BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the	:	
Application of the Ohio	:	
Development Services	:	
Agency for an Order	:	
Approving Adjustments to	:	Case No. 17-1377-EL-USF
the Universal Service Fund	:	
Riders of Jurisdictional	:	
Ohio Electric Distribution	:	
Utilities.	:	

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PROCEEDINGS

before Ms. Greta See and Ms. Trisha Schabo, Hearing Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-D, Columbus, Ohio, called at 9:03 a.m. on Friday, August 18, 2017.

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APPEARANCES:

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Columbus, Ohio 43215-4291

On behalf of the Ohio Development Services Agency.

FirstEnergy Corp.
By Mr. Joshua R. Eckert
76 South Main Street
Akron, Ohio 44308

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

Duke Energy Ohio, Inc.
By Ms. Elizabeth Watts
and Ms. Amy B. Spiller
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Cincinnati, Ohio 45202

On behalf of the Duke Energy Ohio, Inc.

Dayton Power and Light Company
By Mr. Michael Schuler
1065 Woodman Drive
Dayton, Ohio 45432

On behalf of the Dayton Power and Light Company.

Porter, Wright, Morris & Arthur, LLP
By Mr. L. Bradfield Hughes
41 South High Street
Columbus, Ohio 43215

On behalf of the Ohio Power Company.

Carpenter Lipps & Leland LLP
By Ms. Kimberly W. Bojko
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of the Kroger Company.

ALSO PRESENT:

Bruce E. Weston, Ohio Consumers' Counsel
By Mr. Ajay Kumar
and Mr. Christopher Healey,
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

On behalf of the Residential Consumers of Ohio.

McNees, Wallace & Nurick, LLC
By Mr. Matthew Pritchard
Fifth Third Center, Suite 1700
21 East State Street
Columbus, Ohio 43215-4228

On behalf of the Industrial Energy Users of Ohio.

Ohio Partners for Affordable Energy
By Ms. Colleen Mooney
P.O. Box 12451
Columbus, Ohio 43212-2451

On behalf of the Ohio Partners For Affordable Energy.

Mike DeWine, Ohio Attorney General
By William Wright, Section Chief
Mr. Thomas McNamee,
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO

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ODSA Exhibit	Identified	Admitted
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1 Friday Morning Session,
2 August 18, 2017.
3 - - -
4 EXAMINER SEE: Let's go on the record.
5 Scheduled for hearing today at this time
6 is in the Matter of the Application of the Ohio
7 Development Services Agency for an Order Approving
8 Adjustments to the Universal Service Fund Riders of
9 Jurisdictional Ohio Electric Distribution Utilities.
10 My name is Greta See. I am the Attorney
11 Examiner assigned to this proceeding. Joining me
12 today on the Bench is Trisha Schabo, also an Attorney
13 Examiner with the Legal Department.
14 At this time I would like to take the
15 appearances of the parties starting with Ohio
16 Development Services Agency.
17 MR. STINSON: Thank you, your Honor. On
18 behalf of the Ohio Development Services Agency, the
19 law firm of Bricker & Eckler by Dane Stinson, 100
20 South Third Street, Columbus, Ohio 43215.
21 EXAMINER SEE: Industrial Energy Users of
22 Ohio.
23 MR. PRITCHARD: On behalf of the IEU
24 Ohio, Matt Pritchard from the law firm McNees,
25 Wallace & Nurick, 21 East State Street, Columbus,

Ohio 43215.

EXAMINER SEE: Ohio Consumers' Counsel.

MR. HEALEY: Good morning, your Honor. Representing formally the residential consumers in the state of Ohio, on behalf of Bruce Weston, Ohio Consumers' Counsel, I'm Christopher Healey, 10 West Broad Street, Columbus, Ohio 43215. With me today is Ajay Kumar, also an attorney with OCC, and today is Ajay's last day with OCC, so we wish him the best.

EXAMINER SEE: On behalf of the Kroger Company.

MS. BOJKO: Thank you, your Honor. On behalf of the Kroger Company, Kimberly W. Bojko, the law firm Carpenter Lipps & Leland, 280 North High Street, Suite 1300, Columbus, Ohio 43215.

EXAMINER SEE: Ohio Partners for Affordable Energy.

MS. MOONEY: On behalf of the Ohio Partners for Affordable Energy, I'm Colleen Mooney, Post Office Box 12451, Columbus, Ohio.

EXAMINER SEE: On behalf of Ohio Power Company.

