 Q. And do you have any additions and

1 corrections?

2 A. Not to my knowledge.

3 MS. WATTS: Thank you. Mr. Duff is
4 available for cross-examination.

5 EXAMINER BULGRIN: All righty.

6 Mr. Healey.

7 MR. HEALEY: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Healey:

11 Q. Good morning, Mr. Duff.

12 A. Good morning.

13 Q. Just preliminarily do you have a copy of
14 the amended stipulation in front of you?

15 A. I do.

16 Q. And you have a copy of your testimony
17 obviously.

18 A. Yeah.

19 Q. Thank you. Now, you are Duke's witness
20 sponsoring the amended stipulation and
21 recommendation, correct?

22 A. Yes.

23 Q. And just as a minor cleanup, I am only
24 going to focus on the amended stipulation so if I say
25 "stipulation," that's what I am referring to.

1 A. Yep.

2 Q. We are not going to refer to the original
3 one.

4 A. Yep.

5 Q. Let's look first at page 1 of the
6 stipulation, please. And about four lines down
7 there's a defined term "signatory parties" which I
8 understand to mean the parties that signed the
9 stipulation, correct?

10 A. Yeah, that's my understanding.

11 Q. And the -- a couple lines down further it
12 states that "This Stipulation and Recommendation,
13 which resolves all of the issues raised by Parties"
14 as opposed to signatory parties. Is there a
15 distinction between parties and signatory parties as
16 those terms are used here?

17 A. I believe it would be the signatory
18 parties.

19 Q. And is that consistent throughout,
20 whenever it says "parties" --

21 A. I believe so, yes.

22 Q. -- it means the signatory parties?

23 A. I didn't draft the stipulation.

24 Q. Understood. I'm just trying to --

25 A. That would be my interpretation.

1 Q. Let's turn to page 2 of the stipulation
2 really quickly -- or actually we can skip that.

3 Let's look at page 4 of the stipulation,
4 please. And I direct you to the second to last
5 whereas clause right in the middle that states
6 "WHEREAS, this Stipulation represents a serious
7 compromise of complex issues and involves substantial
8 benefits that would not otherwise have been
9 achievable." Do you see that?

10 A. Yes.

11 Q. Now, Duke did not calculate the monetary
12 value of the substantial benefits in this whereas
13 clause, correct?

14 A. To the best of my --

15 MS. WATTS: Objection as to form.

16 EXAMINER BULGRIN: Excuse me?

17 MS. WATTS: I am objecting as to the form
18 of the question.

19 EXAMINER BULGRIN: Could you rephrase?

20 MR. HEALEY: I am not sure I understand
21 the objection, your Honor. If the witness
22 understands the question --

23 MS. WATTS: It assumes a fact not in
24 evidence because you asked him if he calculated
25 monetary value, and I am not sure he was referring to

1 monetary value. Actually it is not his document, so
2 I don't know how he could answer that question but.

3 MR. HEALEY: Your Honor, he is the
4 witness sponsoring the stipulation. It says there
5 are substantial benefits. I am asking if he has a
6 monetary value for those benefits. If he says "no,"
7 he says "no." If he says "yes," then he says "yes."

8 EXAMINER BULGRIN: Well, you can answer.

9 A. I did not calculate any monetary benefit
10 associated with the stipulation.

11 Q. Let's turn now to page 9 of your
12 testimony.

13 A. I'm there.

14 Q. And starting at line 13, you discuss the
15 Commission's criteria for approval and line 15 you
16 identify three different I'll call them factors and
17 you state that as you understand it and as explained
18 by legal counsel, "the Commission will approve a
19 stipulation when it (i) is the product of serious
20 bargaining, among capable, knowledgeable parties;
21 (ii) does not violate any important regulatory
22 principle or practice, and (iii) as a package,
23 benefits ratepayers and the public interest." Do you
24 see that?

25 A. Yes.

1 Q. If I refer to that as the Commission's
2 three-prong or three-part test, you will understand
3 what I am referring to?

4 A. Yes, sir.

5 Q. And in line 15 you state that this is
6 based on your understanding and explained by your
7 legal counsel. Did you review any PUCO orders or
8 Ohio Supreme Court decisions to identify these three
9 factors?

10 A. No, I did not. I testified in support of
11 stipulations in the past and these were the three
12 factors that have been discussed in those cases.

13 Q. And you note that "as explained by my
14 legal counsel." Can you tell me what your legal
15 counsel explained to you with regard to these three
16 prongs?

17 MS. WATTS: Objection.

18 EXAMINER BULGRIN: Sustained.

19 MR. HEALEY: Your Honor, it says
20 "explained by my legal counsel." I don't know what
21 clearer waiver of privilege there could be.

22 EXAMINER BULGRIN: Well, I am going to
23 sustain the objection anyhow.

24 MR. HEALEY: Thank you, your Honor.

25 Q. (By Mr. Healey) Mr. Duff, you believe

1 that the stipulation was, in fact, the product of
2 serious bargaining, correct?

3 A. Yes.

4 Q. And you believe that Duke seriously
5 bargained with all of the parties that signed the
6 stipulation?

7 A. Yes.

8 MR. HEALEY: Your Honor, I would like to
9 mark as OCC Exhibit 1 Duke Energy Ohio's response to
10 OCC Interrogatory 06-067. May I approach the
11 witness, please?

12 EXAMINER BULGRIN: Sure. This is OCC
13 Exhibit 1.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Now, Mr. Duff, you testified that the
16 company, in fact, seriously bargained with all the
17 signatory parties, correct?

18 A. Yes.

19 Q. And to bargain with these parties, you
20 had various conversations with them?

21 A. Conversations, communications I would say
22 is a better.

23 Q. That's broad enough, sure. And many of
24 these communications were over the telephone; is that
25 right?

1 A. Some were.

2 Q. Some were? I would like you to look at
3 OCC Exhibit 1, please, and in this discovery request
4 from OCC, OCC asked Duke to identify the settlement
5 communications related to the stipulation. And after
6 various objections, near the bottom of Duke's
7 response Duke stated that "The Company has engaged in
8 numerous telephone discussions with various parties
9 to the proceeding most of which were not recorded in
10 any fashion or logged." Do you see that language
11 there?

12 A. Uh-huh.

13 Q. And you were part of many of these
14 conversations?

15 A. Yes.

16 Q. Were you part of all of them?

17 A. Maybe not all of them. I can't say for
18 sure but the majority of them, yes.

19 Q. And the Ohio Consumers' Counsel did not
20 participate in all of these numerous telephone
21 conversations, correct?

22 A. No, but I know I was on phone calls with
23 you relating to this, I think.

24 Q. And the PUCO staff did not participate in
25 each of these numerous telephone conversations,

1 correct?

2 A. They participated in some of the phone
3 conversations.

4 Q. But not all of them.

5 A. That's correct.

6 Q. Thank you. Do you have a copy of the
7 amended application in front of you?

8 A. No, I do not.

9 MR. HEALEY: Your Honor, may I approach?

10 EXAMINER BULGRIN: Sure.

11 MR. HEALEY: I am handing the witness
12 what's been marked Duke Exhibit 3 already. It's a
13 copy of the amended application.

14 Q. (By Mr. Healey) Can you turn to page 12,
15 please, Mr. Duff, of the amended application.

16 A. Yes. I'm there.

17 Q. Now, Table 3 in the amended application
18 provides the energy efficiency benchmarks for 2017,
19 2018, and 2019, correct?

20 A. That's correct.

21 Q. And you are familiar with those
22 benchmarks?

23 A. Yes.

24 Q. And these are the cumulative benchmarks
25 as opposed to the annual benchmarks?

1 A. The sum of the annual benchmarks.

2 Q. Sure. So if we talk about cumulative
3 benchmarks or annual benchmarks, you know what we are
4 talking about?

5 A. Yes.

6 Q. Those are the benchmarks under --

7 A. Yes.

8 Q. -- 4928.66, and the the cumulative --

9 A. Yes.

10 Q. -- is the sum of the -- it would be
11 easier if you let me finish the question just so
12 we'll have a cleaner record. So I'll finish, and
13 then you can confirm. Thank you.

14 MR. HEALEY: Your Honor, I would like to
15 mark as OCC Exhibit 2 a copy of Duke's response to
16 NRDC Interrogatory 01-009. May I approach the
17 witness, please?

18 EXAMINER BULGRIN: Sure.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Now, Mr. Duff, you have in front of you
21 what's been marked OCC Exhibit 2, and you're
22 identified as the responsible witness on this
23 discovery response, correct?

24 A. Yeah.

25 Q. And this interrogatory NRDC asks Duke for

1 information about the cumulative energy savings
2 through 2015 and 2016. Do you see that?

3 A. Yes.

4 Q. And I just want to very quickly compare
5 the cumulative savings actually achieved by Duke in
6 2015 in response A in OCC Exhibit 2 which you'll note
7 is 1,541,645 megawatt-hours, correct?

8 A. Yes.

9 Q. And then if you look back at Table 3 on
10 page 12 of the amended application, you'll see that
11 the cumulative required energy efficiency savings for
12 2017 is 1,489,662 megawatt-hours, correct?

13 A. Yes, those are the numbers.

14 Q. So it's fair or accurate to say that Duke
15 is at least as of 2017 about two years ahead of its
16 cumulative savings requirements given that the 2015
17 actual savings is higher than the 2017 target?

18 A. Again, these are projected numbers so, I
19 mean, I guess based off those projections, these
20 definitely need to be known they are not final, so it
21 really depends on what the annual sales would be.

22 Q. Okay. Thank you for that clarification.
23 Let's turn to page 4 of the amended stipulation,
24 please.

25 A. The stipulation again?

1 Q. Yes, stipulation again.

2 A. Oh, okay. You said page 4, right?

3 Q. Yes.

4 A. Okay.

5 Q. Just a clarifying point, in the paragraph
6 that starts with the "Now, therefore," it reads "the
7 Parties stipulate, agree and recommend that the
8 Commission make the following findings and issue its
9 Opinion and Order in these proceedings accepting and
10 approving the Company's application and testimony as
11 filed." I just want to confirm that the word
12 "application" here means the original application and
13 the market potential study and the amended
14 application collectively?

15 A. Yes, that would be a fair statement.

16 Q. Thank you. Now, the stipulation does not
17 modify any of the program costs for any particular
18 program; is that right?

19 A. It does not modify any of the projections
20 of any of the programs unless ultimately approved.
21 There were some nonresidential marketing dollars that
22 were built in as part of the stipulation.

23 Q. But just, for example, you know, the
24 application has projected budgets for each program.
25 The stipulation is not changing any of those

1 numbers --

2 A. It could, yes.

3 Q. It could.

4 A. Yes. As I just mentioned, some of the
5 commitments in the stipulation are pertaining to
6 finding the markets of targeted groups, and those
7 marketing dollars would be part of -- part of the
8 marketing budgets.

9 Q. Okay. So those marketing dollars would
10 potentially increase the budget for the programs they
11 apply to?

12 A. Potentially.

13 Q. Okay. And the stipulation doesn't
14 provide any projections or estimates of those
15 marketing dollars, does it?

16 A. It did.

17 Q. It --

18 A. It was specific dollar amounts.

19 Q. Are you referring to -- sorry. Are you
20 referring to the commitments in the stipulation I
21 believe to OMA and OHA?

22 A. Yes.

23 Q. Are there any others?

24 A. Not to my knowledge, no.

25 Q. Okay. So other than the marketing

1 commitments in the amounts stated in the stipulation
2 for OMA and OHA, does the stipulation contemplate any
3 changes to the budgets of particular programs?

4 A. It doesn't in that we don't have any
5 granular projections. There are commitments to
6 develop new programs.

7 Q. Okay.

8 A. And obviously without having those
9 programs approved or having the time to put those
10 programs together to create projections wasn't --
11 wasn't possible at this time.

12 Q. Now, those programs you just mentioned,
13 you are referring to at the very least -- as one
14 example is a smart thermostat program, correct?

15 A. Correct.

16 Q. And then another example is, I believe, a
17 space heating program, I think?

18 A. Yes.

19 Q. Let's talk briefly about the smart
20 thermostat program since you mentioned that now.
21 Let's look at page 8 of the stipulation. Now, as you
22 mentioned, the smart thermostat program in the
23 application doesn't provide any projected budget,
24 correct?

25 A. That's correct.

1 Q. And Duke has not actually determined what
2 the budget for this program would be, correct?

3 A. Correct. Going to work with parties to
4 determine that.

5 Q. And the stipulation doesn't provide any
6 estimate of the costs of the program?

7 A. No. It's -- the addition is based off of
8 it being able to prove cost effective. That analysis
9 hasn't been done yet.

10 Q. But through the stipulation, Duke is, in
11 fact, seeking approval of this program?

12 A. I don't necessarily think it says that we
13 are seeking the approval. I think it says it is
14 going to determine, and then if cost effective, it
15 would be added. It says "Once the Company's
16 portfolio is approved by the Commission," so I'm
17 assuming that's -- that that would be the -- the
18 approval of the program, yes.

19 Q. So it's not Duke's intention based on the
20 stipulation to come back to the PUCO for further
21 approval of this program if it is determined to be
22 cost effective, correct?

23 A. I -- no. I think that there is -- there
24 is some Commission oversight after the collaborative.
25 Midway through the page it says "Following the

1 deployment of the program, such instant rebates will
2 be eligible for reimbursement at the incentive level
3 established by the" Commission and -- or "established
4 by the Company and approved by the Commission." So I
5 believe that there is a level of approval necessary
6 for the incentive amount.

7 Q. Okay. So the stipulation provides for
8 Commission approval of an incentive amount, and you
9 do not expect that to occur in the context of the
10 stipulation given that the stipulation doesn't state
11 an amount, correct?

12 A. Correct.

13 Q. And does the stipulation anticipate
14 any -- any Commission oversight other than approving
15 the rebate amount in the future?

16 A. I don't believe so. I think it was
17 part -- that's why it was part of the stipulation, so
18 the Commission could consider it at this time.

19 Q. I would like to direct you to the bottom
20 of page 8 of the stipulation, the page we are
21 currently on, and the very last sentence that states
22 "Duke Energy Ohio will not offer any incentive or
23 rebate that would, on its own or in combination with
24 any applicable gas utility rebate, exceed the actual
25 cost of the purchased smart thermostat." Do you see

1 that there?

2 A. Yes.

3 Q. I would like to walk through a couple of
4 examples of how this provision might take effect.
5 Let's suppose, for example, that a customer goes to a
6 local retailer, Home Depot, Lowe's, whatever, and
7 buys an approved smart thermostat for \$250. Under
8 this sentence the consumer could conceivably get up
9 to \$250 in rebates from both Duke and the applicable
10 gas utility, correct?

11 A. Yes, as long as it's not exceeding the
12 actual cost, that's correct.

13 Q. Now, let's suppose in a new example that
14 a customer buys an approved smart thermostat for \$150
15 and that customer receives a \$100 rebate from his gas
16 utility. Then the maximum rebate from Duke would be
17 \$50, correct?

18 A. That's correct.

19 Q. Now, suppose a customer gets a free smart
20 thermostat from a CRES provider in exchange for
21 buying his or her electricity from the CRES provider,
22 that situation the CRES provider could receive the
23 rebate directly from Duke, correct?

24 A. If, in fact -- if, in fact, the CRES
25 provider had costs associated with it and it was part

1 of their cost acquisition, then, yes.

2 Q. And so in that situation Duke would
3 confirm the actual costs that the CRES provider --

4 A. Correct.

5 Q. -- incurred to obtain the thermostat and
6 that would be the maximum rebate --

7 A. Yes.

8 Q. -- that the CRES could receive --

9 A. Yes.

10 Q. -- right? Let's consider one final
11 example. Let's suppose a customer buys a thermostat
12 for \$200 and gets a \$100 rebate from the CRES
13 provider. Then the customers could also get a \$100
14 rebate from Duke, correct?

15 A. So let's just make sure I have your
16 example correct. \$200 thermostat that the CRES
17 provider is providing to the customer. So as long as
18 the -- we can't pay both the CRES provider and the
19 customers, so as long as the customer didn't convey
20 the incentive to the CRES provider, yes, you could
21 pay \$100 to the -- to the customer.

22 Q. Okay. Thank you. Let's go back to page
23 4 of the stipulation, please.

24 A. I'm there.

25 Q. And I would like to focus on paragraph 1

1 which reads "Signatory Parties acknowledge that the
2 Company will offer programs consistent with its
3 existing approved energy efficiency and peak demand
4 reduction programs during 2017 until such time as the
5 Commission approves a new portfolio." Do you see
6 that language?

7 A. Yes.

8 Q. And Duke has, in fact, continued its 2016
9 programs into 2017?

10 A. It has offered programs consistent with
11 the historic portfolio, yes.

12 Q. And so under this provision if the
13 Commission does not approve the new portfolio until
14 say March 31, 2017, then Duke will continue its 2016
15 programs until the end of March, correct?

16 A. Programs consistent with the 2016
17 portfolio, yes.

18 Q. Sure. And by the same token if the
19 Commission gets delayed and doesn't approve the new
20 portfolio until September of 2017, then again the
21 2016 programs -- programs will be continued
22 consistent with the 2016 programs?

23 A. Yes. Parties felt that was in the best
24 interest of customers.

25 Q. Now, let's say the stipulation does, in

1 fact, get approved and there are new programs. Will
2 the money that Duke spends on programs in 2017 from
3 the continuation of the previous programs, will those
4 dollars be on top of the budget that's approved in
5 the stipulation?

6 A. I don't think it really went to the
7 specifics of that with respect to those dollars.
8 Again, it was something that was put into the amended
9 stipulation because the hearing for this case kept on
10 getting pushed out, and we didn't know when we would
11 get an approval.

12 I think with respect to the dollars, if
13 we are not operating under a firm cap, the dollars --
14 historically what has worked is the dollars that have
15 been spent in a year have been what the company seeks
16 to recovery as long as it's in attempts to meet and
17 exceed its mandates, so I would think that, yes, they
18 would be total dollars spent in 2017 to reach the
19 2017 energy efficiency benchmarks.

20 Q. Maybe we can take a step back and break
21 this down a little bit more. The dollars spent in
22 2017 before approval of a new portfolio, Duke will
23 seek recovery of those costs, correct?

24 A. That's correct.

25 Q. And if the stipulation gets approved, it

1 gets approved with a budget, correct?

2 A. It gets approved with projections for
3 costs. I don't think -- my point is it has never
4 been a firm budget that you have to hit your budget
5 and then you stop spending. It's because the
6 Commission and the state of Ohio has encouraged
7 utilities to meet and exceed that you basically will
8 spend to get as much energy efficiency as you can in
9 the year because that's the most cost effective way
10 to get energy efficiency before standards move
11 forward. You are trying to pull the efficiency
12 forward.

13 My point is there hasn't been a total
14 budget. There have been projections provided for the
15 years for the portfolios but there's never been a
16 firm budget that the company must stop spending at.

17 Q. So it's your understanding then that the
18 projected numbers as recorded in the amended
19 application are not a limit on Duke's spending.

20 A. No.

21 Q. And so your position is -- or your
22 interpretation is that Duke can spend an unlimited
23 amount of money and --

24 A. Provided cost effective energy
25 efficiency.

1 Q. Okay. Now, Duke has not done any
2 forecast of the amount of costs it will incur for the
3 continuation of the previous programs into 2017,
4 correct?

5 A. No, it has not. It's been -- as I said,
6 it was a response to the delay in this proceeding.

7 Q. Let's say the delay continues until the
8 end of March and that's when the new portfolio is
9 approved, so you would have then at that point run
10 the continued programs for an extra three months,
11 correct?

12 A. Yeah, a quarter of the year.

13 Q. So your anticipation then would be you
14 would spend approximately a quarter of the previous
15 annual projections?

16 A. No, because it's not lineal in terms of
17 when dollars are spent. Customers do different
18 efficiency at different times of the year. Again, I
19 think it's probably looking at historic amounts
20 spent; but, again, the other thing you have to
21 consider is that these programs, which is one of the
22 reasons why we have been so interested in getting the
23 new portfolio program, these programs have been
24 pretty much in place since 2013 and were frozen as
25 part of SB 310 so they haven't had any changes and

1 updates so it's hard to say it would be a straight
2 similar spending. It's one of the things that's a
3 reality of energy efficiency, when programs are in
4 the market, it gets harder to get customers for those
5 programs because you are reaching deeper into market
6 saturation.

7 MR. HEALEY: Your Honor, that's all I
8 have for Mr. Duff.

9 MR. PARRAM: No questions.

10 MS. MOONEY: No questions.

11 EXAMINER BULGRIN: Staff.

12 MR. JONES: Yes, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Jones:

16 Q. Good morning.

17 A. It's a little bit of a wrench here.

18 Q. Exactly. I want to ask you about the
19 amended stipulation here. I want to refer you to the
20 amended stipulation, if I may, on page 5, paragraph
21 5.

22 A. Yes.

23 Q. And let me know when you are there.

24 A. I'm there.

25 Q. Okay. It states that, paragraph 5 there,

1 that the signatory parties agree that Duke is
2 "eligible to earn a shared savings consistent with
3 the incentive structure" in the table provided on
4 that page; is that correct?

5 A. Well, there's a clause after that that
6 says "if the Company exceeds the annual statutory
7 benchmark for savings achieved."

8 Q. Okay. And that's noted there in the
9 paragraph, correct?

10 A. Yes.

11 Q. Yes, okay. So, now, if Duke exceeds its
12 statutory benchmark by 101 percent to 106 percent,
13 then it will receive 6 percent aftertax shared
14 savings; is that correct?

15 A. That's correct.

16 Q. And if Duke exceeds its benchmarks by
17 106 percent to 112 percent, then will it receive
18 9 percent aftertax shared savings?

19 A. Yes.

20 Q. Okay. So according to your table there
21 on page 5, Duke -- Duke can choose then between
22 6 percent and 9 percent shared savings when it
23 exceeds the benchmarks by 106 percent?

24 A. No. It's -- it's through -- so the way
25 we would interpret it is just you have got to get

1 above 100, you would have to get above, so you would
2 have to be at 106.01 percent, so you are correct.

3 If you looked at the pure signs of
4 things, there shouldn't be an underline under that
5 greater than or equal to 106. There is no choice in
6 the matter. The company has to exceed 106 percent to
7 get to the 9 percent shared savings.

8 Q. Okay. Thank you for that clarification.
9 All right. And if Duke then exceeds its benchmarks
10 by 32 percent, then it will receive 12 percent
11 aftertax shared savings; is that correct?