MR. HUGHES: Good morning. Brad Hughes on behalf of Ohio Power Company from the law firm of Porter, Wright, Morris & Arthur, 41 South High

Street, Columbus, Ohio 43215.

EXAMINER SEE: On behalf of the Duke Energy Ohio.

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

EXAMINER SEE: On behalf of Ohio Edison, Toledo Edison, and Cleveland Electric Illuminating Company.

MR. ECKERT: Thank you. On behalf of the Ohio Edison, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Josh Eckert with FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308.

EXAMINER SEE: Dayton Power and Light Company.

MR. SCHULER: Good morning, your Honor. Michael Schuler on behalf of DP&L, 1065 Woodman Drive, Dayton, Ohio 45432.

EXAMINER SEE: And on behalf of the staff of the Public Utilities Commission.

MR. McNAMEE: Thank you, your Honor. On behalf of the staff of the Public Utilities Commission of Ohio in its rather limited role in this

1 case, I am Thomas McNamee, Assistant Attorney
2 General. The address is 30 East Broad Street, 16th
3 Floor, Columbus, Ohio 43215.
4 EXAMINER SEE: Thank you.
5 Mr. Stinson.
6 MR. STINSON: Yes, your Honor. At this
7 time we would call our witness Megan Meadows. If I
8 could approach, your Honor, as well.
9 EXAMINER SEE: Yes.
10 (Witness sworn.)
11 EXAMINER SEE: Thank you. Have a seat.
12 - - -
13 MEGAN MEADOWS
14 being first duly sworn, as prescribed by law, was
15 examined and testified as follows:
16 DIRECT EXAMINATION
17 By Mr. Stinson:
18 Q. Ms. Meadows, would you please state your
19 full name for the record.
20 A. Megan Kathleen Meadows.
21 Q. And your business address?
22 A. 77 South High Street, Columbus, Ohio
23 43215.
24 Q. And you're employed by the Ohio
25 Department of -- Ohio Development Services Agency?

1 A. Correct.
2 Q. I placed before you three documents, ODSA
3 Exhibit No. 1, 2, and 3. Could you identify ODSA
4 Exhibit No. 1, please.
5 A. Yes. This is the notice of intent that
6 was filed on behalf of the Ohio Development Services
7 Agency.
8 MR. STINSON: I have copies too if
9 anybody wants copies.
10 Q. And could you identify ODSA Exhibit No.
11 3.
12 A. No. 3? Yes. This is my reply testimony
13 filed on behalf of the Ohio Development Services
14 Agency.
15 EXAMINER SEE: Ms. Meadows, you are going
16 to need to speak up.
17 THE WITNESS: I'm sorry.
18 Q. And could you identify Exhibit No. 2.
19 A. This is my testimony submitted on behalf
20 of the Ohio Development Services Agency.
21 Q. Thank you. And was that testimony
22 prepared by you or under your direct supervision?
23 A. Yes.
24 Q. And are those true and accurate copies of
25 your testimony?

A. Yes.

Q. Do you have any additions or corrections to that testimony today?

A. No.

Q. If I were to ask you the same questions, would your answers be the same?

A. Yes.

MR. STINSON: Thank you, your Honor. At this time I move for the admission of Exhibits 1 through 3, subject to cross-examination.

EXAMINER SEE: Okay. For purposes of cross, have the parties determined an order that they wanted to go in, or can we just go down the table?

Good deal. Let's start at this end and go around the table.

MR. ECKERT: No cross-examination, your Honor.

MR. HUGHES: No cross-examination from Ohio Power but the utilities will be jointly crossing the witness through Mr. Schuler, I believe.

EXAMINER SEE: So you have worked it out. Okay.

Mr. Schuler.

MR. SCHULER: No cross-examination for this witness, your Honor.

EXAMINER SEE: Mr. Healey.

MR. HEALEY: Your Honor, in lieu of cross I would just ask for administrative notice of the amended application filed in last year's 16-1223 case on November 29, 2016.

EXAMINER SEE: I'm sorry. Which case, Mr. Healey?

MR. HEALEY: Sorry. It's Case No. 16-1223. That would be last year's USF case. It's the amended application that just has some information about the 2017 rates, so I would just like administrative notice. And if that's taken, then I have no cross.

MR. STINSON: I'm sorry, your Honor. I am having difficulty hearing. We have a large vibrating sound over here.

EXAMINER SEE: Okay. So, Mr. Healey, you are going to have to stand up and go for it again.

MR. HEALEY: Sure. Your Honor, I request administrative notice of the amended application filed on November 29, 2016, in PUCO Case No. 16-1223. This is the application from last year's USF case and it has some information about the 2017 rates. And if this document is administratively noticed, then I have no cross for the witness.

MS. BOJKO: Your Honor.

EXAMINER SEE: Go ahead. Go ahead, Ms. Bojko.

MS. BOJKO: I would just ask to see the document before we may raise objections.

MR. HEALEY: Does anybody else?

EXAMINER SEE: We are talking about the amended adjustment application. You said November?

MR. HEALEY: Yes. It was filed on November 29, 2016. Did counsel for anyone else need a copy of the document?

EXAMINER SEE: As well as the court reporter and the Bench.

MR. HEALEY: Yes, your Honor.

MS. BOJKO: Your Honor, I guess I would ask we delay ruling until a break so we have time to review this document as well as the history. We are putting one document out of a case, not the order, not potentially a stipulation that modified this amended application. I believe it would be fair to have us review it during a break in order to make objections on the record at a later time, if necessary.

EXAMINER SEE: And probably more efficient.

With that, Mr. Pritchard, cross-examination for this witness?

MR. PRITCHARD: I have no cross-examination, your Honor.

EXAMINER SEE: Ms. Bojko?

MS. BOJKO: Yes, your Honor, thank you.

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CROSS-EXAMINATION

By Ms. Bojko:

Q. Good morning, Ms. Meadows. As you know, I represent the Kroger Company here today. I will be asking you a few questions regarding your reply testimony. Do you have a copy of your reply testimony in front of you?

A. Yes.

Q. I believe that was marked as ODSA Exhibit 3 --

A. Yes.

Q. -- is that correct? Could you turn to page 2 of your testimony, please. On line 13 of your testimony, you discuss the filing of the reply testimony. You mentioned that no other party filed direct testimony opposing the NOI. Do you see that?

A. Uh-huh.

Q. Isn't it also true no other party --

1 EXAMINER SEE: I'm sorry, Ms. Meadows. I
2 am going to need you to speak up and answer her.
3 A. Okay. Yes, I see that line.
4 Q. Isn't it true that no other party filed
5 direct testimony supporting the NOI?
6 A. I'm not aware.
7 Q. And you stated that the NOI retains a
8 traditional two-step declining block rate design; is
9 that your understanding?
10 A. Yes.
11 Q. And that was adopted in 2001 initially;
12 is that correct?
13 A. Yes.
14 Q. And that was adopted by a stipulated
15 agreement; is that correct?
16 A. That I am not aware.
17 Q. And to your knowledge, has it recently
18 been adopted by stipulated agreements for several
19 years?
20 A. I'm not aware of that.
21 Q. It's your understanding today that the
22 number of customers eligible for the second tier of
23 that two-step declining block rate structure is
24 limited; is that correct?
25 A. Correct.

MR. HEALEY: Objection, your Honor, vague as to "limited."

MS. BOJKO: Your Honor, she answered the question. I think she understood what I meant.

EXAMINER SEE: Yes, she had answered the question.

Q. (By Ms. Bojko) And on page 3 of your testimony, line 2, you use the word "limiting," is that correct, when you talk about the eligible customers able to participate in the two-tier rate design?

A. I'm sorry. Can you repeat your question?

Q. I'll strike that. I'll try again. Thank you.

ODSA has in the past supported the current proposal which contains the two-step rate design; is that correct?

MR. HEALEY: Object as to what proposal we are talking about, whether it's Kroger's proposal or ODSA's proposal. I just don't want there to be any confusion in the record.

MS. BOJKO: Can I have my question reread. I thought I had that.

(Record read.)

Q. The current ODSA USF rider has a two-step

1 declining rate structure; is that correct?
2 A. Yes.
3 Q. And ODSA has supported that since 2001;
4 is that correct?
5 A. Yes.
6 Q. And in ODSA's support of that two-tiered
7 declining rate block since 2001, that rate block, the
8 second tier, is limited to the number of customers
9 that are eligible to take advantage of that second
10 block; is that correct?
11 A. Yes.
12 Q. Isn't it true that you have no specific
13 knowledge regarding the EDUs' billing systems and
14 whether they are equipped to accommodate Kroger's
15 proposal?
16 MR. STINSON: Could I have that reread,
17 please, your Honor?
18 EXAMINER SEE: Sure.
19 (Record read.)
20 A. Yes, that is correct.
21 Q. Are you aware that some utilities already
22 aggregate a multi-set -- site customer's data on a
23 monthly or annual basis?
24 A. No, I am not.
25 Q. Isn't it also true that you are not aware

of what costs, if any, will accrue due to Kroger's proposal?