12 A. That's correct.

13 Q. And when we say aftertax, it means that
14 ratepayers also pay Duke's corporate income tax rate
15 of 36 percent on top of the shared savings incentive
16 amount calculated in the second column of the table?

17 A. Yeah. That's consistent with what was
18 approved for AEP in their recent stipulation as well.

19 Q. Okay. Thank you. And then also on that
20 same page, next paragraph, 6, then that the company
21 agrees to a cap on shared savings in the amount of 8
22 million aftertax dollars annually; is that correct?

23 A. That's correct.

24 Q. So, now, if you look at the aftertax
25 amount there for the table, we are looking at 12.5

1 million annually, right, for aftertax?

2 A. I'll take your word for it. I haven't
3 done the math on it, but approximately I would say
4 given the number you threw out.

5 Q. Okay. So under Duke's amended plan then
6 for 2017 through 2019, under the proposed annual
7 shared savings cap Duke would be eligible to receive
8 up to 37,500,000 aftertax for those three years
9 combined?

10 A. Approximately, approximately, if your
11 math is correct that it is 12.5 a year, the cap is an
12 annual cap so, yes.

13 Q. Okay. And the proposed cap on shared
14 savings over 2017 to 2019 before tax would be
15 24 million?

16 A. No, no, no. The 8 million is the
17 aftertax number. I'm sorry. I must have
18 misunderstood your question. If you gross it up for
19 tax, that's the 12-1/2.

20 Q. Yes.

21 A. So it would be the sum of those is the
22 pretax amount. I misunderstood your question. The 8
23 million is an aftertax number. So you would gross
24 that number up. That would give you your 12.5
25 million assuming the tax percentage that you quoted,

1 and then the sum of those three, those would then be
2 the pretax number.

3 Q. And for the record what's the pretax
4 number?

5 A. The pretax number would be the 12.5 you
6 referenced earlier.

7 Q. Okay. And then what is the aftertax
8 number?

9 A. \$8 million.

10 Q. And if you had that for three years, what
11 would that be?

12 A. The sum of the aftertax is 24.

13 Q. 24 million, okay. And Duke's proposed
14 annual energy efficiency program portfolio budget is
15 approximately 38 million a year?

16 A. The program costs, yes. Again, that's --
17 I should caveat that's based off of projections and
18 that doesn't factor in any of the costs of any of the
19 amendments that were part of the stipulation.

20 Q. Okay. So if you were to take that --
21 that 38 million, subject to the other changes you
22 just mentioned there, you would get 114 million over
23 three years; is that correct?

24 A. Approximately -- let's see, yeah,
25 approximately.

1 Q. Okay. And as -- if Duke were to be
2 eligible to receive then the maximum 37,500,000 over
3 three years, then what percentage would that be of
4 the 114 million?

5 A. The 114 million doesn't project out to
6 12 percent overachievement, so we haven't done that
7 math, Mr. Jones.

8 Q. Okay. All right. I want to refer your
9 attention here to page 7 of the -- sorry, paragraph
10 7.

11 A. Paragraph 7.

12 Q. 7 on page 5 there --

13 A. Yes.

14 Q. -- and continues over on page 6.

15 A. Yep.

16 Q. And it reads, correct me if this isn't
17 what it says here, it says that "During the term of
18 the Stipulation, net benefits from the following will
19 not count towards shared savings," and I am skipping
20 ahead to G here, "any energy savings previously used
21 in the calculation of a shared savings incentive
22 during a prior year." Do you see that?

23 A. That's correct.

24 Q. Mr. Duff, you have knowledge and were
25 involved in the proceeding involved in Case No.

1 14-457-EL-RDR, were you not?

2 A. I most certainly was.

3 Q. Okay. And --

4 MR. JONES: Your Honor, if I could have
5 an exhibit here that's an entry of the Commission on
6 that stipulation for what was approved by the
7 Commission and I would like to just show Mr. Duff
8 this exhibit.

9 EXAMINER BULGRIN: Sure.

10 MR. JONES: I want to take administrative
11 notice of it too.

12 EXAMINER BULGRIN: Sure.

13 MR. JONES: May I approach?

14 MS. WATTS: John, I don't have any
15 objection to that, and I suspect the witness has a
16 photographic memory of the decision.

17 MR. JONES: I am sure you are right.

18 EXAMINER BULGRIN: So we are going to
19 mark this Staff Exhibit 2.

20 MR. JONES: Yeah. I would ask
21 administrative notice to be taken of the decision.

22 EXAMINER BULGRIN: Okay.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. (By Mr. Jones) And what I have handed you
25 is marked as Staff Exhibit 2. And it's a second

1 entry on rehearing from the Commission in Case No.
2 14-457-EL-RDR. Do you see that?

3 A. Yeah. Do you want to go to page 6?

4 Q. Excuse me, yes, yes. And this is a
5 decision that approved the stipulation that you were
6 involved with, right?

7 A. Yes.

8 Q. And the staff was involved with. Okay.
9 And one of the terms of that stipulation dealt with
10 the provision, and if you will look on page 6, as you
11 mentioned, down at the bottom, in paragraph 1, you'll
12 see there in the third sentence, would you read that
13 please for the record.

14 A. Sure. "Beginning in 2017, the company
15 will not file for recovery of the shared savings
16 mechanism in any portfolio plan year after 2014 in
17 which banked savings have been used to meet the
18 annual benchmark. If there is a change in law or
19 regulation regarding shared savings, Duke may seek a
20 shared savings incentive consistent with such change
21 in law, regulation, or order."

22 Q. Okay. Thank you. Now, I want to go back
23 then to that provision in the amended stipulation
24 that goes from page 5 to page 6 and paragraph 7G and
25 that language that's provided there, "any energy

1 savings previously used in the calculation of a
2 shared savings incentive during a prior year." Now,
3 let me ask you so any energy savings in the bank from
4 the previous year that was not used to calculate
5 shared savings, can that count toward shared shavings
6 in this proposal?

7 A. So I think -- I think just to kind of
8 explain because I am losing a little on your
9 question.

10 Q. Okay.

11 A. The stipulation provision that says that
12 the company can't file for recovery shared in any
13 portfolio plan year after 2014 in which banked
14 savings have been used to meet the annual benchmark,
15 that really pertains to the language that we read
16 earlier in 5 that says if the company exceeds, it can
17 earn the incentive, if they exceed the annual
18 statutory benchmark for shared savings meaning that
19 it can't -- it can't earn an incentive unless it
20 exceeds the annual statutory benchmark.

21 Q. Yes.

22 A. So that is consistent. The term 7 deals
23 with the net benefits included in shared savings and
24 what this was saying was any net benefits that's been
25 previously recognized in the calculation of shared

1 savings can't be counted again. The company had a
 2 bad experience with the term banked savings, and the
 3 language that was originally in the stipulation had
 4 banked savings in it, so we worked with parties to
 5 define what banked savings were which means that
 6 things that have been used in the past recognized the
 7 net benefit of shared savings, so it's crystal clear
 8 that we're not double counting savings in the shared
 9 savings calculation, and we can't earn an incentive
 10 in any year in which we have to meet the -- in which
 11 we can't meet the benchmark without annual savings.

12 Q. Okay. So just to be clear then from --
 13 for this amended plan that's before us in this
 14 proceeding, that the way you are interpreting 7G of
 15 the amended stipulation is you can't use banked
 16 savings for anything other than to help meet the
 17 benchmark for any year in the portfolio plan, right?

18 A. Correct. It doesn't -- the term 7
 19 doesn't deal with meeting the benchmark at all. Term
 20 7 only deals with what the net benefits included in
 21 the shared savings calculation are to be. And this
 22 was to be cleared that if it's been used to calculate
 23 shared savings in the past, it can't be -- no net
 24 benefit can be used. That's the whole point.

25 But the company is committed to the exact

1 terms in the stipulation. It won't file for shared
2 savings or any net benefits in any year that it has
3 to -- that it -- in which banked savings have been
4 used to meet the annual benchmark.

5 Q. So Duke would not rely on banked savings
6 to get the incentive then for any plan year in this
7 amended --

8 A. It cannot. It cannot under the terms of
9 the stipulation unless there is any change in law or
10 regulation.

11 Q. Mr. Duff, I want to ask you moving on
12 from that did you assist Duke in replying to any of
13 staff's data requests in this case?

14 A. I looked at some of them, not all of them
15 but some of them, yes.

16 Q. Okay.

17 MR. JONES: Your Honor, I have two
18 exhibits here I would like to present to Mr. Duff.

19 EXAMINER BULGRIN: All righty.

20 MR. JONES: Thank you.

21 EXAMINER BULGRIN: And these are marked
22 Staff Exhibits 3 and 4.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 Q. (By Mr. Jones) Mr. Duff, what I have
25 handed you is marked as Staff Exhibit 3 and Staff

1 Exhibit 4. Do you see that before you?

2 A. Yes.

3 Q. And if I could have you turn to page --
4 the second page. I guess it would be the third page
5 actually. This is on front and back.

6 A. Of?

7 Q. Where it says "Request." Do you see
8 that?

9 A. Yes. So you are talking about Exhibit 3.

10 Q. Exhibit 3, yes.

11 A. Okay. Yeah.

12 Q. And do you see there before you as to
13 STAFF-DR-01-001 request for data being made to Duke
14 from staff?

15 A. Yes.

16 Q. Okay. And then if you would refer to
17 Staff Exhibit 4 and if you refer to the second to the
18 last page.

19 A. Yes.

20 Q. Page 4 of Exhibit 4, do you see then a
21 chart there and information provided on that page
22 that says --

23 A. Yes.

24 Q. -- responsive to the Data Request?

25 A. Yes, I believe so. This was a complex

1 one where it depended on which source document you
 2 were pulling from. We were surprised because this
 3 was all publicly available data through filings, but
 4 we determined it was more challenging to find because
 5 timing of different things and projections to figure
 6 out projected costs, particularly going back for the
 7 2009 to 2012 period because it was under save-a-watt.

8 Q. Okay. Very good. So you are familiar
 9 with this. You have helped prepare this --

10 A. Yes.

11 Q. -- response to staff's Data Request.
 12 Okay. Let me ask you on Staff Exhibit 4, page 4,
 13 then --

14 A. Yes.

15 Q. -- does it provided there for the years
 16 2009 to 2015, does it show the company's projected
 17 and actual costs versus energy portfolio plans?

18 A. Yes.

19 Q. Okay. And also from the same years, 2009
 20 through 2015, it shows Duke's actual program costs?

21 A. That's correct.

22 Q. Okay. And does it show that the actual
 23 program costs for those years were less than what was
 24 projected for each year?

25 A. Yes.

1 Q. Okay.

2 A. It is important to note some of those
3 years we didn't hit our mandates though because the
4 portfolio was frozen. I think that's important to
5 note.

6 Q. And in 2012 look for a second.

7 A. Yes.

8 Q. And if you want to do this simple
9 calculation, I am saying that the actual costs were
10 approximately 74 percent of what was projected; would
11 you agree with that?

12 A. That's correct.

13 Q. Okay. And if you look at 2013, the
14 actual costs were approximately 86 percent of what
15 was projected; is that correct?

16 A. Subject to check, I'll take your math,
17 yeah.

18 Q. Okay. And in 2014, Duke spent 97 percent
19 of what it projected, and in 2015 it was 86 percent
20 of what it projected; is that correct?

21 A. That is correct.

22 Q. The actual --

23 A. Again, I haven't done the math. Looking
24 at those numbers those sound approximately correct.

25 Q. Okay. And if you were to do the math and

1 average those percentages actually spent on program
2 costs below what was projected from those years 2012
3 through 2015, you get an average of 86 percent --

4 A. I --

5 Q. -- approximately?

6 A. I haven't added those. That one is
7 getting a little bit bigger. I can't do a quick ball
8 park to give you an average on four large numbers.
9 If you have done the math, subject to check, I'll
10 accept that.

11 Q. Okay. Thank you. So then looking at
12 that information, and the difference would be an
13 average reduction of 14 percent between what was
14 actually spent and what was projected each year from
15 2012 through 2015, correct?

16 A. I think that -- based off what you said.
17 Again, I think it's important in 2013, '14, and '15,
18 the company fell short of its annual benchmark in
19 those years.

20 Q. Thank you. And you're familiar then with
21 what staff is proposing then pursuant to Mr. Donlon's
22 testimony as to FERC Form line 10 of 2015, FERC Form
23 1, what's being proposed by staff for a cost cap
24 here?

25 A. I have read his testimony, yes.

1 Q. Okay. And you are familiar then with
2 that number 33,820,565 --

3 A. Yes.

4 Q. -- from that line 10?

5 A. Yes.

6 Q. Now, if you reduced your proposed annual
7 38 million budget to the 33,820,565 shown on the 2015
8 FERC Form 1, line 10, this reduces your average
9 annual budget by 11 percent, approximately, correct?

10 A. So that's just the program costs, no lost
11 revenues and no shared savings which is in
12 Mr. Donlon's 33 million cap, so I don't think that's
13 an apples-to-apples comparison, Mr. Jones.

14 Q. But you would agree that's a 11 percent
15 reduction.

16 A. Subject to check, I haven't done the math
17 to know.

18 Q. Okay. And if you reduced your annual
19 budget then to that line 10, 33,820,565, you would
20 still have approximately 3 percent or 1.14 million
21 left over in your annual budget; is that correct?

22 A. No. I don't think you can look at it
23 that way.

24 Q. I am just asking you that question
25 though.

1 A. No. Well, you are just throwing math out
2 that I haven't done, so if your math is correct and
3 you are saying the difference between 4 -- 33 and
4 whatever the 11 percent reduction is is that, subject
5 to check, I can -- I can, but I haven't done that
6 math to know, Mr. Jones.

7 Q. Okay. Fair enough. And looking again at
8 Staff Exhibit 4, page 4, looking between 2009 and
9 2015, with the exception of 2011, the actual
10 kilowatt-hour energy savings achieved was above what
11 Duke projected, correct?

12 A. That's correct. We are very pleased with
13 the way we manage our portfolio to try to make it as
14 cost effective as possible. The shared savings
15 incentive structure is very effective for doing so.

16 MR. HEALEY: Your Honor, I move to strike
17 the last commentary as unresponsive.

18 EXAMINER BULGRIN: Overruled.

19 Q. Mr. Duff, beginning in 2012, Duke's
20 actual kilowatt-hour energy savings achieved was
21 141 percent of what it projected; is that correct?

22 A. So you are saying the sum of the actuals
23 is -- the sum of the projected over the 2012 to 2015
24 period is 141 percent greater?

25 Q. Overachieved, yes.

1 A. I haven't done that math again, subject
2 to check. But I would point out, as I pointed out
3 earlier, the Commission wants the company to hit its
4 annual mandates. It's incentivized to do this. It's
5 desired to be incentivized to do so. And from 2013
6 to 2015, the company fell significantly short of its
7 mandates primarily due to the fact it was operating
8 under a frozen portfolio.

9 So looking at those numbers, it's not
10 really a true estimate of what the company would have
11 done because it couldn't strive to hit its actual
12 mandates due to the freeze.

13 MR. JONES: Your Honor, I would move to
14 strike everything after talking about 2013 forward
15 because beyond the scope of the question.

16 EXAMINER BULGRIN: I will deny that. You
17 asked the question so.

18 Q. Mr. Duff, in 2013, Duke's actual
19 kilowatt-hour savings achieved was 125 percent of
20 what you projected, overachieved; is that correct?

21 A. Are you comparing the 144,101,736 to
22 115,117,713?

23 Q. Yes.

24 A. Subject to check, that math looks
25 correct.

1 Q. Okay. And subject to check then, Duke's
2 actual energy efficiency savings in kilowatt-hours
3 was 131 percent in 2014 and 119 percent in 2015 of
4 what you projected; is that correct?

5 A. Subject to check.

6 Q. Okay. I want to ask you Duke's
7 forecasted mandate for megawatt-hour savings for 2017
8 is approximately 202,190 megawatt-hours; is that
9 correct?

10 A. Are you going back -- are you going back
11 to the -- can you reference the source?

12 Q. Yeah. Let's see here, going back to the
13 amended application.

14 A. Okay. I want to make sure we are on the
15 same.

16 Q. Page 12. Yes.

17 A. That looks approximately correct, yes.

18 Q. Okay.

19 A. Again, obviously that's subject -- these
20 are projections but.

21 Q. Right.

22 A. So you are saying for 2017? Actually I
23 can't do any math to figure out that number for 2017.

24 Q. Okay.

25 A. I don't have a 2016 baseline to compare

1 it to to figure out what the annual number is.

2 Q. Okay. And let's see here, 2018 it would
3 be --

4 A. 2018 looks like the 202 you referenced.

5 Q. I have 203,213.

6 A. Yeah. Yeah, that's --

7 Q. That looks right to you?

8 A. Because that's just '18 minus '17, but I
9 can't determine the '17 projection because I don't
10 have the '16 baseline in front of me.

11 Q. Right. Okay.

12 EXAMINER BULGRIN: I'm sorry. What page
13 are you on?

14 MR. JONES: This is page 12 of the
15 amended application, table 3.

16 EXAMINER BULGRIN: Okay.

17 MR. JONES: Looking at the cumulative
18 energy savings.

19 EXAMINER BULGRIN: Got it.

20 Q. Let's see here, and now let's look at
21 what Duke proposed in savings for those years 2017
22 through 2019. If you look at what Duke proposed for
23 savings in energy efficiency, for 2017 that number
24 would be 239,148?

25 A. Can you reference a page again?

1 Q. Actually this is coming from the --

2 A. You are throwing a lot of numbers out,
3 and I don't have a source.

4 Q. JEZ Exhibit 1.

5 A. If you can show that to me, that would be
6 great. That's not one of my exhibits.

7 Q. Yeah. If you look at the direct
8 testimony of James Ziolkowski.

9 A. I don't have that, Mr. Jones.

10 Q. Okay.

11 MS. WATTS: John, I have a copy. The
12 exhibit is not legible in this form.

13 Q. Yeah. This is hard to read too so you
14 are probably going to struggle with this. This is
15 what we have. This is what we were provided.

16 MS. WATTS: We typically give the live
17 file to staff. From a working perspective everybody
18 has the live file, but in the hearing room we don't
19 have that advantage so.

20 EXAMINER BULGRIN: Let's go off the
21 record here.

22 (Discussion off the record.)

23 (Recess taken.)

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

1 Mr. Jones.

2 MR. JONES: Thank you, your Honor. Your
3 Honor, the company is willing to stipulate that the
4 proposed megawatt-hour savings for 2017 was 239,148
5 megawatt-hours and for 2018 it was 236,582
6 megawatt-hours and for 2019 it was 234,352
7 megawatt-hours and this is reflected in the record
8 from the testimony of James Ziolkowski at his Exhibit
9 JEZ-1, page 3 of 6, and it provides that information
10 in that exhibit.

11 EXAMINER BULGRIN: Very good. Thank you.

12 MR. JONES: Thank you.

13 Q. (By Mr. Jones) So, Mr. Duff, if the
14 company only achieved 90 percent of its proposed
15 megawatt-hours for 2017, you still achieve
16 approximately 215,233 megawatt-hours of savings and
17 still exceed the mandate by 12,243 megawatt-hours; is
18 that right, subject to check?

19 A. Well, no, because we never were able to
20 agree on a 2017 mandate number. You never provided
21 me the 2017 projected mandate, annual mandate amount.
22 You recall you referenced the table in the amended
23 application that had '18 and '19. But without a '16
24 baseline, I can't determine what '17 is so, again,
25 those are projections.

1 I think the other thing that is important
2 to note is that's a set of projections of 2017
3 assuming the portfolio was in place January 1, so
4 looking at 2017 is a really hard exercise to say
5 there is any sort of accuracy in the projections.

6 Q. Okay. Fair enough. Let's look at 2018.
7 If you achieve 90 percent of your proposed
8 megawatt-hour savings in 2018, you still achieve
9 212,924 megawatt-hours of savings and still exceed
10 the mandate by 9,326 hours, megawatt-hours of
11 savings, correct?

12 A. Subject to check, that math sounds
13 correct.

14 Q. Okay. And also then for if you achieve
15 90 percent of your proposed megawatt-hour savings in
16 2019, you achieve 210,917 megawatt-hour savings and
17 still exceed the mandate by 7,704 megawatt-hour
18 savings, correct?

19 A. Subject to check, based off of those
20 original projections, yes.

21 MR. JONES: Very good. Can I have a
22 second, your Honor?

23 EXAMINER BULGRIN: Sure.

24 MR. JONES: Your Honor, I have no further
25 questions. Thank you.

1 EXAMINER BULGRIN: Okay. Any redirect?

2 MS. WATTS: Can we take just one brief
3 moment, your Honor?

4 EXAMINER BULGRIN: Sure.

5 (Discussion off the record.)

6 MS. WATTS: Just a couple of questions,
7 your Honor.

8 EXAMINER BULGRIN: Sure.

9 - - -

10 REDIRECT EXAMINATION

11 By Ms. Watts:

12 Q. Mr. Duff, do you remember some questions
13 you responded to earlier with respect to the smart
14 thermostat program?

15 A. Yes.

16 Q. And I believe the questions related to
17 whether the program would be approved by the
18 Commission in this order and dealt with in the
19 collaborative?

20 A. Yes.

21 Q. Could you explain how you anticipate that
22 happening?

23 A. Sure. So once we start working with
24 parties to get the estimates of program costs and get
25 program structure and design through the different

1 channels put together, we will do some cost
2 effectiveness analysis and bring that to the
3 collaborative in which all the parties are generally
4 present and work through this is how the project is
5 cost effective, these are the proposed incentives
6 that were included, and get input from those parties
7 prior then I guess to getting any approval from the
8 Commission regarding the actual incentive amounts.

9 Q. Okay. Thank you. And you've answered a
10 number of questions with respect to the amended
11 application in response to mathematical calculations
12 that Mr. Jones has done, correct?

13 A. Yes, I have.

14 Q. And can you explain what those
15 projections indicate?

16 A. Well, I think the point -- I think that
17 Mr. Jones was pointing out that the company has
18 achieved more than its projected efficiency savings
19 at a lower cost than its projection and trying to
20 extrapolate that that's going to go into the future
21 potentially. However, if you look over history, the
22 trend in terms of how much under the company has
23 spent versus how much it has overachieved is going
24 down over time. Energy efficiency is getting more
25 difficult to achieve and more costly to achieve. And

1 so while the company really does with the help of its
2 collaborative actively manage its programs to get --
3 to exceed its projected impacts and spend less, the
4 variance between those two is going down over time
5 because it's getting harder. So to say that the
6 company spent 14 percent less in 2013 and achieved 25
7 percent more than its projection, that goes down
8 because if you look at the 2010 numbers, the company
9 overachieved by 33 percent and saved -- and saved a
10 similar type of 10 percent percentages.

11 So the company is -- has traditionally
12 done that, and when you are looking at mandates where
13 you are trying to exceed the mandates as aggressively
14 as possible in a cost effective manner, to try and
15 say that the history of being able to overexceed your
16 projections is going to be something that would
17 continue would be, I think, a false assumption.

18 MS. WATTS: Thank you, your Honor. I
19 have nothing further.

20 EXAMINER BULGRIN: Okay.

21 MR. HEALEY: I have got a brief recross,
22 if that's okay, your Honor.

23 EXAMINER BULGRIN: Sure, Mr. Healey.

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RECROSS-EXAMINATION

By Mr. Healey:

Q. Mr. Duff, you testified just now that you'll get input from the parties through the collaborative regarding a thermostat program; is that right?

A. Correct.

Q. Now, the members of the collaborative don't vote on any decisions that Duke makes with respect to its portfolio, correct?

A. It's not a formal vote, no.

MR. HEALEY: That's all, your Honor.

EXAMINER BULGRIN: Okay. Anything further?

All right. I think you can step down.
Thank you.

THE WITNESS: Thank you.

MS. WATTS: Your Honor, I can move Mr. Duff's testimony in now or wait and do them all at once.

EXAMINER BULGRIN: Why don't we go ahead and move it all.

THE WITNESS: Should I move it back to the original?

EXAMINER BULGRIN: I think that's fine.

1 MS. WATTS: Could you pull it around a
2 little bit?

3 THE WITNESS: Good?

4 EXAMINER BULGRIN: Thank you.

5 Any objection to Company Exhibit 4?

6 Hearing none, it will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MR. JONES: Your Honor, as to the staff
9 exhibits, I know I think I moved for administrative
10 notice of Staff Exhibit 2 which is a second entry on
11 rehearing in the 14-457-EL-RDR case, so I don't know
12 if I still move for admission of Staff Exhibit --

13 EXAMINER BULGRIN: Yeah. Is there any
14 objection to the admission of Staff Exhibits 2, 3, or
15 4?

16 MS. WATTS: None from us.

17 EXAMINER BULGRIN: Okay. Those will be
18 admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER BULGRIN: And we have OCC
21 Exhibits 1 and 2, I believe, also.

22 No objections? Those will be admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER BULGRIN: Okay. Let's go off
25 the record for a minute.

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(Discussion off the record.)
(Thereupon, at 11:32 a.m., a lunch recess
was taken.)

- - -

1 Monday Afternoon Session,
2 February 27, 2017.

3 - - -

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

6 Ms. Watts.

7 MS. WATTS: Thank you, your Honor. Duke
8 Energy Ohio would call Trisha Haemmerle. And, your
9 Honor, we would ask -- hold on. Let me find my
10 exhibit list. I don't know what we are up to.

11 EXAMINER BULGRIN: Hang on. I have got
12 one too.

13 Before you sit down.

14 (Witness sworn.)

15 MS. WATTS: I think we are on 6 and 7.
16 Does that seem right?

17 MR. HEALEY: 5.

18 MS. WATTS: 5 and 6?

19 EXAMINER BULGRIN: Okay. Company
20 Exhibits 6 -- 6 and 7.

21 MS. WATTS: 5 and 6.

22 EXAMINER BULGRIN: 5 and 6.

23 MS. WATTS: Your Honor, so the initial
24 testimony would be Exhibit 5 and the supplemental
25 would be Duke Exhibit 6.

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EXAMINER BULGRIN: Okay.

(EXHIBITS MARKED FOR IDENTIFICATION.)

- - -

TRISHA A. HAEMMERLE

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

DIRECT EXAMINATION

By Ms. Watts:

Q. Ms. Haemmerle, do you have those before
you?

A. I do.

Q. And could you describe those, please.

A. I have my direct testimony from June 15,
2016, and my supplemental testimony from October 14,
2016.

Q. Thank you. And did you write that
testimony yourself?

A. I did.

Q. And is it true and accurate to the best
of your knowledge?

A. It is.

Q. Do you have any additions or corrections?

A. Not that I'm aware of.

MS. WATTS: Okay. Ms. Haemmerle is
available for cross-examination.

1 EXAMINER BULGRIN: All righty.
2 Mr. Healey.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Healey:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. Ms. Haemmerle, do you have a copy of the
9 stipulation in front of you?

10 A. I do not.

11 Q. Okay.

12 MR. HEALEY: Your Honor, may I approach
13 with a copy of that?

14 EXAMINER BULGRIN: Sure.

15 MR. HEALEY: It is a copy of the amended
16 stipulation that has been marked Exhibit 2.

17 Q. As with Mr. Duff, if I refer to the
18 "stipulation," I will be referring to this document,
19 and we won't worry about the original one that was
20 filed. We will just focus on this.

21 A. Okay.

22 Q. Can you turn to page 8, please, of the
23 stipulation.

24 A. Okay.

25 Q. And on page 8 it discusses a smart

1 thermostat program that's included in the
2 stipulation, correct?

3 A. Yes.

4 Q. And I would like to refer you back,
5 halfway down there's a provision that states -- let
6 me find it. It starts with the word "Once." "Once
7 the Company's portfolio is approved by the
8 Commission, a retailer or competitive retail electric
9 supplier may, at their own risk, provide a customer
10 with an instant discount prior to the full
11 implementation of the Smart Thermostat Program." Do
12 you see that?

13 A. I do.

14 Q. And then the following sentence right
15 after that reads "Following the deployment of the
16 program, such instant rebates will be eligible for
17 reimbursement at the incentive level established by
18 the Company and approved by the Commission." Do you
19 see that as well?

20 A. Yes.

21 Q. And I just want to confirm the phrases
22 "instant discount" and "instant rebate" in these two
23 sentences mean the same thing, correct?

24 A. I believe so. I did not write the
25 stipulation so.

1 Q. Now, under this provision which permits a
2 retailer or CRES provider to provide an instant
3 discount or rebate to a customer, when they provide
4 this instant discount, are they required to inform
5 the customer that the retailer or CRES provider may
6 seek reimbursement from Duke?

7 A. I don't know. I did not write the
8 stipulation, and I'm not sure how we had planned to
9 implement the program as we still are under analysis
10 of how we are going to implement the program.

11 Q. Now, Ms. Haemmerle, you said you didn't
12 write the stipulation. You are Duke's witness for
13 various discovery responses related to this smart
14 thermostat program, are you not?

15 A. I am.

16 Q. So you are generally familiar with this
17 provision?

18 A. Yes.

19 Q. And you stated, I believe, a minute ago,
20 and correct me if I am not getting it completely
21 correctly, you are still working out the details for
22 this program; is that right?

23 A. That is correct and I believe that's what
24 we stated in many of the discovery responses.

25 Q. And so one of those details that still

1 needs to be worked out is what an instant rebate or
2 instant discount is?

3 A. Yeah, yes. I mean, we are still
4 analyzing the program and trying to determine the
5 specifics as it has not been approved at this time.

6 Q. Sure. Now, under this provision that we
7 just discussed, those two sentences, I would like to
8 walk you through some examples, and you can tell me
9 if you have any insight on the examples.

10 A. Okay.

11 Q. Let's say that a local retailer like
12 Lowe's is running a sale for Memorial Day and they
13 are giving \$100 off Nest thermostats. Would that
14 qualify as an instant discount subject to future
15 reimbursement?

16 A. I guess it could. I mean, like I said,
17 I'm not sure exactly how we plan to implement this at
18 the time.

19 Q. Let's say in a new example that a
20 customer buys a \$250 thermostat from a retailer and
21 under this provision that we are discussing their
22 CRES providers gives them \$125 instant discount.
23 Would the CRES provider be able to then get that \$125
24 from Duke after the fact?

25 A. Again, I'm not sure exactly how we plan

1 to implement the program at this time.

2 Q. I understand that you're not sure how you
3 plan to implement the program.

4 A. Yes.

5 Q. I'm asking how --

6 A. It's a possibility. It's a possibility
7 that we would discuss as we are trying to implement
8 the program and talking through it with our
9 collaborative on how we should.

10 Q. Sure. I understand that the -- every
11 detail of this program has not been determined.

12 A. Right.

13 Q. I am trying to understand what these
14 precise two sentences mean because they seem -- you
15 know, these sentences don't say we'll figure this out
16 later. They say "Following the deployment of the
17 program, such instant rebates will be eligible for
18 reimbursement at the incentive level established by
19 the Company and approved by the Commission." So I am
20 trying to understand what "will be eligible for
21 reimbursement" means. That doesn't indicate to me
22 that there is some kind of future decision to be
23 made.

24 So that's what I am trying to get at
25 here. So in light of that do you understand

1 whether -- when a CRES provider gives a \$100 discount
2 to a customer, under these two sentences it will then
3 be able to get that \$100 back from Duke?

4 A. I don't know.

5 Q. Let's turn to page 10, please, of the
6 stipulation again. And this page paragraph 13
7 discusses a space heating program. Are you generally
8 familiar with this provision of the stipulation?

9 A. Generally, yes.

10 Q. And Duke has not determined what the cost
11 of this program will be, correct?

12 A. Correct.

13 Q. And Duke has not projected a budget for
14 this program?

15 A. That is correct.

16 Q. And the stipulation doesn't provide any
17 estimate of the potential costs for this program,
18 correct?

19 A. Correct.

20 MR. HEALEY: That's all I have, your
21 Honor.

22 EXAMINER BULGRIN: Great.

23 Mr. Jones.

24 MR. JONES: I have no questions, your
25 Honor.

1 EXAMINER BULGRIN: Very good.

2 Any redirect?

3 MS. WATTS: Just one moment, your Honor.

4 EXAMINER BULGRIN: Sure.

5 MS. WATTS: Just one quick question, your
6 Honor.

7 EXAMINER BULGRIN: Sure.

8 - - -

9 REDIRECT EXAMINATION

10 By Ms. Watts:

11 Q. Ms. Haemmerle, with respect to the two
12 programs you just answered questions about in
13 response to OCC's questions, in particular the first
14 one was a smart thermostat program. Just to be clear
15 the company hasn't determined the details of how that
16 program will work just yet, correct?

17 A. That is correct.

18 Q. So how the rebates are paid and under
19 what circumstances, that's a detail of the program
20 that just isn't clear just yet.

21 A. That is correct.

22 MS. WATTS: Thank you. I have nothing
23 further.

24 EXAMINER BULGRIN: Okay. It looks like
25 you can step down. Thank you.

Any objection to the admission of Company Exhibits 5 or 6?

Okay. They will be admitted

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER BULGRIN: Thank you. One more?

MS. WATTS: One more, your Honor. Duke Energy Ohio would call Mr. Ziolkowski to the stand.

EXAMINER BULGRIN: All righty.

(Witness sworn.)

MS. WATTS: May I approach, your Honor?

EXAMINER BULGRIN: Sure.

MS. WATTS: And, your Honor, may we have Mr. Ziolkowski's testimony marked as Duke Energy Ohio Exhibit 7?

EXAMINER BULGRIN: All righty.

(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

JAMES E. ZIOLKOWSKI

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

DIRECT EXAMINATION

By Ms. Watts:

Q. Mr. Ziolkowski, do you have before you what's just been marked as Duke Energy Ohio Exhibit 7?

1 A. Yes.

2 Q. And is that the testimony you caused to
3 be prepared in this proceeding?

4 A. Yes.

5 Q. Did you write that testimony?

6 A. Yes.

7 Q. And is it true and correct to the best of
8 your knowledge?

9 A. Yes.

10 Q. And do you have any additions or
11 corrections?

12 A. No.

13 MS. WATTS: Mr. Ziolkowski is available
14 for cross-examination.

15 EXAMINER BULGRIN: Mr. Healey.

16 MR. HEALEY: Thank you, your Honor. I
17 would like to start by marking an exhibit. This will
18 be OCC Exhibit 3 and this is Duke Energy Ohio's
19 response to OCC Interrogatory 02-002. May I
20 approach, your Honor?

21 EXAMINER BULGRIN: Sure.

22 MR. HEALEY: Thank you.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 - - -

25

CROSS-EXAMINATION

By Mr. Healey:

Q. Now, Mr. Ziolkowski, is that right?

A. Yes.

Q. Thank you. You have what's been marked OCC Exhibit 3 in front of you. Do you recognize this discovery response?

A. Yes, I do.

Q. And you are identified as the person responsible for this discovery response?

A. Yes.

Q. And a couple of clarifying questions here. Duke is asking about month -- sorry. OCC is asking about monthly projected customer bill impacts for 2017, '18, and '19 in this discovery request?

A. Yes.

Q. And just to confirm there's three columns here, 1, 2, and 3. Column 1 is for 2017, 2 is for 2018, and 3 is for 2019?

A. That's correct.

Q. And I would like you to look at the row near the top that is titled "Residential from Portfolio." Do you see that?

A. Yes.

Q. Do those -- the numbers on that line, do

1 they include shared savings amounts in addition to
2 program costs; is that right?

3 A. I believe they do. I have to pull up the
4 original -- my original Attachment JEZ-1 to my
5 testimony, but they would have included -- I believe
6 they would have included the shared savings. Based
7 on the magnitude, they do, but I need to check that.

8 Q. Okay. If you wouldn't mind checking if
9 you can do it quickly. Otherwise we can take it
10 subject to check. That would be fine.

11 MS. WATTS: Do you have glasses up there,
12 Jim? You might need some.

13 A. I am having a hard time reading the
14 print.

15 Q. That's fair. How about this, let me ask
16 you a more general question. Do the numbers you
17 referenced, your Exhibit JEZ-1, the numbers in this
18 response in the first section about "Summary Revenue
19 Requirements," were those derived from JEZ-1
20 generally?

21 A. Yes, yes, they are.

22 Q. And just so I understand the calculation
23 that's being done here, near the bottom -- the third
24 part of your chart, "Estimated EE-PDRR Rate Excluding
25 Prior Period True-Ups," that's just calculated by

1 dividing the revenue numbers from the first part by
2 the estimated kWh numbers in the second part of the
3 chart, correct?

4 A. That's correct.

5 Q. And then you multiply that by a thousand
6 to get the monthly bill impact at the bottom?

7 A. Correct.

8 Q. Thank you. Mr. Ziolkowski, you're aware
9 that under the stipulation Duke is proposing an
10 aftertax shared savings cap of \$8 million, correct?

11 A. Correct.

12 MR. HEALEY: Your Honor, I would like to
13 mark as OCC Exhibit 4, this is one of Duke's
14 discovery responses to IGS, Interrogatory 01-003.
15 May I approach, please?

16 EXAMINER BULGRIN: Sure. This is OCC
17 Exhibit 4.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. (By Mr. Healey) Do you have what's been
20 marked OCC Exhibit 4? This is Duke's response to an
21 interrogatory request from IGS and you'll note that
22 you are the person responsible for subsection C to
23 this discovery response; is that right?

24 A. That's correct.

25 Q. And this question asks you to "Identify

1 the estimated shared savings (after-tax) that Duke
2 will earn in each year of the Portfolio Plan," and
3 you answer for 2017 about 7.6 million, for 2018 about
4 6.9 million, and for 2019 about 6.7 million. Do you
5 see that?

6 A. Yes.

7 Q. And so if I am interpreting this
8 correctly, if those shared savings estimates turn out
9 to be accurate, or roughly accurate, then the \$8
10 million cap under the stipulation wouldn't have any
11 effect, correct?

12 A. If those numbers came out to be accurate.
13 However, they were based on my original -- the
14 original numbers in Attachment JEZ-1, and the program
15 portfolio as a result of the stipulation, my
16 understanding, has been potentially modified with the
17 programs that you discussed earlier with the various
18 witnesses.

19 Q. Thank you.

20 MR. HEALEY: I would like to mark one
21 more exhibit, your Honor. This will be OCC Exhibit 5
22 and this is the company's response to IGS
23 Interrogatory 01-007. May I approach, please?

24 EXAMINER BULGRIN: Sure.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Mr. Healey) And looking at OCC
2 Exhibit 5 and understanding that there may be changes
3 to the budgets based on the stipulation, given this
4 question was asked in the context of the application,
5 I just want to confirm that the -- these annual
6 budget amounts were determined by adding up the
7 individual program budget amendments in the amended
8 application -- I guess in the original application,
9 correct?

10 A. That is correct. They are program costs,
11 and they include the EM&V costs too.

12 MR. HEALEY: Great. That's all I've got,
13 your Honor.

14 EXAMINER BULGRIN: Great.
15 Mr. Jones.

16 MR. JONES: No questions, your Honor.

17 EXAMINER BULGRIN: Any recross? Or
18 redirect.

19 MS. WATTS: Yeah, just a quick question.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. Watts:

23 Q. Mr. Ziolkowski, those discovery responses
24 that you were just reviewing in response to questions
25 from Mr. Healey were submitted to IGS prior to the

1 stipulation being entered into, correct?

2 A. That is correct.

3 Q. And they were also submitted out to IGS
4 at a time when we had not yet filed -- when Duke
5 Energy Ohio had not yet filed its market potential
6 study.

7 A. I don't know what date we filed our
8 market -- the market potential study, but these data
9 requests were responded to in August, August and
10 October of 2016.

11 MS. WATTS: Okay. Thank you. That's all
12 I have for him.

13 EXAMINER BULGRIN: All right. Thank you,
14 sir.

15 Any objections to the admission of
16 Company Exhibit 7 and OCC Exhibits 3 through 5?

17 Hearing none, they will be admitted

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MS. WATTS: Your Honor, Duke Energy Ohio
20 had one additional witness, and it's my understanding
21 that the parties are willing to stipulate in the
22 testimony of Kevin A. Bright both direct and
23 supplemental.

24 EXAMINER BULGRIN: Okay. Have we marked
25 those yet?

1 MS. WATTS: So those would be Duke Energy
2 Ohio --

3 EXAMINER BULGRIN: 8 and 9?

4 MS. WATTS: -- 8 and 9.

5 (EXHIBITS MARKED FOR IDENTIFICATION.)

6 EXAMINER BULGRIN: Okay. Any objections
7 to the admission of those?

8 MR. HEALEY: Your Honor, OCC's agreement
9 to waive cross on Mr. Bright was subject to the
10 admission of various discovery responses for which
11 Mr. Bright was identified as the responsible witness.
12 I would like to mark those as OCC exhibits now before
13 the admission just given that was a qualification.

14 EXAMINER BULGRIN: Why don't we do that
15 right now.

16 MR. HEALEY: Sure. I believe there will
17 be seven of them.

18 EXAMINER BULGRIN: Okay.

19 MR. HEALEY: So these will be OCC 6
20 through 12. OCC 6 will be -- I will approach and
21 give these all at the same time just because it will
22 be easier.

23 EXAMINER BULGRIN: Sure.

24 MR. HEALEY: OCC 6 is Duke's response to
25 NRDC Interrogatory 01-012. OCC 7 is Duke's response

1 to NRDC-INT-01-015. OCC 8 is Duke's response to IGS
2 Interrogatory 01-001. OCC 9 is Duke's response to
3 IGS Interrogatory 01-002. OCC 10 is Duke's response
4 to OCC Interrogatory No. 02-031. And --

5 MS. WATTS: I'm sorry. That last one,
6 Mr. Healey, was a response to whom?

7 MR. HEALEY: To OCC, 02-031.

8 MS. WATTS: Thank you.

9 MR. HEALEY: OCC 11 is Duke's response to
10 OCC Interrogatory 02-040. And, finally, OCC Exhibit
11 12 will be Duke's response to OCC Interrogatory No.
12 04-059.

13 MS. FLEISHER: What was that number on
14 the last one?

15 MR. HEALEY: Last one 04-059.

16 MS. FLEISHER: Thank you.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 MR. HEALEY: If anybody wants copies, I
19 have all of them.

20 MS. WATTS: We don't need copies.

21 MR. HEALEY: Okay. Thank you, your
22 Honor. With that and assuming these all get
23 admitted, then OCC has no objection to the admission
24 of Mr. Bright's testimony.

25 MS. WATTS: No objection, your Honor.

1 EXAMINER BULGRIN: Okay. Very good. All
2 right. They will be admitted then.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 EXAMINER BULGRIN: I think that concludes
5 the --

6 MS. WATTS: It does, your Honor. The
7 company has no more witnesses.

8 EXAMINER BULGRIN: Okay.

9 MR. HEALEY: I assume staff wants to go
10 last.

11 EXAMINER BULGRIN: Let's go off the
12 record.

13 (Discussion off the record.)

14 EXAMINER BULGRIN: Let's go back on the
15 record then.

16 Mr. Healey.

17 MR. HEALEY: Your Honor, OCC calls
18 Witness Colleen Shutrump.

19 (Witness sworn.)

20 MR. HEALEY: Your Honor, I would like to
21 mark as OCC Exhibit 13 the direct testimony of
22 Colleen Shutrump.

23 EXAMINER BULGRIN: Okay. It will be so
24 marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. HEALEY: May I approach?

2 EXAMINER BULGRIN: Yes.

3 MR. HEALEY: Does anyone else need a
4 copy? I have a copy for the reporter.

5 - - -

6 COLLEEN SHUTRUMP

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

9 DIRECT EXAMINATION

10 By Mr. Healey:

11 Q. Can you please state your name and
12 business address.

13 A. Colleen Shutrump, my business address is
14 10 West Broad Street, Suite 1800, Columbus, Ohio
15 43215.

16 Q. Did you file or cause to be filed
17 testimony in this case?

18 A. I did.

19 Q. And do you have in front of you what has
20 been marked as OCC Exhibit 13?

21 A. I do.

22 Q. And do you recognize this document as the
23 testimony that you filed in this case?

24 A. Yes.

25 Q. Was this testimony prepared by you or

1 under your direction?

2 A. Yes.

3 Q. On whose behalf are you testifying today?

4 A. On behalf of the OCC.

5 Q. And OCC is the Ohio Consumers' Counsel?

6 A. That is correct.

7 Q. And since the filing of your testimony,
8 do you have any changes?

9 A. I do. I have one small correction on
10 page 12, footnote 9, the date that references Case
11 No. 13-833 should be December 4, 2013, not
12 December 3.

13 Q. And other than that change, do you have
14 any other changes?

15 A. No.

16 Q. And with that one change, if I were to
17 ask you the same questions today as they appear in
18 your testimony, would your answers be the same?

19 A. They would.

20 MR. HEALEY: Your Honor, at this time I
21 would move Ms. Shutrump's testimony, OCC Exhibit 13,
22 into the record, subject to cross-examination.