MR. STINSON: Objection, your Honor. I think that's awfully broad.

EXAMINER SEE: Sustained.

Q. If you look at page 4 of your testimony, line 6, you mention that you are unaware or you have no information who would be responsible for those costs. And "those costs," you are referring to costs of accommodation; is that correct?

A. Yes.

Q. And isn't it true that you do not know if there are any additional costs to accommodate Kroger's proposal?

A. Yes.

Q. Isn't it also true that the utilities currently bill for the implementation of the two-step declining rate block structure?

A. Yes.

Q. On page 4 of your testimony, lines 13 through 15, you talk about "the rules." Do you know the rules that you are referencing there in that section?

A. No, I do not.

Q. Are you referencing the Commission's

1 rules that discuss payment back and forth between
2 ODSA and the utility with regard to the universal
3 service fund?
4 MR. STINSON: Objection, your Honor. The
5 testimony speaks for itself at line 12 whose rules
6 they are.
7 MS. BOJKO: Your Honor, she mentioned
8 "rules." I think I can ask what she's referencing,
9 or we'll just move to strike the testimony.
10 MR. STINSON: Well, it's a
11 mischaracterization of her testimony, whether they
12 are Commission rules or ODSA rules.
13 MS. BOJKO: That's why I asked.
14 EXAMINER SEE: Objection -- the objection
15 is overruled. She can answer the question as best
16 she can.
17 A. Can you repeat the question?
18 MS. BOJKO: May I have it reread, please.
19 (Record read.)
20 A. As I stated in my testimony, these are
21 under ODSA's current rules.
22 Q. And the rule number you don't know it
23 here today off the top --
24 A. I am not aware.
25 Q. Would it refresh your recollection to

1 state that the rule might be 122:5-3-05?
2 A. No.
3 MS. BOJKO: Your Honor, may I approach?
4 EXAMINER SEE: Yes.
5 MS. BOJKO: Let the record reflect I am
6 handing the witness a document of the Administrative
7 Code Rule 122:5-3-05.
8 EXAMINER SEE: Ms. Bojko, do you need
9 another copy?
10 Q. Does this refresh your recollection of
11 the rules you might have been referring to on line
12 13, page 4, of your testimony?
13 A. Yes.
14 Q. And on line 13 through 16 of your
15 testimony, you state "The rules provide no mechanism
16 for ODSA to credit the EDUs with an overpayment." Do
17 you see that?
18 A. Yes.
19 Q. Could you please look at Rule
20 122:5-3-05(E). I will give you a chance to read it.
21 Ms. Meadows, isn't it a rule discussing
22 what happens when there is either an overcharge or an
23 underpayment between ODSA and the utility and how to
24 correct that overcharge or underpayment?
25 MR. STINSON: I am going to object to the

1 extent that the witness is not an attorney, your
2 Honor.
3 MS. WATTS: Your Honor, I would add an
4 additional objection in that there is no foundation
5 laid for the question as this witness is not so far
6 as I understand a person at ODSA who is responsible
7 for that -- for the processing of these payments.
8 MS. BOJKO: Well, your Honor, she
9 references in her testimony the rules. She confirmed
10 this was the rule she was referencing. She also
11 claims that there was no section in the rules that
12 talk about overpayment, so I believe in her
13 non-attorney opinion she can answer what she was
14 referencing and whether there is a section in the
15 rules that actually discusses overpayment.
16 EXAMINER SEE: I am recognizing that the
17 witness is not an attorney. She can answer the
18 question.
19 A. So in the rule itself it talks about the
20 correcting anything based on an error or deficiency
21 in the invoice. It doesn't talk about specifically
22 just because an overpayment was made. It is if an
23 error was found, then the invoice we will work with
24 the utilities to correct that error.
25 Q. And it does use the word "overcharges"

1 and "underpayment"; is that correct?
2 A. Based on an error that was found in the
3 invoice, yes.
4 Q. And it also explains to ODSA how to
5 credit the EDUs with any overpayment that they may
6 have made under this provision; is that correct?
7 A. Yes.
8 Q. And you also recognize in your testimony
9 that Kroger made an alternative proposal, and you do
10 that on page 4, line 17; is that correct?
11 A. Yes.
12 Q. And that alternative proposal was to
13 address any alleged or potential cost shifting among
14 classes; is that correct?
15 A. Yes.
16 MS. BOJKO: Your Honor, that's all I have
17 for Ms. Meadows.
18 Thank you, Ms. Meadows.
19 EXAMINER SEE: Ms. Mooney?
20 MS. MOONEY: Yes, I do have a few
21 questions.
22 - - -
23 CROSS-EXAMINATION
24 By Ms. Mooney:
25 Q. You replied to OPAE's objection on page 5

of what I assume to be your Exhibit 2. Do you have a copy of that with you?

A. Yes.

Q. And on page 5, lines 9 and 10, you say "OPAE objects to the two-tier rate design, claiming that it shifts costs from customers with usage in the second tier to customers with usage only in the first tier." Do you see that?

A. Uh-huh.

Q. Do you have a copy of OPAE's objections with you?

A. No. No.

Q. Could you tell me what makes you think that was OPAE's objection?

MR. STINSON: Could I have that reread, please.

(Record read.)

MR. STINSON: I am going to object. The question is just so broad, your Honor.

EXAMINER SEE: Take another run at it, Ms. Mooney.

Q. (By Ms. Mooney) You don't have the comments, so you can't point to me where OPAE said that; is that correct?

A. Correct.

1 Q. Why do you -- why would you -- why would
2 you think -- or why would you say in that sentence
3 there a description of OPAE's objections that it --
4 that we -- that OPAE claims it shifts costs from
5 customers' usage in the second tier to customers with
6 usage only in the first tier when OPAE's objection
7 actually said that it shifts -- that it shifts costs
8 from customers with usage in the second tier to all
9 customers?
10 MR. STINSON: Objection, your Honor, as
11 to what the objection actually says is not in
12 evidence.
13 MS. MOONEY: I can -- we can put -- are
14 we going to put the objections of the parties in the
15 record? Obviously we filed objections.
16 MR. STINSON: ODSA would object to that,
17 your Honor. Persons had opportunity to provide
18 testimony. The inclusion of comments without that
19 person here to testify is hearsay. We strenuously
20 object to adding the comments to the record.
21 MS. MOONEY: These are my objections.
22 MS. BOJKO: Your Honor, the Kroger
23 Company supports admitting objections as part of this
24 case. It is a requirement in the rules to file such
25 objections, and we believe that they are proper and

1 could be and should be admitted as the Commission has
2 done in other cases in the past.
3 MR. STINSON: It was blatant hearsay,
4 your Honor. I have no opportunity to cross-examine
5 anyone on the objections of OPAE. If they wanted to
6 bring up that issue, they had a right to file
7 testimony in this proceeding.
8 MR. HEALEY: Your Honor, we agree with
9 ODSA that these should be not be admitted into the
10 record as ODSA states. Everyone had an opportunity
11 to file testimony, OPAE included, and we would also
12 like an opportunity to cross-examine whoever drafted
13 those objections if they are in the record.
14 MS. MOONEY: Your Honor, we typically
15 have these objections in the record.
16 MR. STINSON: Your Honor, we raised this
17 same issue in the last case, 16-1223, and you upheld
18 that objection.
19 MS. MOONEY: Also she is
20 mischaracterizing our objections in her testimony. I
21 am not allowed to ask here where she got the idea
22 that was our objection, so I believe that is a
23 mischaracterization of our -- of our objection.
24 MS. BOJKO: I can help out.
25 EXAMINER SEE: This is Ms. Mooney's

1 cross-examination so --
2 MS. MOONEY: I don't have a copy of my
3 objections so if I can --
4 EXAMINER SEE: If I may be permitted to
5 finish, you can continue your cross-examination. At
6 this point we have not admitted the objections. As I
7 recall, I have not permitted the admission of
8 objections where testimony has been filed in the USF
9 proceedings. So with that, you can continue with
10 your cross-examination of this witness.
11 MS. MOONEY: Yes, your Honor. May I
12 approach the witness? I have a copy of OPAE's
13 objections.
14 EXAMINER SEE: Yes.
15 MS. MOONEY: And I would like to mark
16 OPAE's objections as OPAE Exhibit 1.
17 MR. STINSON: I am going to continue my
18 line of objections to this line of questioning, your
19 Honor.
20 EXAMINER SEE: There's an objection. You
21 are objecting to?
22 MR. STINSON: I am objecting to the
23 cross-examination based upon this document has no --
24 well, no foundation yet.
25 MR. HEALEY: Your Honor, I would object