23 EXAMINER BULGRIN: Thank you. Any cross?

24 MS. WATTS: I have cross. Do I get to go
25 first?

1 EXAMINER BULGRIN: I am wondering who
2 else has cross.

3 MS. LEPPLA: We will likely have
4 follow-up cross as well.

5 EXAMINER BULGRIN: Do you want to go
6 first then?

7 MS. LEPPLA: You feel free.

8 MS. WATTS: I guess I get to go first.

9 EXAMINER BULGRIN: Okay. Glad that was
10 decided.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Watts:

14 Q. Ms. Shutrump, may I call you Colleen?

15 A. You may.

16 Q. Could you tell me again what was the date
17 on page 12 you changed because I didn't quite catch
18 that.

19 A. So the footnote 9, the date should be
20 December 4, not December 3.

21 Q. I see. Okay. Thank you. Good
22 afternoon. Now, Ms. Shutrump, Colleen, your
23 contention in your testimony overall is that the
24 stipulation violates the Commission's prongs for
25 determining whether stipulations should be accepted,

1 correct?

2 A. Correct.

3 Q. And you contend that this stipulation
4 violates prongs 1 and 2.

5 A. Correct.

6 Q. And you did not reach any conclusion with
7 respect to prong 3, correct?

8 A. Correct.

9 Q. And you are not disputing that the
10 parties that negotiated a stipulation were capable
11 and knowledgeable, correct?

12 A. Correct.

13 Q. And you don't offer any analysis
14 regarding the cost effectiveness of any of the
15 programs in the company's portfolio, correct?

16 A. I do not.

17 Q. And you believe that the stipulation
18 should be rejected because you contend that OCC was
19 not afforded meaningful participation and also
20 because Kroger was not invited to the first
21 settlement meeting, correct?

22 A. Yes.

23 MR. HEALEY: Objection as to
24 mischaracterizing her testimony. Her testimony
25 speaks for itself in this regard. Trying to

1 summarize the testimony, your Honor.

2 EXAMINER BULGRIN: I think she already
3 answered.

4 Q. Okay. And, Colleen, if I misstate any of
5 your testimony, please let me know that, okay? Okay.

6 MS. WATTS: Your Honor, I would like to
7 have marked as Duke Energy Ohio Exhibit 10.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Colleen, do you recall attending a
10 settlement discussion here at the Commission with
11 Duke Energy and parties too, intervenors in this
12 proceeding?

13 A. I do.

14 Q. And did that meeting take place on
15 November 3?

16 A. Yes.

17 Q. And does this appear to be the sign-in
18 sheet that was used for purposes of that meeting?

19 MR. HEALEY: Objection, your Honor, lack
20 of foundation. We haven't established Ms. Shutrump
21 has ever seen this document before.

22 EXAMINER BULGRIN: Sustained. Can you
23 rephrase?

24 MS. WATTS: Okay. Yes, thank you.

25 Q. Ms. Shutrump, I call your attention to a

1 signature that's four lines up from the bottom that
2 appears to be your signature. Is that your
3 signature?

4 A. Yes.

5 Q. And do you recall signing this sheet when
6 you attended a meeting on November 3 at the
7 Commission?

8 A. It looks like I signed this sheet. It's
9 not dated, but we did attend a meeting on November 3.

10 Q. Okay. And do you also see about halfway
11 up from where your signature is that there is a
12 signature on behalf of Kroger by someone named Angie
13 Paul Whitfield?

14 MR. HEALEY: Your Honor, I make the same
15 objection, lack of foundation. We haven't
16 established what this document is. If she is going
17 to sit here and identify people's names on it, I am
18 not sure what purpose it serves.

19 EXAMINER BULGRIN: I'll overrule on that.
20 You can answer.

21 A. Can you repeat the question, please?

22 Q. Sure. Do you see a signature on that
23 page that appears to be signed on behalf of Kroger by
24 someone named Angie Paul Whitfield?

25 A. I see her name.

1 Q. Do you happen to know who Angie Paul
2 Whitfield is?

3 A. I don't know.

4 Q. Is it possible that there was someone in
5 that meeting on November 3 representing Kroger whom
6 you did not know?

7 MR. HEALEY: Objection, your Honor, calls
8 for speculation.

9 EXAMINER BULGRIN: She can answer.

10 A. It's possible.

11 Q. Thank you. And that meeting on
12 November 3, so far as you recall, was that the first
13 time all of the parties gathered to discuss
14 settlement in this case?

15 MR. HEALEY: Objection, your Honor.
16 Assumes facts not in evidence. We have not
17 established that all of the parties were at this
18 meeting.

19 EXAMINER BULGRIN: Perhaps you can
20 rephrase.

21 MS. WATTS: Yes, thank you, your Honor.

22 Q. You've testified that you attended a
23 meeting here at the Commission on November 3 with at
24 least some of the parties to this proceeding in order
25 to discuss settlement, correct?

1 A. Yes.

2 Q. And was that the first meeting that you
3 recall having attended where parties to this
4 proceeding met to discuss settlement?

5 A. That is the first meeting. As far as
6 discussions about a settlement, I think that meeting
7 since it was the initial meeting was more about
8 attempting to understand, better understand Duke's
9 application.

10 MS. WATTS: Your Honor, I would like to
11 have marked as Duke Energy Ohio Exhibit 11 an e-mail
12 from me to counsel for OCC.

13 EXAMINER BULGRIN: Okay. This is Duke
14 Exhibit 11.

15 MS. WATTS: Yes.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. (By Ms. Watts) Colleen, is it your habit
18 when you are working on a case at OCC to form teams
19 to work on cases?

20 A. I'm not sure what you mean by "habit."

21 Q. Is it OCC's practice internally to form
22 groups of people to address particular cases?

23 A. Yes.

24 Q. Okay. And were you assigned at some
25 point in time to work on this particular case?

1 A. Yes.

2 Q. And do you recall when that was?

3 A. It was shortly after Duke filed its plan.

4 Q. Okay. And during the course of such
5 cases, is it not your practice to have Mr. Healey --
6 isn't it true you and Mr. Healey may share e-mails
7 back and forth?

8 A. Yes.

9 Q. And was this an e-mail that you saw?
10 Have you ever seen this e-mail before?

11 MR. HEALEY: Various objections, your
12 Honor. First, there is no foundation. Second of
13 all, she's not on this e-mail. Third of all, this is
14 clearly a confidential settlement communication
15 between Duke and OCC. I don't think there should be
16 any questions on this subject.

17 MS. WATTS: And, your Honor, I have a
18 number of e-mails I would like to introduce, none of
19 which reveal any substance of settlement in any of
20 them. I have checked them very carefully for that
21 purpose.

22 MR. HEALEY: I think this goes to OCC's
23 strategy in settlement, your Honor. It states, and I
24 don't want to put in the record, what we may or may
25 not do in the context of settlement negotiation. The

1 fact it doesn't have any terms does not mean it is
2 not a settlement communication. It is revealing in
3 part OCC's strategy through these negotiations and
4 trying to get them in the record to establish, you
5 know, what OCC may or may not have been doing in the
6 context of negotiations is not appropriate.

7 MS. WATTS: Your Honor, the heart of
8 Ms. Shutrump's testimony is that OCC was not included
9 in settlement negotiations, and these e-mails
10 establish that OCC was, in fact, quite included.

11 EXAMINER BULGRIN: Yeah. I am going to
12 allow them.

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

14 Q. Sure. Have you seen this e-mail before?

15 A. No.

16 Q. Is it possible that there were e-mails
17 back and forth between your counsel and counsel for
18 the case to which you were not privy?

19 MR. HEALEY: Objection, your Honor,
20 speculation. She doesn't even know what e-mails I
21 did or did not send to Ms. Watts or anybody else at
22 Duke.

23 EXAMINER BULGRIN: Yeah. I think we're
24 beating the dead horse here so.

25 MS. WATTS: Okay.

1 EXAMINER BULGRIN: I will uphold the
2 objection and move on.

3 Q. (By Ms. Watts) Ms. Shutrump, do you
4 recall having settlement discussions with the company
5 over the telephone?

6 A. I don't recall.

7 Q. So it's your testimony that you have no
8 recollection of having any settlement discussion with
9 Duke Energy along with your counsel in a
10 teleconference; is that correct?

11 A. My only recollection is the meeting that
12 occurred on November 3.

13 MS. WATTS: Your Honor, I would like to
14 have this next e-mail marked as Duke Energy Ohio
15 Exhibit 12.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. (By Ms. Watts) Colleen, would you take a
18 moment to review the document that's just been marked
19 as Duke Energy Ohio Exhibit 12.

20 A. Okay.

21 Q. And does this document appear to be an
22 e-mail communication from OCC's counsel to the
23 parties in this proceeding?

24 MR. HEALEY: Object, lack of foundation.
25 Again, your Honor, she is not on this e-mail. She

1 hasn't testified she's seen it.

2 MS. WATTS: I haven't even gotten there.

3 EXAMINER BULGRIN: Let's go off the
4 record for a second.

5 (Discussion off the record.)

6 EXAMINER BULGRIN: We'll go back on the
7 record.

8 I'm going to allow you just a little more
9 leeway on this line of questioning, but I think your
10 point is probably well made now. I don't want to
11 really get into the settlement. It does say
12 privileged and confidential, for settlement
13 discussion only, and I believe that's on your stamp
14 so.

15 MS. WATTS: Absolutely but there is no
16 communication in any of these about positions or
17 anything with respect to. It's just dates and times.

18 EXAMINER BULGRIN: Okay.

19 MR. HEALEY: I would also note this
20 appears to be incomplete, your Honor. It is cut off
21 middle of the sentence at the bottom. The rest is
22 not there so there could be lost context in this
23 exhibit in particular.

24 EXAMINER BULGRIN: Okay. Well, let's see
25 if we can move along here.

1 Q. (By Ms. Watts) So, Colleen, looking at
2 that e-mail that was just put in front of you, it
3 would appear to suggest a draft stipulation was
4 circulated in December, correct?

5 MR. HEALEY: Same objection, your Honor.
6 I thought we were moving on.

7 EXAMINER BULGRIN: I'll sustain the
8 objection.

9 MS. WATTS: Okay. I am going to just
10 move on from that, your Honor. Thank you.

11 EXAMINER BULGRIN: Thank you.

12 Q. (By Ms. Watts) And, Colleen, the second
13 major point you raise in your testimony is that the
14 settlement fails the second prong because you believe
15 there should be an overall cap on costs, correct?

16 A. Correct.

17 Q. And you're recommending a 7.8 million cap
18 before taxes on shared savings only, correct?

19 A. Correct.

20 Q. But you also believe there should be a
21 cap on program costs as well.

22 A. I think a cap on program costs is
23 reasonable, yes.

24 Q. And for that reason you support staff's
25 recommendation, correct?

1 A. I think staff's recommendation of a 3.5
2 percent cost cap is reasonable.

3 Q. Have you reviewed Mr. Donlon's testimony?

4 A. Yes.

5 Q. Is it your position that a 3.5 percent
6 cap would reduce spending to 33.8 million?

7 A. That is my understanding.

8 Q. And that calculation, did you take that
9 directly from his testimony, or did you run a
10 calculation yourself?

11 A. I looked at his approach to the
12 calculation.

13 Q. Now, as to staff's overall cap, do you
14 have an opinion as to what amount of that overall cap
15 should apply to program costs and what amount should
16 apply to shared savings respectively?

17 A. I'm sorry. Can you repeat the question?

18 Q. Sure. Staff is recommending an overall
19 cap which would amount to 33.8 million, correct?

20 A. Yes, correct.

21 Q. Are you making any representation as to
22 how much of that cap should be allocated to program
23 costs and how much should be shared savings?

24 A. No, I did not evaluate that.

25 Q. Okay. And you did not include any

1 consideration of lost distribution revenue in your
2 recommendation, correct?

3 A. I did not evaluate lost revenues.

4 Q. And you don't know what the magnitude of
5 the company's lost distribution revenues are per
6 year, do you?

7 A. I don't recall.

8 Q. With respect to your statement turning to
9 page 5, line 17 of your testimony, I will give you a
10 minute to get there.

11 A. I'm there.

12 Q. You stated that you thought a cap of 12.5
13 million was too high. Do you see that?

14 A. I do.

15 Q. You didn't do any analysis -- analysis or
16 study to reach that conclusion, correct?

17 A. That's correct. I did not do any
18 mathematical analysis.

19 Q. And you do not know on a per customer
20 basis what that cap would amount to, correct?

21 A. Correct.

22 Q. And with respect to the \$7.8 million cap
23 that you are recommending, again, you did not do any
24 formal mathematical analysis, correct?

25 A. No. My -- my recommendation is based on

1 my concern for two -- two groups within the
2 residential class, the nonparticipating customers who
3 do not directly benefit from Duke's energy efficiency
4 measures but that pay for these measures and
5 low-income customers.

6 Q. And you did not compare this proposed cap
7 with any other Ohio utility cap or any utility
8 outside of Ohio, correct?

9 A. The shared savings cap?

10 Q. The overall cap as recommended by staff.

11 A. Can I have that question reread, please?

12 Q. Sure. You did not compare the proposed
13 cap with any other utility in Ohio or outside of
14 Ohio, correct?

15 A. I think -- I mean, with respect to --
16 when you say "compare," I'm thinking of analysis. I
17 did not do any analysis, comparative analysis, but I
18 did compare as it relates to how other states are
19 approaching a cost cap and a shared savings cap.

20 Q. So in -- in that sense you are saying you
21 looked at the concept of the cap but not the specific
22 dollar amount of the cap; is that correct?

23 A. That's correct.

24 Q. And you've stated -- you understand that
25 Mr. Donlon's approach to setting a cap is to start

1 with using a number that comes from FERC Form 1,
2 correct?

3 A. Yes.

4 Q. And you agree with that approach.

5 A. I think that approach is reasonable, yes.

6 Q. But you acknowledge that the number on
7 the FERC Form 1 is different for each utility in
8 Ohio, correct?

9 A. Correct.

10 Q. And each utility has a different
11 percentage of shopping customers that will impact
12 that number, correct?

13 MR. HEALEY: Objection, your Honor. The
14 shopping statistics of the various Ohio utilities are
15 not in the record.

16 EXAMINER BULGRIN: She can answer if she
17 knows.

18 A. Can you repeat the question?

19 Q. Sure. The number on the FERC form that
20 you are recommending along with Mr. Donlon be the
21 starting point for setting a cap, is it your
22 understanding that that number is different for each
23 Ohio utility based on the number of shopping
24 customers each Ohio utility might have?

25 A. Yes.

1 Q. The number of shopping customers for each
2 utility in Ohio can go up or down each year, correct?

3 A. I don't know.

4 Q. Do you happen to know what percentage of
5 customers are shopping customers in Duke Energy
6 Ohio's service territory?

7 A. I do not know.

8 Q. Looking at your testimony on page 9, on
9 line 7, you state that "The first Energy Efficiency
10 Portfolio Standard was adopted in 1999 by the State
11 of Texas. Do you see that?

12 A. I do.

13 Q. Do you know what the mandates are
14 specifically for the state of Texas?

15 A. I don't, I don't recall.

16 Q. And beginning on line 11, you talk about
17 other states that have cost caps. And you state that
18 there is a cost cap in place for Texas but do you
19 know what that cap is?

20 A. In Texas the cap is set based on a cost
21 recovery factor rate, energy efficiency rider rate.
22 For any program year the rate must not exceed a
23 specific dollar amount per kWh consumed.

24 Q. And do you know what that dollar amount
25 per kWh is?

1 A. No.

2 Q. And is it established by Commission rule,
3 the dollar amount per kWh?

4 A. It is.

5 Q. And also utilities in Texas likewise --
6 similar to Ohio submit a portfolio for approval by
7 the Texas Commission, correct?

8 A. I don't know.

9 Q. You refer also to the state of Illinois
10 in your testimony on page 9, correct?

11 A. Yes.

12 Q. And you mention that Illinois likewise
13 has a cost cap and that cap is set at 2 percent of
14 customer rates, correct?

15 A. Yes.

16 Q. Do you know what rates are used for
17 purposes of setting that cap?

18 A. The cap in Illinois is set by looking at
19 the average annual increase in the energy efficiency
20 rider charge relative to the costs of the entire
21 bill, and the costs of the entire bill would include
22 the costs of supply, transmission, and distribution,
23 any surcharges, and taxes.

24 Q. Ms. Shutrump, do you recall my taking
25 your deposition late last week?

1 A. Yes.

2 Q. Would you refer to page 30, please, of
3 your deposition. Do you recall my asking you "Do you
4 know which customer rates are referred to for
5 purposes of establishing the 2 percent cap?" Do you
6 recall that question?

7 A. Yes.

8 Q. So if you would look at lines 3 and 4
9 there, the deposition states "I'm not certain, but I
10 think it refers to both residential and
11 nonresidential." Did I read that correctly?

12 A. Yes.

13 Q. You've stated that Mr. Donlon's approach
14 to setting a cap using the FERC form number, you've
15 stated that you support that proposition, correct?

16 A. I do.

17 Q. But in Texas the rate established in
18 Texas is not from sales -- is from sales as opposed
19 to operating revenues, correct? If you know.

20 A. I don't know.

21 Q. And Illinois is a competitive state,
22 correct?

23 A. I believe so.

24 Q. In reading the Illinois statute that you
25 quoted, rates can increase by 2.015 per year per

1 amount paid per kWh, correct?

2 A. Correct.

3 Q. And that language allows for a reduction
4 of program spend if costs exceed the stated level;
5 isn't that true?

6 A. Can you repeat that, please?

7 Q. The language in the Illinois statute
8 allows for a reduction of program spend if the costs
9 exceed the stated level.

10 A. Correct.

11 Q. And that cap applies to program spend but
12 you are not aware of whether it includes shared
13 savings, correct?

14 MR. HEALEY: Object as compound, your
15 Honor. Can we get a rephrase on that?

16 EXAMINER BULGRIN: Yeah. Maybe you want
17 to clarify.

18 MS. WATTS: Sure.

19 Q. The cap that you are referring to there
20 applies to program spend, correct?

21 A. The cap in place limits program costs to
22 a maximum of 2 percent of customer rates.

23 Q. And so is it your understanding that
24 shared savings is included in that number or not
25 included?

1 A. I don't know.

2 Q. And do you know what the mandates are in
3 Illinois specifically?

4 A. I don't.

5 Q. And going back to the cap that's applied
6 in Texas, do you know what categories of costs are
7 included in that cap?

8 A. I don't know.

9 Q. Do you know what the mandates in
10 Pennsylvania are?

11 A. Yes.

12 Q. Is that something you've learned since
13 your deposition was taken?

14 A. Yes. I did look at that over the
15 weekend.

16 Q. So when you were asked during your
17 deposition, you weren't aware of the answer to that
18 question, correct?

19 A. I wasn't aware, correct.

20 Q. And do you know what the Maine Efficiency
21 Trust is?

22 A. I do.

23 Q. Could you describe it, please.

24 MR. HEALEY: Object as to vague and
25 broad, "describe it."

1 EXAMINER BULGRIN: Overruled. You can
2 answer.

3 MR. HEALEY: Thank you.

4 EXAMINER BULGRIN: You can answer.

5 A. Okay. Efficiency Maine Trust is a
6 third-party administrator that administers, manages,
7 delivers programs on a statewide level for the state
8 of Maine.

9 Q. And at least part of the source of
10 funding for that entity comes from the utilities in
11 Maine, correct?

12 A. Yes.

13 Q. But it's possible that that entity also
14 receives funding from other sources?

15 A. Is it possible? Yes.

16 Q. Referring to page 8 of your testimony,
17 you recommended a cap in this case, and you pointed
18 in your testimony to the Commission's language in the
19 AEP portfolio case, correct?

20 A. Yes.

21 Q. And have you read the stipulation in the
22 AEP cases?

23 A. I have.

24 Q. And that stipulation provides for
25 approval of a plan that will run for four years,

1 correct?

2 MR. HEALEY: Objection, your Honor, best
3 evidence.

4 EXAMINER BULGRIN: She's asking if she
5 knows, so I'll overrule the objection.

6 You can answer.

7 Q. Are you aware of that?

8 A. That the plan runs for four years?

9 Q. Yes.

10 A. To the best of my knowledge, yes.

11 Q. And that plan also provides for a cap
12 that is an overall cap similar to the one recommended
13 by staff in this case but set at a 4 percent level,
14 correct?

15 A. Correct.

16 Q. And it allows for a cost cap of that
17 4 percent rate that equates to a dollar value of
18 \$110,310,902.

19 A. Subject to check, correct.

20 Q. And that cap does not include lost
21 distribution revenue, correct?

22 A. I don't know.

23 Q. And does it exclude IRP-D revenue?

24 A. I don't know.

25 Q. And AEP has proposed to retain -- AEP

1 proposed to retain 20 percent of the proceeds it
2 receives from bidding resources into PJM, correct?

3 MR. HEALEY: Object to this line of
4 questioning generally, your Honor. She said it was a
5 single line in an order, and now we are getting into
6 minutia of an AEP document that's not in the record
7 here.

8 MR. JONES: I would object too, your
9 Honor, as to relevance.

10 MS. WATTS: Your Honor, OCC itself is
11 comparing this. In Ms. Shutrump's testimony she is
12 comparing matters in this case to the AEP case, and I
13 merely want to point out how different it is.

14 EXAMINER BULGRIN: Okay. Well, I will
15 give you a little more leeway. You can answer.

16 A. Can you repeat the question, please?

17 Q. Sure. The AEP stipulation provided that
18 AEP would retain 20 percent of the proceeds received
19 from bidding resources into PJM, correct?

20 A. I just don't recall.

21 Q. Okay. Turning to page 13 of your
22 testimony, you have a footnote in your testimony,
23 it's footnote 10, that refers to an article entitled
24 "Beyond Carrots for Utilities: A National Review of
25 Performance Incentives for Energy Efficiency." Do

1 you see that footnote?

2 A. I do.

3 Q. And have you read that report?

4 A. I have.

5 Q. And you state in your testimony that
6 there are 19 states that have cost caps, and you cite
7 that report for that proposition, correct?

8 A. Correct.

9 Q. Do you know how many states do not have
10 cost caps?

11 A. I don't know.

12 Q. And can we agree that the authors of this
13 report, their methodology was to send out a survey to
14 various state commissions for information?