1 to the admission of the exhibit, but I have no
2 objection to the cross-examination.
3 MS. MOONEY: Your Honor, this is her
4 testimony. She's referring directly to OPAE's
5 objections. I have just handed her a copy of OPAE's
6 objections that she is referring to in her testimony
7 that's been marked as ODSA Exhibit 2. I wanted to
8 ask her where -- and I just handed her a copy of our
9 objection where -- she says -- those two lines I read
10 now four times "OPAE objects to the...claiming that
11 it shifts costs from customers with usage in the
12 second tier to customers with usage only in the first
13 tier," handed the exhibit --
14 EXAMINER SEE: Direct her to it.
15 MS. MOONEY: -- and asked where she got
16 that.
17 EXAMINER SEE: Go ahead.
18 A. On page 3.
19 Q. Read it to me.
20 A. Within your objections you state that
21 "ODSA's two-block rate design shifts USF rider
22 payments from the very largest industrial customers
23 to all other customers."
24 Q. Yes, all -- that's exactly what it says.
25 Okay. And that -- and that's the basis for your

statement there?

A. Yes.

MS. MOONEY: Okay. I have no further questions. Thank you. Can I have that back?

EXAMINER SEE: Yes, you can have that back.

Mr. McNamee.

MR. McNAMEE: No questions. Thank you.

EXAMINER SEE: Any redirect, Mr. Stinson?

MR. STINSON: If we could have just a moment, your Honor.

EXAMINER SEE: You may.

(Discussion off the record.)

MR. STINSON: No redirect, your Honor. At this time, your Honor, I would move --

EXAMINER SEE: Just a moment.

- - -

EXAMINATION

By Examiner See:

Q. Ms. Meadows, in your testimony filed on July 24 on page 6, you make a comment that "Kroger's proposal will affect the ODSA's administration of the PIPP program."

A. I said I did not present information on how it would affect the administration of the PIPP

program.

Q. Okay. In ODSA's knowledge would it affect administration of the PIPP program?

A. As I testified, there is insufficient information to say how that would -- if it would affect and how it would.

EXAMINER SEE: Thank you.

Mr. Stinson.

MR. STINSON: At this time, your Honor, I move for the admission of ODSA's Exhibits 1, 2, and 3.

EXAMINER SEE: Are there any objections to the admission of Exhibits ODSA Exhibits 1, 2, and 3?

And hearing none, ODSA Exhibits 1, NOI application; Ms. Meadows' direct testimony and Ms. Meadows' reply testimony, Exhibits 2 and 3, are admitted into the record.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER SEE: Ms. Bojko, you needed additional time to review the amended application filed in last year's USF proceeding, Case No. 16-1223?

MS. BOJKO: Yes, your Honor.

EXAMINER SEE: Have you had an

opportunity to review that?

MS. BOJKO: No, your Honor. No, your Honor.

EXAMINER SEE: Okay.

MR. HEALEY: Your Honor, can we take a break to do that while the witness is still here?

EXAMINER SEE: We'll take a 10-minute recess.

(Recess taken.)

EXAMINER SEE: Have you had an opportunity to review the amended application, Ms. Bojko?

MS. BOJKO: Your Honor, I think we have an agreement. Off the record we decided that it was unnecessary to implement the -- or unnecessary to move to take administrative notice of that amended application.

MR. HEALEY: I'm withdrawing my request, your Honor.

EXAMINER SEE: Okay. Next witness is -- did the parties discuss the order? I don't think we have any out-of-state witnesses.

MR. STINSON: I would request that, ODSA is the applicant, we would be the last to question on cross.

EXAMINER SEE: Okay. But between OCC, Duke's witness, and Kroger, have the parties discussed who was going next?

MS. BOJKO: No, your Honor, but I guess I assumed parties that were supportive of the application would all go first and then the party opposing would go last. Similarly, I would request the cross-examination to proceed that way as well.

MS. WATTS: Your Honor, our witness responds to Kroger's witness so.

EXAMINER SEE: Okay. Let's just do it this way, Mr. Healey or Mr. Kumar, your witness -- Mr. Williams, okay.

MR. KUMAR: He also responds to Kroger's testimony.

EXAMINER SEE: Okay. Ms. Bojko.

MS. BOJKO: So, your Honor, you are rejecting my request and saying that -- I mean, Mr. Higgins responds to the application that the other parties are apparently now supporting, so I think it's only fair to allow him to go last.