15 A. Yes.

16 Q. And so the information in the report is
17 derived from whichever states actually responded to
18 that survey?

19 A. Yes.

20 Q. And I believe you -- you undertook some
21 research with respect to the level of the various
22 caps set in various states, and you in particular
23 researched Michigan, Arizona, and Texas; is that
24 correct?

25 A. As it relates to the shared savings cap,

1 yes.

2 Q. And based on your research, you learned
3 that Michigan provides for an incentive that equals
4 15 percent of program spend and 25 percent of net
5 benefits, correct?

6 A. Yes.

7 Q. Did you happen to use those values and
8 calculate what that might look like for Duke Energy
9 Ohio?

10 A. I did not.

11 Q. Is there any trigger that permits a
12 utility in Michigan to be eligible for an incentive?

13 A. Say that again, please.

14 Q. Is there any trigger in Michigan that
15 permits a particular utility to be eligible for
16 incentive?

17 A. I don't know.

18 MS. WATTS: I have nothing further, your
19 Honor.

20 MS. LEPPLA: Could I have just two
21 minutes so I don't ask additional items that have
22 already been asked?

23 EXAMINER BULGRIN: Sure.

24 (Discussion off the record.)

25 (Recess taken.)

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EXAMINER BULGRIN: Ms. Leppla.

- - -

CROSS-EXAMINATION

By Ms. Leppla:

Q. Ma'am, my name is Miranda Leppla. I represent the Ohio Environmental Council and the Environmental Defense Fund.

I want to first refer you to your direct testimony page 8, lines 3 to 5. And at this place you recommend there should be a cap on the total costs for Duke's energy efficiency programs for 2017 to 2019, correct?

A. Yes.

Q. Is it correct you support the cost cap proposed by the staff of the PUCO, specifically the 3.5 percent overall cost cap proposed by Patrick Donlon?

A. Yes.

Q. Do you know what the monthly energy efficiency costs recovery rider is for residential customers in Duke's territory?

A. So I did look at the rider filings, the past five rider filings for Duke, and I think I calculated an average of \$8.40.

Q. You haven't done any analysis of what the

1 total program costs will be for Duke to hit their
2 annual targets under this portfolio plan, have you?

3 A. No.

4 Q. You haven't done any other analyses,
5 correct, specific to the 2017 to 2019 proposed plan
6 to determine whether Duke would be able to meet their
7 annual statutory target under the 3.5 percent cost
8 cap?

9 A. No.

10 Q. And have you done that analyses -- you
11 haven't done it without collecting for shared savings
12 either?

13 A. You're -- I'm sorry. I don't think I
14 understand.

15 Q. It's okay. So you haven't done any
16 analyses whatsoever related to whether or not Duke's
17 able to hit this 2017 to 2019 proposed cost cap under
18 that 3.5 percent cost cap without collecting shared
19 savings?

20 A. Correct. My recommendation is based on
21 the fact that I believe a cost cap is necessary and
22 my concern is for two -- the groups I mentioned
23 earlier, the nonparticipating customer and the
24 low-income customer who, as it relates to shared
25 savings, if given the opportunity to not pay 3

1 million a year in shared savings to Duke would
2 certainly be meaningful to the family budget.

3 Q. And not to belabor the point, but you
4 haven't also done any analyses related to whether
5 Duke could collect their maximum shared savings under
6 the proposal either then under that 3.5 percent cost
7 cap?

8 A. Whether they can collect their max shared
9 savings?

10 Q. Whether they would be able to.

11 A. I have not done that analysis.

12 Q. Have you analyzed what costs for first
13 year kilowatt-hours saved Duke would need to meet to
14 comply with their annual targets under a 3.5 percent
15 cost cap?

16 A. Can you restate the question, please? I
17 didn't hear the first part.

18 Q. Okay. Sorry. I have a little sore
19 throat so I apologize. If you can't hear, just ask
20 again. Have you analyzed what the costs for first
21 year kilowatt-hours saved that Duke would need to
22 meet in order to comply with their annual savings
23 targets under that 3.5 percent cost cap that's been
24 proposed?

25 A. No.

1 Q. And, again, you have not done any
2 analyses -- what I just asked you, you haven't done
3 any analyses of whether or not they could do it
4 without collecting their shared savings?

5 A. Whether or not they can do what?

6 Q. Whether or not they can -- you haven't
7 analyzed their cost for first year kilowatt-hours
8 saved they would need to meet their cost cap under --
9 I'm sorry, to comply with their annual targets under
10 that 3.5 percent cost cap without collecting any
11 shared savings?

12 A. No.

13 Q. And, again, you have not analyzed any
14 costs for first year kilowatt-hours saved Duke would
15 need to meet to comply with their annual savings
16 under this 3.5 percent cost cap without collecting
17 maximum shared savings under the proposal?

18 A. Can you repeat the question?

19 Q. Sure. You've not done any analysis of
20 whether -- what costs for first year kilowatt-hours
21 saved Duke would need to meet to comply with their
22 annual savings target under the 3.5 percent proposed
23 cost cap without -- without collecting their maximum
24 shared savings under the proposal?

25 A. That's correct.

1 Q. You haven't done any analysis on whether
2 Duke would have the ability to potential exceed its
3 annual statutory target under the 3.5 percent cost
4 cap, correct?

5 A. That's correct.

6 Q. You've not analyzed what mix of programs
7 would potentially be in Duke's portfolio plan under
8 the 3.5 percent cost cap, correct?

9 A. Can you state your question again?

10 Q. Sure. Have you done any analysis of what
11 mix of programs would potentially be in Duke's
12 portfolio plan under that 3.5 percent cost cap that's
13 been proposed?

14 A. No.

15 Q. And you haven't done any analysis of
16 whether any energy efficiency programs in Duke's
17 proposed plan might need to be reduced or eliminated
18 under that 3.5 percent proposed cost cap?

19 A. No.

20 Q. You haven't analyzed the individual costs
21 of the programs in Duke's 2017 to 2019 portfolio to
22 stay within a 3.5 percent cost cap?

23 A. No.

24 Q. And you have not analyzed the individual
25 cost caps proposed and whether those costs are

1 reasonable, have you?

2 A. I don't -- I haven't done any analysis on
3 that, correct.

4 Q. Would you agree that Duke's proposed plan
5 is cost effective at the portfolio level? And by
6 cost effective I am referring to the total resource
7 cost test.

8 A. I believe in Duke's plan they present a
9 plan that states -- where it states the plan is cost
10 effective.

11 Q. And, again, you haven't done any analyses
12 that compares Duke's proposed program from 2017 to
13 2019 to plans for the same years in other states,
14 have you?

15 A. Can you repeat the question?

16 Q. Sure. Have you done any analysis of
17 whether -- Duke's proposed programs for this 2017 to
18 2019 period, you haven't done any analysis comparison
19 to the same years for other states?

20 A. That's correct.

21 Q. How involved in the Duke's collaborative
22 process are you? And by collaborative process where
23 we get together and discuss the portfolio plans and
24 what should be part of those.

25 A. So I attend meetings, provide input, ask

1 questions, and attempt to identify any consumer
2 protection issues.

3 Q. Can you name any programs you suggested
4 should be changed in the process?

5 A. No. I did not evaluate that.

6 Q. Can you name any programs to your
7 knowledge that staff suggested to modify in the
8 process?

9 MR. HEALEY: Objection, your Honor. This
10 is outside the scope of her testimony.

11 EXAMINER BULGRIN: Sustained. Sustained.

12 MS. LEPPLA: She testified she attended
13 meetings. I wondered if she had any knowledge of
14 staff's analysis at those meetings.

15 MR. HEALEY: They can ask staff's witness
16 if they would like.

17 EXAMINER BULGRIN: Yeah.

18 Q. (By Ms. Leppla) Did OCC to your knowledge
19 recommend a cost cap on programs during the
20 collaborative process?

21 A. I don't -- I don't recall.

22 Q. One of the reasons you give in your
23 testimony for supporting a cost cap is to lower
24 overall program costs, correct?

25 A. Yes.

1 Q. And you believe lowering costs are in the
2 public interest, right?

3 A. I believe that what costs?

4 Q. Lowering costs.

5 A. Lowering costs, yes.

6 Q. Do you believe it's also in the public
7 interest to have an energy efficiency portfolio
8 program that provides a balance of cost effective
9 residential, commercial, and industrial programs to
10 reach as many customers as possible?

11 A. I think it depends.

12 Q. Would you support an efficiency portfolio
13 program that was optimized solely to achieve the
14 statutory savings goals defined as first year savings
15 at the lowest possible cost regardless of the mix of
16 programs it contained?

17 A. Would you repeat the question?

18 Q. Sure. I am trying to ask if you -- if
19 you are looking at an energy efficiency portfolio
20 program that's optimized to solely achieve that
21 statutory savings goal at the lowest possible cost,
22 would you approve of that regardless of the types of
23 programs it contained?

24 MR. HEALEY: I would object to that as an
25 incomplete hypothetical. There is a lot going on in

1 that question, your Honor. I know that's not very
2 precise but.

3 EXAMINER BULGRIN: I'll overrule. You
4 can answer if you know.

5 A. I think it depends.

6 Q. Do you believe programs that produce
7 long-term savings provide added value over programs
8 that produce short-term savings?

9 A. Yes.

10 Q. I am going to kind of shift gears and
11 refer you back to your direct testimony. If you
12 could take a look at page 8, lines 16 through 21.

13 A. Page 8?

14 Q. Yes, lines 16 through 21.

15 A. Okay.

16 Q. And you mention here the Commission's
17 order in the recent AEP energy efficiency case,
18 correct?

19 A. Yes.

20 Q. And you state that "The PUCO has also
21 recognized the need to limit the costs that customers
22 pay for energy efficiency programs"?

23 A. Yes.

24 Q. And just to follow up on this, are you
25 aware that the environmental groups filed a request

1 for rehearing on that decision?

2 A. Yes.

3 Q. Are you aware that OCC filed a response
4 to that request for a rehearing called a memorandum
5 contra?

6 A. Yes.

7 Q. And have you read that filing?

8 A. Yes.

9 MS. LEPPLA: Your Honor, if I can
10 approach?

11 EXAMINER BULGRIN: Sure.

12 Q. I am going to hand you a copy of that
13 memorandum contra that you just said you had read
14 previously.

15 EXAMINER BULGRIN: This is publicly
16 filed.

17 MS. LEPPLA: Publicly filed,
18 administrative notice.

19 MR. JONES: Your Honor, I am going to
20 object to this exhibit. It's not within the scope of
21 this proceeding. It's AEP's portfolio case. It
22 doesn't have any relevance to this case.

23 MS. LEPPLA: Your Honor, I would
24 disagree. She references this in her -- she
25 references this case in her testimony, and it is

1 referenced -- it is relevant, rather.

2 EXAMINER BULGRIN: Okay. A little leeway
3 on this. Go ahead.

4 Q. (By Ms. Leppla) If you can turn to page
5 8. Are you already at page 8?

6 A. No. Page 8?

7 Q. I'm sorry, page 5.

8 A. Okay.

9 Q. And it says under this section that "The
10 Cost Cap Sentences do not bind the PUCO to any future
11 decision in this or any other proceedings. This is
12 evident from the plain language of the Opinion and
13 Order, where the PUCO noted merely that it will be
14 reluctant to approve stipulations that do not include
15 an overall cost cap on the annual costs that
16 customers pay for utility-administered energy
17 efficiency programs and utility profits." And that
18 is OCC's position on this?

19 MR. HEALEY: Objection, your Honor. This
20 document speaks for itself. We don't need
21 Ms. Shutrump to interpret OCC's opinions in other
22 cases.

23 EXAMINER BULGRIN: Sustained.

24 Q. Are you aware there was a subsequent
25 Commission order on that request for rehearing?

1 A. I don't recall that.

2 Q. You have not read that order?

3 A. No.

4 Q. Does the OCC's position that this -- from
5 its -- let me start over.

6 It's OCC's position in another case under
7 a cost cap situation that it doesn't apply
8 necessarily to this case with Duke?

9 MR. HEALEY: Same objection. OCC's
10 positions are what they are.

11 EXAMINER BULGRIN: Sustained.

12 Q. Colleen, we will go back to your
13 testimony now and turn to page 9, lines 14 through
14 16.

15 A. Okay.

16 Q. You state here, correct, that at least
17 four states have implemented cost caps similar to the
18 one proposed by the PUCO staff?

19 A. Yes.

20 Q. And these are Illinois, Texas,
21 Pennsylvania, and Maine?

22 A. Yes.

23 Q. Have you done analyses that compare
24 Duke's proposed programs for 2017 to 2019 for the
25 programs for the same years in any of those four

1 states?

2 A. No.

3 Q. I just have a few questions about each of
4 these. We will start with Texas. You mention in
5 your testimony at page 10, lines 12 through 14 --

6 A. Okay. Where are you at?

7 Q. Page 10.

8 A. Okay.

9 Q. Lines 12 through 14. And it looks like
10 you state here "Texas S.B. 1125 requires that
11 cost-effective energy efficiency be subject to a
12 maximum spending amount as established by the Texas
13 commission," right?

14 A. Correct.

15 Q. Okay. And are you aware of the annual
16 efficiency mandates for each utility in Texas?

17 A. I'm not.

18 MS. LEPPLA: Can I approach, your Honor?

19 EXAMINER BULGRIN: Sure.

20 Q. I apologize, Colleen. I did not have a
21 binder clip, it's loose, but I am handing you a "2016
22 State Energy Efficiency Scorecard from ACEEE."

23 MS. LEPPLA: I've got copies of the
24 relevant pages, but I did not print 173 pages so.

25 EXAMINER BULGRIN: Okay.

1 MS. LEPPLA: But I can send you a link to
2 the full document.

3 EXAMINER BULGRIN: Do we want to mark
4 this as an exhibit?

5 MS. LEPPLA: Yeah. We can go ahead and
6 mark this as Environmental Inventors Exhibit 1.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Ms. Leppla) And, Colleen, have you
9 seen this document before?

10 A. I may have. I'm not sure.

11 MS. LEPPLA: It's a publicly available
12 document, your Honor, so we just ask administrative
13 notice be taken of it.

14 MR. HEALEY: I object to that, your
15 Honor.

16 EXAMINER BULGRIN: Yeah.

17 MR. HEALEY: I would object, your Honor.
18 There is no foundation. The fact that it exists out
19 in the public doesn't mean it gets into the record.
20 If they want to sponsor a witness to put this on,
21 they are welcome to.

22 EXAMINER BULGRIN: Yeah.

23 MR. HEALEY: They had that chance as
24 well.

25 EXAMINER BULGRIN: Right. I would agree

1 with that.

2 MS. LEPPLA: Your Honor, this is a
3 publicly filed document and --

4 EXAMINER BULGRIN: It's not publicly
5 filed in the PUCO cases?

6 MS. LEPPLA: No, it is not.

7 EXAMINER BULGRIN: So, yeah, I am not
8 going to take administrative notice of something
9 that --

10 MS. LEPPLA: I will go ahead and ask
11 Colleen a few questions about it, at least, if I can.

12 EXAMINER BULGRIN: Yeah. You are welcome
13 to.

14 MS. LEPPLA: Thank you.

15 Q. (By Ms. Leppla) Colleen, if you could
16 turn to page 28. And you said you had done a
17 comparison with Texas and Ohio, correct?

18 A. As it relates to my testimony, yes.

19 Q. Right. But did you not know the annual
20 efficiency mandates for Texas?

21 A. Correct.

22 Q. If you can look down on -- in the second
23 column there, do you see the state of Texas?

24 A. I do, uh-huh.

25 Q. Do you see what their percentage of total

1 routine sales is?

2 MR. HEALEY: Your Honor, I would object
3 again. We have not established a foundation. She is
4 not sure if she has seen this before. It's not
5 publicly available in the PUCO docket. To ask her
6 questions about it, there is no foundation for this
7 witness.

8 MR. JONES: I would join in that
9 objection, your Honor.

10 EXAMINER BULGRIN: Okay. I'll sustain.

11 Q. (By Ms. Leppla) We will move on to
12 Pennsylvania, if we could. And you stated previously
13 that you have since your deposition looked up annual
14 energy efficiency mandates for each utility in
15 Pennsylvania?

16 A. Not for each utility, in general.

17 Q. Just in general. Thank you. Have you
18 done any analysis on what annual monetary amount is
19 allowed for a Pennsylvania utility under their
20 2 percent cost cap?

21 A. In Pennsylvania the Commission directs
22 the utilities to report total annual revenues and to
23 provide a calculation of total program costs based on
24 the 2 percent limit, so I don't know what those
25 amounts are.

1 Q. So you haven't done any analysis on your
2 own.

3 A. Analysis of what?

4 Q. Of what the annual amount is allowed for
5 Pennsylvania utilities under their 2 percent cost
6 cap.

7 A. No. I think -- no, I have not.

8 Q. And Pennsylvania is similar to Ohio,
9 correct, that customers had the ability to shop for
10 their electricity provider?

11 A. I believe so, yes.

12 Q. And you agree, right, that line 10 of
13 FERC Form 1 which staff is using as the baseline for
14 their cost cap here does not include revenue from
15 shopping customers?

16 A. I'm sorry. You said line 10?

17 Q. Yeah, FERC Form 1, line 10.

18 A. Okay. So on FERC Form -- so repeat the
19 question.

20 Q. Sure. Line 10 of FERC Form 1 that staff
21 has proposed as using for the cost cap in this case
22 does not include revenue from shopping customers,
23 correct?

24 A. I don't know.

25 Q. Are you aware whether line 10 includes

1 revenue from sales by competitive retail electric
2 suppliers in a given distribution utility territory?

3 A. It may. I don't know.

4 Q. So in the reference in your testimony to
5 total annual revenue on which that 2 percent in
6 Pennsylvania is based, are you aware of what that
7 total revenue actually represents?

8 A. No.

9 Q. So you don't know if this amount includes
10 the total cost of electricity borne by the state of
11 Pennsylvania?

12 A. No. I didn't evaluate that.

13 Q. And you don't know if that includes
14 shopping customers then.

15 A. I don't know.

16 Q. Have you done any analysis of the
17 percentage cost cap, what it would be in Pennsylvania
18 if we removed the revenue from shopping customers
19 making it more in line with FERC Form 1, line 10?

20 A. No.

21 Q. Are you aware of the volume of annual
22 electric sales that are attributed to customers who
23 shop in Duke's territory, in other words, those
24 customers who purchase their power from competitive
25 retail electric suppliers?

1 A. Say that again.

2 Q. Sure. Are you aware of the volume of
3 annual electric sales that are attributed to
4 customers who shop in Duke's territory?

5 A. I don't know.

6 MS. LEPPLA: May I approach, your Honor?

7 EXAMINER BULGRIN: Yeah.

8 Q. Colleen, I am handing you a Public
9 Utility Commission implementation order.

10 EXAMINER BULGRIN: Are we going to mark
11 this as an exhibit?

12 MS. LEPPLA: Yeah. I think if we could
13 mark this as Exhibit 2 for the environmental
14 intervenors. And we would like to take
15 administrative notice. This is the Pennsylvania
16 Utility Commission.

17 EXAMINER BULGRIN: Okay.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. (By Ms. Leppla) Colleen, have you ever
20 read this document?

21 A. I may have.

22 Q. And you had just testified that you
23 weren't sure exactly what -- what the total annual
24 revenue, that 2 percent in Pennsylvania, is based
25 upon, correct?

1 A. Correct.

2 Q. Can you turn to page 33 of this decision.
3 I'm sorry, 32. Can you read that first paragraph
4 under "Determination of Allowable Costs."

5 MR. HEALEY: Your Honor, I would object
6 again on the grounds of foundation. She said she may
7 have read this, but she did not recall. I would also
8 note this is an incomplete document. I see page 32,
9 33, 34, 35, 36, and ends in the middle of a sentence,
10 so any questions about this document are necessarily
11 incomplete and out of context.

12 MS. LEPPLA: Colleen has a full copy, I
13 apologize, your Honor. I forgot to tell you I didn't
14 print a full copy for everyone. I only printed the
15 relevant sections. If you would like to check her
16 copy.

17 EXAMINER BULGRIN: I will allow you a
18 little leeway on this, but she is not an expert on
19 Pennsylvania so.

20 MS. LEPPLA: I am just trying to
21 understand. She said she didn't know exactly what
22 that total annual revenue for Pennsylvania was based
23 upon, but she does do a comparison in her testimony,
24 so I am trying to understand what that does entail.

25 Q. (By Ms. Leppla) So if you could look at

1 that first paragraph, it says that "The act allows
2 EDC to recover all prudent and reasonable costs
3 relating to the provision or management of its EE&C
4 plan, but limits such costs to an amount not to
5 exceed 2 percent of the EDC's total annual revenue as
6 of December 31, 2006." Were you aware that that was
7 the case in Pennsylvania when you did your analysis?

8 MR. HEALEY: Make a standing objection to
9 all questions on this document, your Honor, for the
10 same reasons of foundation just to preserve them for
11 the record.

12 EXAMINER BULGRIN: I will overrule your
13 objection. You can answer if you know.

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

15 MS. LEPPLA: Would you mind reading it
16 back.

17 Q. This first sentence right under
18 "Determination of Allowable Costs" on page 32 of the
19 document you are reading, were you aware that there
20 were limits to such costs not to amount -- I'm sorry,
21 limit such costs to an amount not to exceed 2 percent
22 of the EDC's total annual revenue, were you aware
23 that was the case in Pennsylvania when you did your
24 analysis?

25 A. Yes.

1 Q. And if you can turn to page 33. And you
2 just testified that you were not aware of what total
3 annual revenues were in Pennsylvania when you did
4 your analysis. If you look at the top here, the
5 sentence starting with "Pursuant to the Act,"
6 "Pursuant to the Act, total annual revenues shall be
7 defined as 'amounts paid to the electric distribution
8 company for generation, transmission, distribution
9 and surcharges by retail customers.'" Were you aware
10 that was the indication in Pennsylvania when you did
11 your analysis?

12 A. No.

13 Q. I am going to move on to Maine now which
14 is the last state I believe you reference in your
15 testimony. Are you aware -- I'm sorry. Go ahead and
16 turn to your testimony on page 11, if you could.

17 A. I'm there.

18 Q. Lines 1 through 3. You reference that
19 Maine statute and say it "includes an energy
20 efficiency cost cap of 4 percent of total retail
21 electricity and transmission and distribution sales,"
22 correct?

23 A. Correct.

24 Q. Are you aware of the annual energy
25 efficiency mandates for each utility in Maine?

1 A. I am not aware of any mandates in Maine.

2 Q. And have you done any analysis of what
3 the annual monetary amount is allowed for Maine
4 utilities under that 4 percent cost cap?