MR. STINSON: Your Honor, I would agree Mr. Higgins should go now because the other parties' testimony are in response to Mr. Higgins' testimony.

MS. BOJKO: And then Mr. Higgins

1 responded to those -- one of those testimonies.
2 MR. HEALEY: He can't have responded --
3 MS. BOJKO: I withdraw.
4 EXAMINER SEE: Ms. Bojko.
5 MS. BOJKO: Thank you, your Honor. On
6 behalf of the Kroger Company, I would like to call
7 Mr. Kevin C. Higgins to the stand.
8 (Witness sworn.)
9 EXAMINER SEE: Have a seat.
10 MS. BOJKO: Thank you, your Honor.
11 - - -
12 KEVIN C. HIGGINS
13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:
15 DIRECT EXAMINATION
16 By Ms. Bojko:
17 Q. Mr. Higgins, could you please state your
18 and address for the record.
19 A. My name is Kevin C. Higgins. My business
20 address is 215 South State Street, Suite 200, Salt
21 Lake City, Utah 84111.
22 Q. And, Mr. Higgins, on whose behalf are you
23 testifying today?
24 A. I'm here on behalf of the Kroger Company.
25 Q. Did you file or cause to be filed direct

1 testimony regarding the Ohio Development Services
2 Agency's application of universal service fund rider
3 charges to mercantile customers?
4 A. Yes, I did.
5 MS. BOJKO: Your Honors, at this time I
6 would like to mark as Kroger Exhibit 1 a document
7 titled the "Direct Testimony of Kevin C. Higgins"
8 filed on July 24, 2017, in this proceeding.
9 EXAMINER SEE: So marked.
10 (EXHIBIT MARKED FOR IDENTIFICATION.)
11 MS. BOJKO: May I approach, your Honor?
12 EXAMINER SEE: Yes.
13 Q. (By Ms. Bojko) Mr. Higgins, do you have
14 in front of you what's been marked as Kroger Exhibit
15 1?
16 A. Yes, I do.
17 Q. Do you recognize this document as your
18 direct testimony in this proceeding?
19 A. Yes, I do.
20 Q. Was this direct testimony prepared by you
21 or under your direction?
22 A. Yes.
23 Q. Since the filing of your direct
24 testimony, do you have any changes?
25 A. No.

1 Q. If I were to you ask the same questions
2 today as they appear in your direct testimony, would
3 your answers be the same?
4 A. Yes.
5 Q. Mr. Higgins, did you also file or cause
6 to be filed reply testimony in this proceeding
7 responding to concerns raised by ODSA regarding your
8 proposal?
9 A. Yes.
10 Q. Did any other parties file direct
11 testimony addressing Kroger's objections or its
12 proposal set forth in its objections?
13 MR. HEALEY: Objection, your Honor. The
14 record speaks for itself. We don't need him to
15 confirm what other witnesses did as part of his
16 direct examination.
17 MS. BOJKO: Your Honor, I think it's very
18 relevant to what his reply testimony speaks to.
19 MR. HEALEY: He could have included that
20 in his reply testimony. It's prefiled testimony, not
21 in-person direct testimony.
22 EXAMINER SEE: I'll allow the question.
23 You can answer, Mr. Higgins.
24 A. I am not aware of any other party other
25 than Ms. Meadows who filed testimony of that --

1 direct testimony that addressed Kroger's comments.
2 MS. BOJKO: Your Honor, at this time I
3 would like to mark as Kroger Exhibit 2 a document
4 titled "Reply Testimony of Kevin C. Higgins" filed on
5 August 11, 2017, in this proceeding.
6 EXAMINER SEE: So marked.
7 (EXHIBIT MARKED FOR IDENTIFICATION.)
8 MS. BOJKO: May I approach, your Honor?
9 EXAMINER SEE: Yes.
10 MS. BOJKO: May I approach?
11 EXAMINER SEE: Yes.
12 Q. (By Ms. Bojko) Mr. Higgins, do you have
13 in front of you what has been marked as Kroger
14 Exhibit 2?
15 A. I believe that's my reply testimony.
16 Yes.
17 Q. Was this reply testimony prepared by you
18 or under your direction?
19 A. Yes.
20 Q. Since the filing of your reply testimony,
21 do you have any changes?
22 A. No.
23 Q. So if I were to ask you the same
24 questions today as they appear in your reply
25 testimony, would your responses be the same?

A. Yes.

MS. BOJKO: Your Honor, at this time I would like to move Kroger Exhibits 1 and 2, subject to cross-examination, and I tender the witness for cross.