5 A. No.

6 Q. You're familiar -- I believe counsel for
7 Duke asked if you are familiar with the Efficiency
8 Maine Trust?

9 A. Yes.

10 Q. Okay. What is it?

11 A. What is it?

12 Q. Yeah.

13 MR. HEALEY: It's asked and answered,
14 your Honor. We already went through this before.

15 EXAMINER BULGRIN: You can answer.

16 A. It's a third-party administrator that
17 delivers, manages programs statewide.

18 Q. And are you familiar with the sources of
19 the funding for the energy efficiency programs that
20 Efficiency Maine implements?

21 A. Yes.

22 MS. LEPPLA: May I approach, your Honor?

23 EXAMINER BULGRIN: Sure.

24 MS. LEPPLA: Again, I am giving Colleen a
25 full copy of this, and I printed only the relevant

1 pages for everyone else.

2 EXAMINER BULGRIN: And we should mark
3 this Environmental Intervenors 3?

4 MS. LEPPLA: 3, correct.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MS. LEPPLA: Again, we can provide the
7 link to this so you can have full copies.

8 Q. (By Ms. Leppla) If you can flip to Table
9 3, page 11, I believe of that exhibit.

10 A. I'm sorry. What page?

11 Q. Page 11.

12 A. There are no pages on some of these so I
13 am having trouble here. Let's see --

14 EXAMINER BULGRIN: Yeah, that's it.

15 A. I think I am on page 11, yes.

16 Q. Page 11, Table 3, it says "Costs and
17 Savings for Electric Programs." Are you there?

18 A. That's correct.

19 Q. Okay. Make sure we are on the same page.
20 Sorry about that. And were you aware -- you just
21 stated that you were not aware of -- you didn't do
22 any analysis of what the annual monetary amount
23 allowed for Maine utilities under that 4 percent cost
24 cap, correct?

25 A. Correct.

1 Q. And were you aware that 15.2 million of
2 Efficiency Maine's fiscal year 2015 came from a
3 utility system benefits charge?

4 A. If you are referring to a number in the
5 table, I cannot read these numbers. I am having
6 trouble reading what it says under "Program."

7 Q. Okay. Okay. If you can't read it, we
8 don't want to ask you questions about it, so we'll
9 move on. If you can turn back to your direct
10 testimony now, Colleen, page 8, starting at line 3.

11 A. Page?

12 Q. 8. I know, I'm sorry. I didn't have a
13 binder clip for those.

14 A. Okay. Sorry. Okay.

15 Q. Starting at lines 3 through 14, you
16 discuss in the section participating customers'
17 energy efficiency programs versus nonparticipating,
18 correct?

19 A. Yes.

20 Q. And if you look at lines 12 to 14, you
21 state "Nonparticipating customers in Duke's service
22 territory, therefore, are experiencing higher rates
23 (and not necessarily lower bills) to pay for these
24 programs."

25 A. Yes.

1 Q. You didn't do any analysis to determine
2 specific rate impacts of Duke's 2017 to 2019 proposed
3 plan on those nonparticipating customers, did you?

4 A. No, but at the margin the bill is a
5 function of consumption and a rider rate, so the
6 nonparticipating customer in say 2018 uses a thousand
7 kilowatt-hours per month and in 2019 that customer
8 doesn't change the consumption pattern because that
9 individual does not participate in Duke's energy
10 efficiency measures, but in 2019, for example, if the
11 rider rate increases by 2 percent, then that customer
12 is going to experience a 2 percent rate increase.

13 MS. LEPPLA: Your Honor, I just move to
14 strike after "no."

15 EXAMINER BULGRIN: You asked the question
16 so.

17 MS. LEPPLA: But I was just --

18 EXAMINER BULGRIN: I will deny that.

19 MS. LEPPLA: I was asking if she did any
20 analysis.

21 Q. Again, you have not done any specific
22 analysis for rate impacts for Duke's 2017 to 2019
23 plan on nonparticipating customers, correct?

24 A. I think I've answered the question.

25 Q. You didn't do any specific analysis.

1 A. That's correct.

2 Q. Did you do any analysis to determine any
3 specific bill impacts of the 2017 to 2019 proposed
4 plan on nonparticipating customers?

5 A. No.

6 MS. LEPPLA: I have no further questions,
7 your Honor.

8 EXAMINER BULGRIN: Okay.

9 MS. LEPPLA: Thank you, Colleen.

10 MR. JONES: No questions, your Honor.

11 MS. MOONEY: No questions, your Honor.

12 EXAMINER BULGRIN: Any redirect?

13 MR. HEALEY: No, your Honor.

14 EXAMINER BULGRIN: I think we are done
15 then. Thank you.

16 THE WITNESS: Thank you.

17 EXAMINER BULGRIN: Okay. Any objection
18 to the admission of OCC Exhibit No. 13?

19 It will be admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER BULGRIN: I'm not sure what to
22 do with all these ones we marked for the
23 environmental advocates. I will take administrative
24 notice of the Pennsylvania Public Utilities
25 Commission decision which is Exhibit No. 2.

1 MS. LEPPLA: I believe that was Exhibit
2 3, your Honor. Sorry.

3 EXAMINER BULGRIN: It's 2. But I believe
4 we have objections to the No. 1 and the memorandum
5 contra as well?

6 MR. JONES: Yes, your Honor.

7 MS. LEPPLA: Your Honor, as far as the
8 memoranda contra, that's a publicly filed document in
9 another case in this Public Utilities Commission, so
10 I think that should be admitted.

11 EXAMINER BULGRIN: Well, I don't think it
12 needs to be admitted to the record of this case.

13 MS. LEPPLA: I apologize. Yes.

14 EXAMINER BULGRIN: Okay. And so I am
15 going to deny admission of No. 1 and No. 3.

16 Okay. Are we down to staff?

17 MS. WATTS: Last but not least, of
18 course.

19 EXAMINER BULGRIN: Of course.

20 MR. JONES: Your Honor, staff would call
21 Patrick Donlon to the stand.

22 EXAMINER BULGRIN: Okay. One minute.

23 We will go off the record here for a
24 second.

25 (Discussion off the record.)

1 EXAMINER BULGRIN: Ms. Watts.

2 MS. WATTS: We would like to move
3 Exhibits 10, 11, and 12, please, your Honor.

4 EXAMINER BULGRIN: Okay. Any objections?

5 MR. HEALEY: Yes, your Honor. I want to
6 object to all three of them actually. No. 10 was the
7 sign-in sheet. We never established any foundation
8 for this. There is no date. There's no time. We
9 don't know when this sign-in sheet was created. It
10 also says that it's page 1 of 5 and this is only page
11 1 so it's incomplete. I don't think any foundation
12 was ever established and there's no basis to admit it
13 into the record.

14 EXAMINER BULGRIN: Okay.

15 MS. WATTS: Your Honor, OCC made as the
16 subject of their testimony an issue with respect to
17 whether there had been settlement negotiations with
18 OCC. We abbreviated our cross-examination on that
19 topic because we were admonished to do so, but we
20 feel the need to establish there was, in fact, some
21 negotiation with OCC prior to entering the
22 stipulation.

23 EXAMINER BULGRIN: Okay. So for those
24 limited purposes, I will allow the admission of these
25 three exhibits then.

1 MR. HEALEY: With all due respect on No.
2 10, you know, Ms. Shutrump stated in her testimony
3 there were conversations between Duke and OCC so
4 that's in the record. OCC is not denying that Duke
5 spoke to OCC at any given point. I still don't see
6 any basis for admitting No. 10 regardless of what
7 Duke wants to get into the record. We just don't
8 know what this document is. It could be anything.
9 This could be any meeting. It could be any date.
10 There is no foundation to know what this document is.
11 That -- that is the evidentiary standard for letting
12 things into the record on a document like this.

13 EXAMINER BULGRIN: Well, for better or
14 worse, I am admitting it so.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER BULGRIN: Okay. Mr. Donlon.

17 (Witness sworn.)

18 EXAMINER BULGRIN: Mr. Jones.

19 MR. JONES: Thank you, your Honor.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

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PATRICK DONLON

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

DIRECT EXAMINATION

By Mr. Jones:

Q. Would you please state your name for the
record, please.

A. Patrick Donlon.

Q. Where are you employed?

A. Public Utilities Commission of Ohio.

Q. And what is your job title and
responsibilities?

A. I'm the director of the rates and
analysis department, and I'm responsible for really
all aspects of the department.

Q. And did you have an opportunity to
prefile direct testimony in this proceeding?

A. I did.

Q. And you have before you what's marked as
Staff Exhibit 1 for identification. Could you please
identify that document, please.

A. It is the prefled direct testimony of
Patrick Donlon.

Q. And was this testimony prepared by you or
at your direction?

1 A. It was.

2 Q. And do you have any changes or additions
3 to make to that testimony?

4 A. I do have one.

5 Q. And where would that be?

6 A. Page 7, line 128.

7 Q. Okay. Do you want to describe that
8 change, please?

9 A. Yes. The first word in there is "No."
10 It should be "Not necessarily."

11 Q. Okay. So the change you are making on
12 page 7 of your testimony on line 128, you are
13 striking the word "No" and replacing that with "Not
14 necessarily"?

15 A. Correct.

16 Q. And do you have any other changes or
17 additions to make to your testimony?

18 A. I do not.

19 Q. And if I were to ask you the same
20 questions contained in your prefiled testimony with
21 the exception of the change you made here today,
22 would your answers be the same?

23 A. Yes.

24 MR. JONES: Your Honor, I offer
25 Mr. Donlon for cross-examination.

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EXAMINER BULGRIN: All righty.
MS. MOONEY: I have no questions.
EXAMINER BULGRIN: Company.
MS. WATTS: Yes, thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Watts:

Q. Good afternoon, Mr. Donlon.
A. Good morning -- or afternoon.
Q. Geez, you get up late. I would like to ask you -- first, I would like to just sort of get something off the record. One of the points in your testimony that you mentioned is that you believe the company should file an application to change accounting methods to defer program costs and distribution revenue. The company has, in fact, filed for a deferral of that nature; is that not correct?

MR. JONES: Your Honor, can counsel refer the witness to where she is referring to in the testimony?

Q. Page 3, line 41. Sorry.

EXAMINER BULGRIN: Ms. Watts, would you know what the case number is?

MS. WATTS: Your Honor, I do not, but I

1 can provide that at a break.

2 EXAMINER BULGRIN: Okay.

3 A. Can you repeat the question?

4 MR. JONES: Can I have the question back?

5 EXAMINER BULGRIN: Are you there?

6 THE WITNESS: I'm there but then if we
7 can have the question reread because.

8 Q. Okay. Or I can rephrase it.

9 EXAMINER BULGRIN: Yeah.

10 A. Either way.

11 Q. So you're recommending that the company
12 file an application to change accounting in order to
13 defer costs for 2016 program costs and lost
14 distribution revenue, correct?

15 A. Yes.

16 Q. And do you understand that the company
17 has actually already filed such a request?

18 A. I wasn't aware of that.

19 Q. Okay. But if such a request has been
20 filed, staff would support that request; is that
21 correct?

22 A. Well, staff would review the request. I
23 don't want to say we'll support the request without
24 reading it; but, yes, that would mitigate that
25 portion of the testimony in this case.

1 Q. Okay. Thank you. And your testimony
2 only addresses your contention that the Commission
3 should impose a cap on costs for energy efficiency,
4 correct?

5 A. It also speaks to a section of the
6 stipulation on shared savings that seemed to have a
7 little bit of misleading -- or staff wasn't sure what
8 the intent of the certain section 7G was and then
9 also just that certain programs should be included in
10 the shared savings calculation.

11 Q. Okay. All right. Thank you for that
12 clarification. Your testimony does not address any
13 of the proposed budgets associated with any of the
14 programs in the portfolio, correct?

15 A. Staff has not taken a position on the
16 individual programs or their budgets.

17 Q. And you are not disputing the cost
18 effectiveness of any of those programs, correct?

19 A. Staff has not taken a position on that.

20 Q. And you do not dispute that the portfolio
21 as a whole is designed to be cost effective, correct?

22 A. Staff has not taken a position on that.

23 Q. Would you refer to page 4, line 48 of
24 your testimony.

25 A. I'm there.

1 Q. And you have -- beginning on page 7 you
2 have an answer that includes two bullet responses,
3 and you are advocating there for an overall cost cap,
4 correct?

5 A. Correct.

6 Q. And by overall in this instance you are
7 including program costs, lost distribution revenues,
8 and shared savings, correct?

9 A. Lost distribution revenue would not be a
10 part of this --

11 Q. Okay.

12 A. -- of the overall cap.

13 Q. Are you -- you don't dispute that the
14 company is entitled to recover lost distribution
15 revenue, correct?

16 A. Correct.

17 Q. You are just not including it; you would
18 not include the revenue from that in the calculation
19 of the cap.

20 A. Right. It is not part of the cost cap.
21 The cost cap would be the overall budget portfolio
22 program and then the shared savings. Lost
23 distribution revenue -- or, yeah, lost distribution
24 revenue as well not part of it.

25 Q. Okay. And the starting point that you

1 recommend for your proposed cap is line 10, page 300
2 of the 2015 FERC Form 1, correct?

3 A. Correct.

4 Q. And you would take the number on that
5 line, and you would multiply that number by 3.5
6 percent, correct?

7 A. Correct.

8 Q. And in your testimony you acknowledge
9 that that number represents total sales to ultimate
10 consumers, correct?

11 A. Correct.

12 Q. But can we agree that that number
13 represents distribution and transmission sales plus
14 Standard Service Offer sales?

15 A. Correct.

16 Q. So it does not include sales through
17 competitive retail electric service providers,
18 correct?

19 A. Not for Duke, no.

20 Q. Okay. So do you happen to know what the
21 switching rate is for Duke Energy Ohio in its service
22 territory overall?

23 A. Not off the top of my head.

24 Q. Would you agree that switching varies
25 within the service territories for the four Ohio

1 light distribution utilities?

2 A. It does.

3 Q. And do you know how much switching varies
4 from year to year for Duke Energy?

5 A. Not off the top of my head.

6 Q. Are competitive electric service
7 providers required to meet energy efficiency mandates
8 in Ohio?

9 A. They are not.

10 Q. Referring to page 5, line 85 of your
11 testimony, you state that using a number on the FERC
12 form that you are recommending be used for setting
13 the cap, you believe that it allows for transparency
14 amongst all the utilities in the state, correct?

15 A. Uh-huh. Yes, sorry.

16 Q. When you say "transparency," who are you
17 suggesting that it is transparent to?

18 A. Well, it's similar to -- it goes into --
19 let me find the right question here. Question 17 on
20 page 7 that "staff decided on this methodology
21 because it's straightforward, simplistic, and easy
22 for both technical and non-technical observers to
23 understand." So that's the transparency. It's one
24 number that people can find. It's not a rate off of
25 your generation or percentage of generation or

1 something else that could be misinterpreted,
2 confusing, or hard to explain to the general public.
3 So it's a number that's out there, easily defined,
4 and is done in total dollars.

5 Q. Okay. So generally speaking with respect
6 to transparency, is your concern an ability to
7 explain these numbers to the general public?

8 A. I think that's part of the goal to a
9 certain extent.

10 Q. Okay. And the number on the FERC form is
11 only one component of the calculation, correct?

12 A. Uh-huh. Yes.

13 Q. So turning to page 6, line 94 of your
14 testimony, you see -- actually it starts on line 93.
15 "Does the cost cap remain the same for each year of
16 the portfolio plan," and you respond "Yes." Do you
17 see that?

18 A. Yes.

19 Q. So for purposes of clarification are you
20 saying that the cap would be set in the first year
21 and then remain the same for the three years of the
22 approved plan?

23 A. Yes.

24 Q. So if switching -- if shopping customer
25 numbers go up or down in each of those three years,

1 that impact would not be reflected in any change to
2 the budget numbers, correct?

3 A. That's correct.

4 Q. Now, you've also explained that staff
5 reviewed a number of different options in determining
6 how to set a cap; is that correct?

7 A. Yes.

8 Q. Can you tell me what some of those
9 different considerations were?

10 A. So some of the options we looked at
11 were -- stated a cap that would be a percentage of
12 the total bill. Some of them would be percentage of
13 generation. We looked at the acquisition costs,
14 incentive there; but, again, we felt that this was a
15 simplistic and easy way for multiple parties to
16 understand and come to a set budget for the cap.

17 Q. Is it not correct in FirstEnergy's
18 proceeding that you also explained that you selected
19 this methodology because you thought it would be
20 something consistent across all four EDUs?

21 MR. JONES: Objection, your Honor,
22 outside the scope of this proceeding. We are talking
23 about the FirstEnergy proceeding.

24 EXAMINER BULGRIN: I'll overrule it. You
25 can answer.

1 A. While that consistency came up, and I
2 think it was actually misconstruing in that case,
3 that was consistency among line 10 was the piece and
4 through that they were trying to say that everything
5 was consistent. It was actually, if you will, a --
6 in that testimony the question 11, why we pick line
7 10, we use the word consistency but I think there was
8 confusion as to if that was consistency on line 10 or
9 consistency for everything so that's why I adjusted
10 to use the word.

11 Q. So is it your testimony then that
12 consistency from staff's perspective only relates to
13 that one number on the FERC form?

14 A. Yes.

15 Q. And so is it not true that staff
16 generally strives for consistency across the four
17 electric distribution utilities in terms of reaching
18 policy decisions?

19 A. So many answers. Strives, I think we --
20 staff does try to be consistent when appropriate and
21 when we can. There's a lot of different areas and
22 different mitigating factors that changes everything
23 and pretty much every single utility is slightly
24 different. And while we try and stay consistent on
25 overall general policy, when you get into the

1 minutia, there is a lot of little tweaks into that.

2 Q. With respect to energy efficiency, can
3 you explain what any of those little tweaks were?

4 A. Well, I was talking in generalities. I
5 mean, what exactly with respect to what piece of
6 things?

7 Q. Well, isn't it true that staff
8 recommended a cap level for FirstEnergy companies at
9 3.0 percent?

10 MR. JONES: Objection, your Honor. It
11 hasn't even gone to a decision yet. It's another
12 proceeding outside the scope of this hearing, not
13 relevant to this proceeding.

14 EXAMINER BULGRIN: I will overrule. You
15 can answer.

16 A. Yes, we did.

17 Q. And with respect to AEP, the cap level
18 for AEP has, in fact, already been approved by the
19 Commission, correct?

20 A. I think it has, well subject to
21 rehearing.

22 Q. Okay. And there was a stipulation in
23 that case, correct?

24 A. Correct.

25 Q. And the cap level on that case was 4.0

1 percent as recommended by staff, correct?

2 MR. JONES: Objection, your Honor,
3 continuing objection.

4 EXAMINER BULGRIN: I'll overrule. You
5 can answer.

6 A. Yes, there was.

7 Q. And with respect to DP&L, the cap level
8 that staff recommended was 4 percent, correct?

9 MR. JONES: Objection, your Honor.
10 Again, there's no decision in that case either.

11 EXAMINER BULGRIN: I will overrule.
12 She's just asking. She is not asking what the
13 Commission has decided. She's asking what the staff
14 has recommended.

15 A. Yes. In both AEP and DP&L it was
16 4 percent through stipulation.

17 Q. So I am wondering if you can tell me what
18 were any of the factors that caused staff to reach
19 different conclusions with respect to cap levels.

20 A. So both AEP and DP&L were stipulations so
21 obviously there was give and take on both sides of
22 those parties to get to that percentage. You know,
23 and we did recognize with Duke that they don't have
24 their generation; so, therefore, the FERC Form 1 may
25 be a little bit lower, and so we bumped that up a

1 little bit. When doing our analysis, we thought it
2 was -- that 3-1/2 percent Duke would be able to
3 achieve both mandate levels and that's why we felt
4 that was appropriate.

5 Q. So you just mentioned that the number for
6 Duke in its FERC form was a little bit lower. Do you
7 know by what percent it was lower?

8 A. No, I don't.

9 Q. And lower in terms of comparison with
10 other utilities; is that the comparison you made?

11 A. Yes.

12 Q. And do you recall on what basis?

13 A. On what basis what?

14 Q. If you're -- if you're stating that it
15 was lower for Duke Energy, the number on the FERC
16 form was a little bit lower for Duke Energy so,
17 therefore, you recommended a higher cap, and I am
18 wondering if you can tell me did you find it to be
19 lower on a per customer basis or a per kWh basis or
20 what -- in what sense it was lower?

21 A. I think what I really meant to say was
22 that when evaluating the FERC Form 1 number and the
23 program and everything holistically, that we felt
24 Duke needed a slightly higher percentage in that so
25 that's why we got to the 3.5. As to what was lower

1 in that, I don't have the exact. Off the top of my
2 head I can't tell you exactly all the analysis we
3 went through to look at that. It has been a while.

4 Q. On page 6, line 99, you state that "Staff
5 evaluated that 3.5 percent cap would provide price
6 security for all ratepayers." Do you see that?

7 A. Yes.

8 Q. Can you define what you mean by price
9 security in that context?

10 A. Well, by creating an overall price cap
11 that the company cannot exceed, there's a limit to
12 how much the customers can be charged in any given
13 year.

14 Q. Did you or anyone on the staff do any
15 forecasting or modeling to determine whether a
16 3.5 percent cost cap would provide price security for
17 ratepayers?

18 A. We did not do any modeling or
19 forecasting.

20 Q. Are you aware of any other state that
21 uses the FERC form line 10 as a cost cap -- as a part
22 of a cost cap calculation for energy efficiency
23 programs?

24 A. I am not.

25 Q. Did staff have any idea of what it

1 might -- what might be acceptable in terms of cost to
2 customers prior to setting the cap proposal?

3 A. Could you rephrase that?

4 Q. Yeah. I would be happy to. When you
5 were determining what would be an appropriate cost
6 cap, what was your starting point in terms of what
7 would be appropriate?

8 A. So staff's always in the position that
9 they have to measure all sides and all parties so
10 what our goal was and what we were trying to do is
11 figure out how much -- what the companies -- or
12 company needed to be able to reach the mandated level
13 but also still mitigate the risk to consumers for
14 energy efficiency. So that was our starting point.

15 Q. And in reaching a decision about an
16 appropriate cost cap, did staff do any calculations
17 with respect to a per customer charge in each
18 different scenario that it was considering?

19 A. We did some. I'm sure we did not do it
20 in each scenario we were considering, but we did
21 evaluate some. What those specific numbers back and
22 forth were I don't remember off the top of my head
23 but I am sure we ran some of them.

24 Q. On page 6 you state that "costs have been
25 escalating to the point that the rider has become one

1 of the highest on residential bills." Do you see
2 that?

3 A. Yes, I do.

4 Q. When thinking about cost escalation, what
5 period of time are you considering?

6 A. Well, I know off the -- I think it was
7 the October rates that Duke's energy efficiency bill
8 was the third highest rider.

9 Q. October what year, please?

10 A. Of -- well, we are in '16 so '15. We're
11 '17 so '16. Sorry.

12 Q. So your testimony is that in October of
13 2016 -- could you restate what you?

14 A. Yeah. Sorry. October of '16 the
15 estimated bill impacts were an average of I want to
16 say 750 customers, residential customers, it was the
17 third highest rider. I think SmartGrid is -- was the
18 highest and then the kWh tax was the second highest
19 and then it was the energy efficiency rider. I
20 forget exactly what you guys call yours.

21 Q. So when you say SmartGrid was the
22 highest, are we talking about Duke's SmartGrid?

23 A. Duke's, this was just Duke's bill.

24 Q. Okay.

25 A. Just counting the riders you have.

1 Q. Okay. So your testimony is that in
2 October of 2016, for Duke bills in terms of rider
3 prices, the SmartGrid rider was the highest on a per
4 customer basis?

5 A. I think so. I think it was SmartGrid,
6 taxes, and then the energy efficiency. I know energy
7 efficiency was the third highest. I am pretty sure
8 SmartGrid was the first but that's kind of irrelevant
9 to this.

10 Q. Okay. And when you say third highest,
11 you're talking about relative to other charges on the
12 bill as opposed to relative to other utilities in the
13 state.

14 A. To your -- yes, just to the individual,
15 the third highest rider charge on Duke's bill to an
16 average customer of 750 kW.

17 Q. Okay. I think I am clear on that.

18 A. Sorry. Not trying to make it more
19 difficult.

20 Q. Do you know how much that rider has
21 escalated over any period of time?

22 A. Well, it's a little bit harder to do when
23 you look at the fact that it's forecasting and so you
24 can over -- and it's trued up so you always have the
25 adjustments to actuals added in there, so it's better

1 to really look at overall program costs and that's
2 why we also decided that the cap should be on an
3 overall dollar program costs because if you look at
4 the trend of program costs, those are going up.

5 Q. Do you know if the Commission has
6 received any specific complaints from customers about
7 the energy efficiency rider in particular?

8 A. Customers I don't know. I know they have
9 received a lot from the General Assembly.

10 Q. Okay. Do you know what AEP Ohio's 2015
11 energy efficiency benchmark is?

12 A. No.

13 MR. HEALEY: Objection.

14 THE WITNESS: Sorry.

15 Q. Do you know if staff reviewed that at all
16 in determining what an appropriate cost cap would be
17 for Duke Energy Ohio?

18 A. We -- when looking at the cost cap, we
19 were reviewing the cost cap structure, I guess to
20 call it, we were looking at all the companies. So,
21 yes, we were evaluating that. We have, as you
22 pointed out, consistency among having a cost cap on
23 all four utilities, we've suggested in all four
24 utilities, so, yes, we've looked at that. I just
25 don't remember the other three utilities at this

1 point what they are.

2 Q. Okay. So for 2015 would you accept,
3 subject to check, that the benchmark number was 427.1
4 gigawatts?

5 MR. HEALEY: Now, I will object to
6 relevance of AEP's benchmark, your Honor.

7 MR. JONES: Object too on the same basis,
8 your Honor.

9 MS. WATTS: Your Honor, the witness has
10 testified about consistency and about methodologies
11 with respect to selecting a cap. And it's important
12 to point out the differences in the way in which that
13 cap affects different utilities in Ohio in terms of
14 fairness, so I would like to demonstrate the
15 difference between Duke Energy's -- how it works for
16 Duke Energy and how it works for AEP.

17 MR. JONES: Your Honor, the witness
18 testified to what consistency meant as far as using
19 FERC Form 1.

20 EXAMINER BULGRIN: I will give you a
21 little leeway on this. You can answer.

22 Q. So the question was would you accept,
23 subject to check, the benchmark for AEP is 427.1
24 gigawatt hours?

25 A. Yes.

1 Q. And would you agree that Duke
2 Energy's for -- at the same time period was 201.5
3 gigawatt-hours?

4 A. I don't have the -- anyone's gigawatts
5 memorized, so subject to check, I am willing to
6 accept that.

7 Q. Understood. And would you agree then
8 that the calculation of those two, the Duke Energy
9 Ohio's is 47.2 percent of AEP's number in terms of
10 gigawatt-hour benchmarks?

11 A. I'll accept, subject to check. I really
12 didn't listen to the numbers close enough to do the
13 math in my head.

14 Q. So would you agree that staff recommended
15 to the Commission an approved annual cap of
16 \$110,319,902 for AEP?

17 A. 110 sounds correct.

18 Q. And the staff is proposing for Duke
19 Energy Ohio a cap at 33 point -- 33,820,556 for Duke
20 Energy Ohio.

21 A. Yes.

22 Q. And would you agree then that the
23 proposal for Duke Energy is 30.7 percent of the cap
24 approved for AEP?

25 A. Again, subject to check, and not doing

1 any of the math.

2 Q. Okay. In your testimony on page 7 on
3 line 128, there is a reference there to the "economic
4 theory of a product life cycle." Do you see that?

5 A. Yes.

6 Q. Could you -- I know you have a minor in
7 economics, correct?

8 A. Yes.

9 Q. I don't so would you mind describing to
10 me what the economic theory of a product life cycle
11 is.

12 A. Well, simplistically it's -- I like to
13 take T.V.s because everyone has -- most people have a
14 T.V. I remember my physics teacher didn't have one.
15 But as products become more available, more generally
16 people buy them. More and more competition comes in
17 place, and the pricing of products goes down as they
18 become more mainstream. So that is what that is
19 meant to say is that, you know, an LED lightbulb was
20 very cost -- costly a few years ago, and I don't know
21 the exact prices but, and, now, it's cheaper now than
22 it was four or five years ago. So that's the
23 price -- the product life cycle simplistically.

24 Q. And does this theory with respect to a
25 product life cycle include certain stages to the

1 process? Are there stages to a product life cycle?

2 A. Yes.

3 Q. And are those stages -- do they last over
4 different periods of time for different products?

5 A. Yes, they do.

6 Q. And are the factors that influence that
7 difference in time related to demand for the product?

8 A. There's many factors that affect that.

9 Q. Okay. And is demand one of those
10 factors?

11 A. Yes.

12 Q. And how about production costs?

13 A. Yes.

14 Q. And how about revenues from the product?

15 A. Well, revenues from a product are
16 probably going to determine what other customers
17 are -- or competition coming in so, yes, they could.

18 Q. Okay. Now, with respect to energy
19 efficiency, there's a term of art sort of in the
20 energy efficiency world where we refer to measures
21 within a portfolio. Are you familiar with that term?

22 A. Let's just make sure we are talking about
23 the same word. Can you explain what measures you are
24 talking about?

25 Q. The Ohio utilities provide portfolios

1 that have programs in them, correct?

2 A. Correct.

3 Q. And the programs include certain measures
4 that make up the program.

5 A. Okay.

6 Q. Is that your understanding?

7 A. Yes.

8 Q. Okay. So and those measures may have
9 a -- may themselves have a life cycle, correct?

10 A. Yes.

11 Q. So with respect to your example about an
12 LED lightbulb, the lightbulb has a lifetime of use,
13 correct?

14 A. Yes.

15 Q. And a lightbulb might be a measure within
16 an energy efficiency program.

17 A. Yes.

18 Q. And so my question to you is the -- given
19 the life cycle of that particular product, how does
20 that compare with your product life cycle theory,
21 your economic product life cycle theory?

22 A. Can you restate the question?

23 Q. Yeah.

24 A. Or have it reread.

25 Q. So you explained a theory that is

1 referred to in your testimony as the economic theory
2 of a product life cycle, correct?

3 A. Correct.

4 Q. Are you saying that that theory is one
5 and the same as the measure life of an item in a
6 portfolio program?

7 A. It's not one and the same, no. What I am
8 saying here is, you know, with -- this is more
9 talking about the proverbial wall of prices are --
10 energy efficiency is only going to get more expensive
11 and more expensive. That's not necessarily true.
12 Some of the products that are still energy
13 efficiency, particularly with 3 -- Senate Bill 310
14 that allows you -- actually states to measure the
15 higher of as found or code that some products will
16 get cheaper over time. It still would be valuable in
17 the energy efficiency programs.

18 So it's not saying they are a one for
19 one. It's saying that proverbial wall of energy
20 efficiency and you are going to hit a point where
21 it's not cost effective any more. That wall is
22 always moving and moving backwards a lot of times.

23 Q. So you used a television as an example in
24 your -- in your explanation about how products become
25 cheaper. Did you do a survey of products that are

1 used for energy efficiency to determine whether what
2 percentage of those products are increasing or
3 decreasing in cost?

4 A. We did not.

5 Q. Do you have any particular products in
6 mind when you talk about products becoming cheaper
7 over time?

8 A. I think there is an example of them but
9 there is not one specific one that we're focused on
10 now.

11 Q. Did you do any research into the product
12 life cycle of energy efficiency measures?

13 A. Not in any detail, individual program and
14 product life cycle analysis, no.

15 Q. And, sir, you're familiar with the TRM,
16 correct?

17 A. Yes.

18 Q. And TRM stands for Technical Reference
19 Manual, correct?

20 A. Correct.

21 Q. And have you reviewed the Commission's
22 TRM?

23 A. I have printed it out before, looked at
24 various sections, but I will certainly not say I have
25 read it cover to cover.

1 Q. And that document -- the Commission's TRM
2 lists value for energy efficiency values, correct?

3 A. Correct.

4 Q. And each measure listed in TRM has a
5 measure life, correct?

6 A. Yes.

7 Q. And the measure life in that instance is
8 not the same as a product life cycle, correct?

9 A. My understanding is that's how long it is
10 projected to last for those energy savings.

11 Q. Okay. Which again is not the same as a
12 product life cycle, correct?

13 A. Correct. Product cycle the way I was
14 using was really more about the cost of a product,
15 not energy savings or anything to that.

16 Q. Okay. Now, staff has concluded that a
17 3.5 percent cap is sufficient for Duke Energy Ohio to
18 meet its benchmarks, correct?

19 A. Correct.

20 Q. Can you tell me how you reached that
21 understanding?

22 A. Looking at historic spend and -- spend
23 and energy savings and what Duke has achieved, Duke
24 has always under -- underachieved their budget and --
25 or underspent their budget and overachieved the

1 energy savings that they projected. So within that
2 we projected that they could meet it. It's a little
3 bit hard as the last three years Duke didn't actually
4 set a budget to achieve the mandate. They used their
5 bank to achieve that. So it was a little bit harder
6 with Duke to be looking at the full analysis but
7 that's what we went through and evaluated.

8 Q. Okay. And, sir, do you have some
9 familiarity with Senate Bill 221 in Ohio?

10 A. Yes.

11 Q. And do you also have some familiarity
12 with Senate Bill 310?

13 A. Yes.

14 Q. And isn't it true then that Duke Energy
15 Ohio was not able to amend its portfolio any time
16 during 2014, '15, and '16 pursuant to SB 310?

17 A. Yes.

18 Q. When you look at the company's cost from
19 previous years, did you consider shared savings in
20 that analysis?

21 A. Shared savings is a mechanism created by
22 the Commission to incentivize overcompliance, so
23 while we were taking that into consideration, our
24 main goal was meeting the mandates set by
25 legislation.

1 Q. Is it staff's policy, position now that a
2 company should only meet its mandates or that it
3 should exceed its mandates?

4 A. It's staff's opinion that's a company
5 management decision and that, you know, there is an
6 incentive program designed that they can do that and
7 there is an incentive for it, but they are required
8 to meet the mandate.

9 Q. Okay. So I am not sure you -- that was
10 responsive to my question. My question is is it
11 staff's policy now that a company should strive to
12 exceed its mandate or that it should meet the
13 mandate?

14 MR. JONES: Objection, asked and
15 answered, your Honor.

16 EXAMINER BULGRIN: I'll sustain.

17 Q. In looking at previous years for Duke
18 Energy Ohio, did you consider cost per kWh?

19 A. Staff did evaluate cost per kWh. In
20 fact, if I remember correctly, I think our cost cap
21 gives about 140 -- roughly \$140 per megawatt-hour
22 where if you look at inception from -- through 2015,
23 it was roughly 120, 125 per kWh.

24 Q. Did you review Duke Energy -- sorry.

25 A. I said kWh. That was megawatt-hours. I

1 think I said kWh. Sorry.

2 Q. And you meant megawatt-hours.

3 A. Megawatt-hours, yeah.

4 Q. Okay. Did you review the company's
5 market potential study that was filed in this case?

6 A. My staff did.

7 Q. Did staff incorporate any findings from
8 that market potential study in its recommendation?

9 A. It did not.

10 Q. Has staff done any analysis itself with
11 respect to the market -- any market potential?

12 A. Did we do our own market potential study?

13 Q. Yes.

14 A. No, we did not.

15 Q. Are you aware of any previous Commission
16 decisions related to energy efficiency that
17 incorporate the concept of product life cycle?

18 THE WITNESS: Can you reread that. I'm
19 sorry.

20 (Record read.)

21 A. Specifically referenced, no, but it was
22 within staff's determination and thought pattern when
23 reviewing the cost cap for all the other utilities,
24 so it's not called out anywhere, but it was in our
25 thought pattern.

1 Q. It's in staff's thought pattern.

2 A. Yes.

3 Q. Okay. So staff's proposal in this case
4 is to start with the FERC Form 1 number and use that
5 to establish a budget for the program years for '17,
6 '18, and '19, correct?

7 A. No. It's to create a cost cap, not a
8 budget.

9 Q. Okay. I'm sorry, misspoke. You explain
10 that staff's proposal included an opportunity for the
11 company to retain proceeds, if there are any, from
12 bidding into PJM, correct?

13 A. So it's bidding the demand response in
14 the interruptible in PJM and keeping that because
15 we're not -- the interruptible credit is not a part
16 of the cap, so the interruptible revenues that it
17 gets from PJM should be kept out. It's any revenues
18 that PJM bids in for energy efficiency should be
19 offset by the cap, if that's what you mean. So
20 there's two different pieces. I want to make sure we
21 are keeping it straight.

22 Q. Could you say that last sentence again.

23 A. Sorry. So anything that the company bids
24 in for energy efficiency should come back and be
25 credited to the cap to lower that. So I don't know

1 if that's what you mean by keep the revenues but
2 lowering the cap because that gets passed back
3 through the rider. On interruptible credits that
4 shouldn't be in there because the interruptible
5 demand response program is not a part of the cap, so
6 they should be separate.

7 Q. I see. And do you know when bids into
8 PJM happen on an annual basis?

9 A. Well, the original base residual auction
10 is three years out but then there is supplemental.
11 Incremental, thank you.

12 Q. And incremental auctions occur when?

13 A. I think there's one each year for leading
14 up to the actual year.

15 Q. And you are aware that the mandate for
16 energy efficiency impacts increases to 2 percent very
17 soon, correct?

18 A. Is it 2021? It's outside this portfolio
19 plan, so I know that much.

20 Q. Okay. Sir, do you have a copy of Staff
21 Exhibit 4 up there?

22 A. I do not.

23 MS. WATTS: John, do you have a copy to
24 give him?

25 MR. JONES: Staff Exhibit what?

1 MS. WATTS: 4.

2 MR. JONES: 4? Yes.

3 Q. Sure. Would you turn to the table that's
4 on page 4 of that exhibit. So your counsel walked
5 Duke Energy Ohio's witness through some numbers, and
6 I am going to sort of go back to some of the same
7 numbers and walk you through them, if that's okay.

8 A. I'm just refamiliarizing myself with what
9 this actually is.

10 Q. Sure.

11 A. Sorry. Thank you.

12 Q. Okay. So have you seen this before?

13 A. Yes.

14 Q. Okay. I want to direct your attention
15 only to the years 2013, '14, and '15 on that table,
16 okay?

17 A. Okay.

18 Q. And I am only referring to the "Actual
19 Costs" column and the "Actual kWh" column.

20 A. Okay.

21 Q. And can we agree -- I will represent to
22 you that we've done the math on this, and I am just
23 going to ask you if you will agree, subject to check,
24 to our math, okay?

25 A. Okay. Sorry.

1 Q. Okay. So the actual costs in 2013 were
2 22,130,677, correct?

3 A. I'm sorry. Can you repeat that?

4 Q. Sure. The actual costs incurred by the
5 company for 2013 was 22,130,677.

6 A. Correct.

7 Q. Do you see that? And the actual kWh
8 achieved was 144,101,736? Do you see that?

9 A. Correct.

10 Q. And would you agree, subject to check,
11 that that turns out to be .154 cents per kWh --
12 dollars per kWh?

13 A. Subject to check.

14 Q. Okay. And for 2014, the actual costs
15 were 30,608,344.

16 A. Okay.

17 Q. And the actual kWh achieved was
18 152,268,735.

19 A. Correct.

20 Q. And that equals .201 dollars per kWh?

21 A. Subject to check.

22 Q. And then again for 2015, the actual costs
23 were 31,531,908.

24 A. Correct.

25 Q. And the actual kWh was 164,010,308.

1 A. Correct.

2 Q. And on a dollars per kWh basis that's
3 109 -- .192.

4 A. Subject to -- subject to check.

5 Q. Okay. And so would you be willing to
6 accept that the average over three years was
7 460,380,779 and the cents per kWh on average was
8 .183?

9 A. Yes. But as I stated earlier, these
10 programs weren't actually designed to meet the
11 mandate levels so that's why staff went since its
12 inception in determining this because it's a little
13 bit harder with the -- when the program wasn't
14 actually designed to meet the program -- the mandate
15 level. But, yes, I would, subject to check, I agree
16 with the numbers.

17 MS. WATTS: Could you read back that
18 answer, please, Karen, because I am not sure I
19 understood it.

20 (Record read.)

21 A. There wasn't one complete sentence in
22 that.

23 Q. So, Mr. Donlon, can we go back up a
24 little bit. So when you say programs weren't
25 designed to meet the mandate level, which programs

1 are we referring to?

2 A. The 20 -- I think it was the 2013, '14,
3 '15, my understanding of those programs were designed
4 to achieve -- they were budgeted to actually achieve
5 lower than the mandate -- the mandated amount and use
6 the bank. So what I was trying to say ineloquently,
7 I guess, is when staff did their acquisition costs,
8 they actually looked at all from 2009 through 2015 to
9 get a better handle on what the history was than just
10 the last three years.

11 Q. And is it your understanding in the years
12 2009 through 2012 that the company was under a
13 different cost recovery mechanism?

14 A. I don't know the specifics behind that.

15 Q. Okay. Does rider SAW or rider
16 save-a-watt mean anything to you?

17 A. Yes.

18 Q. And is it your understanding that that
19 was the cost recovery mechanism for Duke in those
20 years?

21 A. What I remember -- I don't know the
22 mechanics behind the individual riders to know how
23 drastically the recovery changed between the rider
24 made changes.

25 Q. So you don't know how rider save-a-watt

1 was calculated?

2 A. Not for cost recovery use.

3 Q. And so those -- for those earlier years
4 do you know whether the programs were designed to
5 meet the mandates or exceed the mandates?

6 A. You can go back and look from a what the
7 savings were of what they did but from a how they
8 were designed I don't have specifics on that.

9 Q. Okay. Sir, you're recommending that the
10 company -- that the cap that applies to the company's
11 programs for energy efficiency be initially
12 calculated starting with a number that appears on
13 FERC Form 1, line 10, correct?

14 A. Correct.

15 Q. And that line is said to represent in the
16 form itself total sales to ultimate consumers,
17 correct?

18 A. Yes.

19 Q. Are you generally familiar with that FERC
20 Form 1?

21 A. I have become generally familiar.

22 Q. Okay. Do you have a copy of that
23 attached to your testimony?

24 A. I do.

25 MS. WATTS: May I approach, your Honor?

1 EXAMINER BULGRIN: Sure.

2 MS. WATTS: I don't have copies of this,
3 I apologize.

4 Q. Sir, I am showing to you what I represent
5 to be the total document of which you have only an
6 extract in your testimony. Have you seen that
7 document before?

8 A. Yes.

9 Q. And is that the entire FERC form that you
10 are referring to for purposes of your testimony?

11 A. Well, this is Toledo Edison so it's not
12 the one in my testimony, no.

13 Q. Okay. Hold on. How about this one?
14 Let's try this one.

15 A. Are you going somewhere?

16 MR. JONES: Counsel, do you have another
17 copy of that?

18 MS. WATTS: I do not. I'm sorry.

19 A. It adds page 301.

20 Q. Sir, do you see Column D on that document
21 on page 301?

22 MR. HEALEY: I'm sorry, your Honor. Are
23 we marking this as an exhibit? Is this something we
24 are privy to seeing as well while she is doing
25 cross-examination? This is not in the record.

1 MR. JONES: We can't follow along. We
2 don't have a copy of it.

3 MS. WATTS: I can ask the question pretty
4 simply. I don't think anybody needs to see the form
5 to get to the question.

6 EXAMINER BULGRIN: Okay.

7 Q. (By Ms. Watts) Mr. Donlon, referring to
8 the form on page 301, there is a column entitled
9 "Sales by the Utility to Ultimate Consumers in
10 Megawatt-Hours." Do you see that? It's on line 10,
11 Column D, so it goes right across from your line 10,
12 column B.

13 A. Yes.

14 Q. So staff's recommendation is to use
15 operating revenue as relative to the amount of energy
16 efficiency, correct?

17 A. Correct.

18 Q. But there's a number there that also
19 represents megawatt-hours of sales to all customers,
20 correct?

21 A. Yes.

22 Q. Would that not be a more consistent
23 number to use across all four utilities?

24 A. We don't think it's -- consistency, no.
25 We think it's better since the portfolio programs are

1 done in an overall total cost that it should be a
2 total dollars, shared savings is total dollars. That
3 way it's everything is in total dollars. You don't
4 have to do any conversions so that's why we chose
5 total dollars.

6 Q. You could use that number to derive a
7 total dollar budget for each utility, correct?

8 A. You could do a lot -- you could do a cost
9 cap in a lot of different methodologies. Again,
10 going back to we wanted it somewhat simplistic so
11 that, you know, general public, General Assembly, you
12 know, the companies, staff, intervenors could all
13 simplistically find it here as the FERC Form 1 number
14 in overall dollars times a percentage, that's your
15 number. You don't have to do conversions. You don't
16 have to deal with megawatt-hours and back in savings.
17 It's just an overall dollar amount.

18 Q. So you could take the number on FERC Form
19 1, line -- page 301, Column D, and run the same
20 calculation, correct?

21 A. There's a lot of different ways to run a
22 cost cap, absolutely.

23 MS. WATTS: I have nothing else, your
24 Honor.

25 EXAMINER BULGRIN: Okay.

1 MS. FLEISHER: Your Honor, I have some
2 questions.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Fleisher:

6 Q. Mr. Donlon, good afternoon.

7 A. Good afternoon.

8 Q. Could you tell me how much is Duke's
9 monthly efficiency rider currently for the average
10 residential customer?

11 A. As of October -- I don't have to date.
12 As of October, I want to say somewhere in the 2 to 3
13 dollars off the top of my head. Again, I know it's
14 the third highest on their rider. I want to say for
15 the average 750 residential customers, it's somewhere
16 in the 2 to 3 dollar range. I might be off slightly
17 on that.

18 Q. Fair enough. Do you know what the
19 monthly efficiency rider costs would be for an
20 average residential customer under the proposed 3.5
21 percent cap?

22 A. Again, the individual -- what the actual
23 max out cap would be, I don't have that off the top
24 of my head. It still may be \$3 that would
25 actually -- I think that fits under the cap. So I

1 don't have the exact highest number but what the
2 rider would be it doesn't necessarily matter. It
3 could be anywhere under whatever that cap number, the
4 cap price is.

5 Q. But you can't tabulate that total cap
6 number into what it would look like on a customer's
7 bill?

8 A. We could get the max it could be.
9 However, I just don't have that off the top of my
10 head, but you could calculate that, yes.

11 Q. And do you know how much the total bill
12 for an average residential customer in Duke territory
13 is?

14 A. For the October it's roughly -- for a 750
15 kWh customer, it's roughly 100 to 108, subject to
16 check. Might even -- Duke might be in the 90s. It
17 might be lower. I have looked at so many companies.

18 MS. FLEISHER: And, your Honor, may I
19 approach?

20 EXAMINER BULGRIN: Sure.

21 MS. FLEISHER: I am going to do
22 Environmental Intervenors 4 and 5 both at once to
23 save time. With 4 they are two sheets from a Duke
24 electric tariff. 4 would be the infrastructure
25 modernization rider, and 5 would be rider DCI.

1 (EXHIBITS MARKED FOR IDENTIFICATION.)

2 EXAMINER BULGRIN: Okay. Just to clarify
3 the one that's rider DR-IM is Environmental
4 Intervenor Exhibit 4.

5 MS. FLEISHER: Correct.

6 EXAMINER BULGRIN: And rider DCI is
7 Exhibit 5.

8 MS. FLEISHER: Correct.

9 EXAMINER BULGRIN: Thank you.

10 Q. (By Ms. Fleisher) Mr. Donlon, the Exhibit
11 4, rider DR-IM, is that what you were referring to
12 earlier as Duke's SmartGrid rider?

13 A. Yes. I am pretty sure it is, yes. It
14 looks like the right dollar amount too.

15 Q. And are you familiar with Duke's
16 distribution capital investment rider?

17 A. Yes.

18 Q. Okay. And it says here "All retail
19 jurisdictional customers shall be assessed a charge
20 of 9.183 percent of the customer's applicable base
21 distribution charges." Are you -- do you happen to
22 know what that might translate to into a dollar
23 amount roughly?

24 A. No. As of October, it would have been
25 less than what the October energy efficiency rider

1 is, if my memory is correct from this morning, but I
2 don't know what exactly the charge is. Unfortunately
3 I don't have Duke's base, base key.

4 Q. And do you know whether there is a cost
5 cap on either of these riders?

6 A. No, there is not.

7 Q. So talk to you --

8 A. Actually --

9 Q. Go ahead.

10 A. These -- well, some of -- some companies'
11 distribution capital investment riders, DCI, DIRs,
12 they all are -- they are all named differently and,
13 you know, we don't keep them all completely
14 consistent between the companies but most of them do
15 actually have a cap that they can accrue over time,
16 so I don't know specifically about Duke's, but I do
17 know other utilities do have caps on what the annual
18 increase is on a D -- I am thinking particularly of
19 AEP's DIR which does have one. I think I would
20 assume Duke's does too, but I honestly don't know if
21 Duke's does.

22 Q. And to be clear, you said a cap on the
23 annual increase?

24 A. Yes.

25 Q. And to turn to the efficiency rider for a

1 second, because I think we've established but just to
2 lay some foundation, that includes the costs of
3 Duke's efficiency programs as well as shared savings,
4 correct?

5 A. The cap includes shared savings and
6 program costs, correct.

7 Q. And I'm speaking specifically of the
8 actual rider. That does not capture what the benefit
9 to customers might be from the programs, correct?

10 A. Can you restate that?

11 Q. If a customer is saving money, for
12 example, through participation in Duke's programs,
13 that wouldn't be reflected in the rider on their
14 bill, correct?

15 A. Correct.

16 Q. And would you agree that Duke's
17 efficiency programs do offer benefits to
18 participants?

19 A. Some participants.

20 Q. Do you know how much savings a
21 participant might get under any programs in the
22 proposed plan or on average?

23 A. That's going to be very dependent on the
24 customer, how they use the program, when the program
25 is, so not exactly.

1 Q. Do you know how many Duke customers are
2 projected to participate in the programs for the
3 proposed plan?

4 A. Not off the top of my head.

5 Q. Do you have any sense of the proportion?
6 Half? Fewer than half?

7 A. I honestly don't know.

8 Q. Is that something staff considered in
9 conceiving the cost cap?

10 A. I'm sure my staff looked into that. I
11 just don't have those numbers off the top of my head.

12 Q. So you can't testify to that.

13 A. No.

14 Q. Did you do -- did staff do any analysis
15 of how many fewer customers might participate in
16 Duke's efficiency programs under the 3.5 percent cap?

17 MR. HEALEY: Objection, assumes facts not
18 in evidence. There is no evidence that fewer
19 customers will, in fact, participate under the cap.

20 Q. I believe I said "might participate."

21 EXAMINER BULGRIN: You can answer.

22 A. I don't perceive that happening unless
23 the company has to adjust some of their programs,
24 either cut a program or not. But that's a management
25 decision from there. So from a customer survey or

1 something like that, no, we did not do that.

2 Q. Are you familiar with the idea of
3 wholesale market price suppression caused by
4 efficiency programs?

5 A. Yes.

6 Q. And is it fair to translate that into
7 laymen's terms as meaning that if efficiency programs
8 reduce electricity consumption, that suppliers will
9 have to buy less electricity on the wholesale market?
10 Let's start with that as Step I.

11 A. I would say that it's -- on a wholesale
12 level that when there is less energy to produce --
13 or, that is, the demand curve is reduced, then the
14 supply curve is also reduced or actually the
15 equilibrium like shifts.

16 Q. And as a result, you're eliminating the
17 need to purchase the most expensive supply of
18 electricity, supply services; is that correct?

19 A. On the wholesale market.

20 MS. FLEISHER: And may I approach with
21 Environmental Intervenors 6?

22 EXAMINER BULGRIN: Sure.

23 MS. FLEISHER: February 26, 2015, letter
24 from the Public Utilities Commission to the Ohio
25 legislature which may look familiar to you.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Ms. Fleisher) Mr. Donlon, does this
3 letter look familiar to you?

4 A. Yes, it does.

5 Q. Does it appear to you to be an authentic
6 copy of a letter sent from the Ohio Public Utilities
7 Commission to the General Assembly dated February 26,
8 2015?

9 A. Yes, it does.

10 Q. And did you participate in preparation of
11 this letter?

12 A. Yes, I did.

13 Q. And can you turn to page 12.

14 A. I am there.

15 Q. You are there, yep. You see a section
16 titled "Market price suppression"?

17 A. Yes.

18 Q. Okay. And is this -- if you need to take
19 a moment to read this through. No, okay. And does
20 this discussion reflect the concept of market price
21 suppression that you and I were just discussing
22 previously?

23 A. In the wholesale market, yes, it does.
24 What it doesn't do is the next step to how that
25 actually translates into the retail market.

1 Q. And did staff do any analysis of
2 wholesale price suppression benefits from Duke's
3 efficiency programs in the past?

4 A. So the only study that I am aware of that
5 we actually did the price suppression in the
6 wholesale market was at this point. Our modeling
7 technology is only able to really do more of a PJM
8 standpoint so this is across the entire PJM market.

9 Q. Okay. So staff has done no analysis of
10 what the potential effects of Duke's efficiency
11 programs might be on residential customers' bills
12 through this phenomena of wholesale market price
13 suppression?

14 A. Staff's tech -- our forecasting ability
15 does not allow us to get into the residential piece
16 of it. We don't have -- you really need more of a
17 bottom up and this is a top down forecasting tool and
18 it's on the -- when we ran this, this was across the
19 PJM region of energy efficiency so not on an
20 individual utility-by-utility basis. But to get down
21 to the actual residential and how it impacts, we
22 really needed -- staff would need a bottom up
23 forecasting tool, and we don't have that technology.

24 Q. And under the Commission's rules, we all
25 use the total resource cost estimate to determine

1 cost effectiveness of efficiency programs, correct?

2 A. Correct.

3 Q. And is it fair to say that the total
4 resource cost test tells you whether in the aggregate
5 a plan or program or whatever you are applying it to
6 will save more in energy supply costs than the total
7 costs of the plan or program?

8 A. What it does is it takes the cost and
9 then the lifetime projected energy savings and
10 calculates what the energy savings on a dollar per kW
11 would be so but that looks at the life of the
12 project, not necessarily what someone is saving to
13 that.

14 Q. And as applied in practice, that does not
15 capture any wholesale market price suppression
16 effects, correct?

17 A. It does not.

18 Q. And as applied in practice in Ohio, it
19 does not include any natural gas savings, correct?

20 A. It does not.

21 Q. And you testified that the energy
22 efficiency -- the annual energy efficiency benchmark
23 goes to 2 percent in later years, correct?

24 A. 2021 or 2022, I think.

25 Q. It is 2021.

1 A. All right.

2 Q. And do you know at this point whether
3 Duke may need to use banked savings from the 2017 to
4 2019 plan period to meet that benchmark in future
5 years?

6 MR. HEALEY: Objection, speculation, your
7 Honor.

8 MR. JONES: Beyond the scope of this
9 plan, your Honor. It's not relevant.

10 EXAMINER BULGRIN: I'll overrule. You
11 can answer, if you know.

12 A. Seeing as Duke has in the past been
13 willing to use their bank, I could see them budgeting
14 a plan to use their banked savings in the future.

15 Q. And going to your testimony page 4.

16 A. I'm there.

17 Q. Hold on. I did not mean page 4. I meant
18 page 6. Sorry. Skipping around a little. Trying
19 not to duplicate. I believe you and Ms. Watts
20 discussed on line 99 staff's evaluation that a 3.5
21 percent cost cap would provide price security; is
22 that correct?

23 A. Correct.

24 Q. And did staff analyze whether alternative
25 percentages would provide price security for

1 ratepayers?

2 A. Yes, we reviewed various different
3 scenarios and percentages.

4 Q. And can you tell me why -- whether any of
5 those various other scenarios in staff's judgment
6 would provide price security?

7 A. We felt that 3-1/2 was -- resulted in the
8 best, again, balance between allowing the company to
9 be able to based on history and other -- history and
10 different factors to balance what staff is falling
11 under of -- or always trying to gauge of -- and I
12 like when I use later of risk mitigation better than
13 price security but risk mitigation to the consumers
14 in allowing the company the ability to meet the
15 mandate and potentially achieve shared savings if
16 they so desire.

17 Q. And when you mentioned history there, is
18 that referring to the spending and savings results in
19 Staff Exhibit 4 in that table?

20 A. Correct.

21 Q. Okay. And in those prior years the
22 underspending, where staff has found that there was
23 underspending, there was no cost cap applicable in
24 those years, correct?

25 A. Correct.

1 Q. And are you aware that Duke has a
2 stakeholder collaborative process?

3 A. I am.

4 Q. Okay. And are you aware that the
5 collaborative has quarterly meetings?

6 A. I am.

7 Q. And has staff participated in those
8 meetings and the collaborative process as a whole?

9 A. They have definitely attended.

10 Q. Is it fair to say that part of the
11 purpose of the collaborative is to provide various
12 stakeholders including staff with input on Duke's
13 efficiency programs?

14 A. I think that's fair.

15 Q. Are you aware of any programs that staff
16 has suggested Duke modify in that collaborative
17 process?

18 A. I'm not aware of that level of detail.

19 Q. To your knowledge did staff recommend a
20 cost cap on programs in that collaborative process?

21 A. No. The cost cap came up through
22 settlement negotiations and discussions through this
23 hearing, or this case filing.

24 Q. Are you familiar with the process that
25 Duke uses to come up with the projected costs and

1 savings for its portfolio plan?

2 A. Me particularly, no.

3 Q. But I think you mentioned you've reviewed
4 their market potential study?

5 A. At a very high level, my staff has
6 reviewed it in much greater detail.

7 Q. And the staff hasn't offered any critique
8 of Duke's assumptions regarding projected costs and
9 savings for the 2017 to 2019 plan, correct?

10 A. We are not taking a stance on the market
11 potential study.

12 Q. And in your discussion with Ms. Watts, I
13 think you talked about an example of LED costs coming
14 down over some past time period?

15 A. I did mention that.

16 Q. Do you know whether LEDs are a product
17 that is subsidized by energy efficiency programs in
18 Ohio?

19 A. In some cases they are and some cases
20 they aren't.

21 Q. Okay. Do you know whether LEDs are
22 subsidized through energy efficiency programs across
23 the United States?

24 A. I do not.

25 Q. Do you know whether those subsidies have

1 helped develop the market for LEDs?

2 A. I am assuming it probably has.

3 Q. And turning back to page 6 of your
4 testimony, lines 100 to 101.

5 A. Yes.

6 Q. You testified that that cost cap did not
7 hinder Duke's amount to meet or exceed their
8 statutory benchmarks. Other than the historical
9 analysis that we've discussed regarding past
10 programs' spending and savings results, is there any
11 other analysis that was done to support this
12 statement?

13 A. The knowledge and expertise of my staff
14 and their years of experience went into that as well,
15 but as for a forecast or modeling forward, no.

16 Q. Do you believe that Duke will be able to
17 achieve the same level of energy savings under the
18 cap as is projected under the proposed plan?

19 A. I think that's a possibility, yes.

20 Q. And I think we've used this terminology
21 before, but do you know what I mean first year
22 kilowatt-hour cost of savings?

23 A. Is that the acquisition costs?

24 Q. Correct, yes.

25 A. Yes.

1 Q. Okay. And did staff do any analysis of
2 the acquisition costs under the proposed cap to
3 support the statement on page 6, lines 100 to 101, of
4 your testimony?

5 A. Yes. I think I said earlier that if I
6 remember off the top of my head, the acquisition
7 under the cap would be roughly \$140 per
8 megawatt-hour.

9 Q. Okay. And did staff analyze what
10 programs Duke could implement at that cost?

11 A. Again, staff feels that's a management
12 decision for Duke to evaluate. We typically -- I
13 don't get too involved in the individual programs.

14 Q. Okay. And staff hasn't done any analysis
15 of how Duke might alter its programs to comply with
16 the proposed cap, correct?

17 A. Again, staff feels that's a management
18 decision so, you know, different things like putting
19 floor -- agreeing to floors in various programs can
20 cause problems with it, but we feel that's a
21 management decision by the company.

22 Q. Are you generally familiar with the
23 programs in the proposed plan?

24 A. Generally, my staff is much more on each
25 individual one, but generally I have an understanding

1 of some of the programs, many of the programs.

2 Q. And so, for example, would you be aware
3 of how much program savings are projected to come
4 from residential behavior programs?

5 A. No. I don't have that level of expertise
6 on the stand at least.

7 Q. We all have more expertise off the stand.

8 A. Pretty way to phrase that.

9 Q. Would you support an efficiency program
10 portfolio that was optimized to achieve annual
11 savings goals at the lowest possible cost regardless
12 of the programs in that portfolio plan?

13 A. From staff's standpoint it's really we
14 are agnostic to the individual programs and let the
15 companies manage that on their own.

16 Q. So you are focused on costs alone?

17 A. Not costs alone. I mean, obviously we
18 participate in the programs. We talk and we discuss
19 things with the other parties. But from very rarely
20 in these cases does staff get involved in very
21 specific programs. Now, we may take a stance on
22 certain aspects of them depending on the programs,
23 but for the most part we allow the company to manage
24 them and intervenors, who have specific stakes in the
25 various programs, to manage that.

1 Q. Do you believe it's in the public
2 interest to have a portfolio that provides a balance
3 of cost effective residential and commercial programs
4 to a wide range of customer types?

5 THE WITNESS: Can you reread that,
6 please.

7 (Record read.)

8 A. The staff, it's perspective is that often
9 I think that sounds like a good idea looking at it
10 which individual lines depend on it, but it doesn't
11 mean a program that doesn't necessarily do that would
12 be bad either. So I think staff is still neutral.

13 Q. When staff put a little more context to
14 it, for example, would staff support a portfolio plan
15 that did not offer programs for small businesses?

16 A. Staff would have to evaluate that program
17 and really see what the other benefits are.

18 Q. Do you believe that programs that produce
19 long-term savings provide added value over programs
20 that produce short-term savings?

21 A. Depends for who.

22 Q. For the participant in the program.

23 A. The individual participant it's cost --
24 cost/benefit analysis. I guess it's dollars per
25 savings so a short term and you get a return on \$20

1 on the short term versus a long term that only
2 returns, you know, at the end of the day 10 cents,
3 maybe not. It depends.

4 Q. You are familiar with the concept of
5 measure life that I think Ms. Watts was describing
6 earlier.

7 A. Generally.

8 Q. And the idea that some efficiency
9 measures last longer than others, correct?

10 A. I'm sorry. I blanked.

11 Q. I can just repeat it. Who --

12 A. Sorry.

13 Q. No problem. The idea is that some energy
14 efficiency measures last longer than others, correct?

15 A. Yes.

16 Q. And we've talked about first year
17 kilowatt-hours savings. We can also calculate
18 lifetime kilowatt-hours, or costs rather, correct?

19 A. Calculate the lifetime costs or lifetime
20 savings?

21 Q. Lifetime costs per kilowatt-hour. Sorry
22 I wasn't clear.

23 A. So the lifetime costs, yes, correct, you
24 can calculate that.

25 Q. Okay. And that accounts for the measure

1 life by taking the total costs and net lifetime
2 savings, correct?

3 A. Yes.

4 Q. And the cost cap that you've proposed
5 accounts for first year kilowatt-hour costs, correct?
6 Or strike that.

7 The costs cap that you proposed applies
8 to first year kilowatt-hour costs.

9 A. No. It applies to the program costs.
10 The program costs are actually the rebates or the
11 incentives being paid out so, and then if you add in
12 energy savings, energy savings is calculated on
13 the -- that's where -- the shared savings my
14 understanding is actually all of the energy savings
15 of the lifetime; so, no, I don't think that's
16 correct.

17 Q. Let's take a step back because I think
18 we're not on the same page on this.

19 A. Okay.

20 Q. So Duke's programs have to achieve an
21 annual benchmark, correct?

22 A. Correct.

23 Q. And that benchmark is based on first year
24 savings from the programs, correct?

25 A. I would have to check that out.

1 MR. JONES: Your Honor, I would have to
2 object to that question. I don't think that's a --
3 for the record what she's stating for the question is
4 a basis.

5 MS. FLEISHER: He is testifying as a
6 staff expert on the cost cap, and the cost cap
7 applies to programs. It applies to how Duke's going
8 to meet its benchmark. How the benchmark is measured
9 is relevant. If he doesn't know the answer.

10 EXAMINER BULGRIN: Yeah, I'll allow it.
11 You can answer.

12 THE WITNESS: I think I already did.

13 EXAMINER BULGRIN: I thought you did.

14 MS. FLEISHER: Okay.

15 Q. (By Mr. Fleisher) I think you have, in
16 fact, answered that, so I'll move on. If you can
17 turn to page 8 of your testimony, lines 137 to 139.

18 A. I'm there.

19 Q. Okay. And here you testify that "Duke is
20 not required to use the most advanced and cutting
21 edge energy efficiency products available on the
22 market." I was just wondering whether you had -- you
23 were meaning to refer to any specific examples of the
24 advanced or cutting edge energy efficiency products.

25 A. No. This goes back to what Senate Bill

1 310 now allows and that 310 actually allows for it to
 2 be as -- the higher of as found or code. So that
 3 means it doesn't always have to be everything in the
 4 newest technology and the next thing on the market,
 5 so you can use some things that are further along in
 6 the product life cycle is really what that more
 7 references.

8 MS. FLEISHER: Give me one moment.

9 That's it. Thank you very much.

10 EXAMINER BULGRIN: Okay. Mr. Dove,
 11 anything?

12 MR. DOVE: No.

13 MR. JONES: Your Honor, could I just have
 14 3 minutes?

15 EXAMINER BULGRIN: Sure.

16 (Recess taken.)

17 EXAMINER BULGRIN: Let's go back on the
 18 record.

19 Mr. Jones.

20 MR. JONES: Thank you, your Honor. Your
 21 Honor, staff has no further questions.

22 EXAMINER BULGRIN: Oh, excellent.

23 Thank you, Mr. Donlon.

24 Any objection to the admission of Staff
 25 Exhibit 1?

1 MS. WATTS: No objection.

2 EXAMINER BULGRIN: Hearing none, it will
3 be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER BULGRIN: And we also have at
6 this point, well, EI Exhibits 4, 5, 6 and Company
7 Exhibits 1, 2, 3, and the Joint Exhibits 1 and 2.
8 All of those will be admitted.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 EXAMINER BULGRIN: And let's go off the
11 record and talk about briefs.

12 (Discussion off the record.)

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

15 So Duke has requested to file rebuttal
16 testimony which they are going to do by March 7, and we
17 will schedule the rebuttal, the hearing, for
18 Wednesday, March 15, at 10:00?

19 Okay. Very good. Then we are concluded
20 for today, and we'll see you all on March 7 -- 15.

21 (Thereupon, at 4:14 p.m., the hearing was
22 adjourned.)

23 - - -

24

25

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Monday, February 27,
2017, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6323)

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Summary: Transcript in the matter of the Duke Energy Ohio, Inc. hearing held on 02/27/17 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.