EXAMINER SEE: Okay.

Ms. Mooney?

MS. MOONEY: No questions.

EXAMINER SEE: Mr. Pritchard?

MR. PRITCHARD: No questions, your Honor.

EXAMINER SEE: Mr. Healey?

MR. HEALEY: Yes, your Honor, just a few.

- - -

CROSS-EXAMINATION

By Mr. Healey:

Q. Mr. Higgins, can you please turn to page 6 of your direct testimony, Kroger Exhibit 1.

A. Yes.

Q. And there's a sentence starting on line 2 that says "Adoption of the two-step declining rate design implements a policy that limits the total financial impact of the USF rider on the state's largest electric consumers, which are among its largest employers, compared to what otherwise would occur if the rider's revenue requirements were to be

1 recovered through a single per kWh rate." Do you see
2 that sentence?
3 A. Yes.
4 Q. I would like to focus on the clause where
5 you say "which are among its largest employers."
6 A. Yes.
7 Q. Does your testimony provide any data on
8 who these largest employers are?
9 A. My testimony does not provide any data on
10 who these largest employers are, no, it does not.
11 Q. And there is nothing in your testimony
12 about how much energy these largest employers each
13 consume; is that correct?
14 A. Well, they would -- in the context of my
15 testimony, it's referring to customers who would
16 consume 10 million kilowatt-hours a year or more per
17 year. That's the threshold for the second-tier rate
18 so that's the reference there. But I did not
19 identify the specific amount of energy that the
20 largest employers consume.
21 Q. And you have not identified the number of
22 employees at these companies, correct?
23 A. I have not identified the number of
24 employees at these other companies.
25 Q. Nor have you identified how many

1 locations any of these employers have in Ohio?
2 A. No.
3 MR. HEALEY: Your Honor, I would like to
4 move to strike the language "which are among its
5 largest employers." This language should be stricken
6 from Mr. Higgins' testimony because he does not
7 provide any data on who these employers are, how many
8 people they employ, whether their employees are even
9 located within the state of Ohio, how these
10 employees -- companies' employee counts compare to
11 other employers in the state of Ohio. He lacks
12 personal knowledge of this information under Rule of
13 Evidence 602. It's also irrelevant under Rule 402.
14 To prove that the statement is true or false, we
15 would have to engage in a comprehensive review of all
16 employers in the state of Ohio, their energy usage,
17 their number of employees, and for those reasons
18 there is no foundation for this statement and I ask
19 that it be stricken.
20 MS. BOJKO: Your Honor --
21 EXAMINER SEE: Repeat which section you
22 are requesting be stricken.
23 MR. HEALEY: It's the words on page 6 of
24 Mr. Higgins' direct testimony starting on line 4,
25 "which are among its largest employers."

EXAMINER SEE: Just that phrase.

MR. HEALEY: Yes.

MS. BOJKO: May I be heard?

EXAMINER SEE: Yes.

MS. BOJKO: Mr. Higgins is here on the stand. Half the questions Mr. Healey mentioned in his objection he never asked Mr. Higgins. He asked if these items were included in his testimony. He is here to further explain his testimony which is typical in Public Utilities Commission cases.

Mr. Higgins could explain what he meant by that phrase. He could explain what he does know. Mr. Healey misrepresented that he has no personal knowledge because Mr. Healey hasn't asked him if he has any personal knowledge. Mr. Healey is assuming that because he did not put every item and every thought on the direct testimony but that is the point of live hearing testimony. And he is here to be cross-examined on his statements in his testimony, so I would like the witness an opportunity to answer the questions that Mr. Healey claims he has no personal knowledge on.

MR. HEALEY: Your Honor, I don't think I can be compelled to ask him any particular questions. He had an opportunity to defend and provide

1 information on this statement in his testimony, and
2 he chose not to. It's unsubstantiated, nonfact that
3 he's trying to get into the record with no supporting
4 data.
5 MS. BOJKO: Your Honor, he is an expert
6 witness that has participated in numerous utility
7 Commission cases. He does have the knowledge. Just
8 because you don't include every piece of knowledge
9 does not exclude your testimony, or we would be
10 striking every expert on the stand and that will
11 follow if that is the ruling. We will move to strike
12 every phrase in every expert witness that does not
13 have a full, I guess, treatise associated with each
14 phrase and each claim in their testimony.
15 They are experts. They are here to give
16 their opinion. He is qualified. There has been no
17 testimony that he isn't qualified. There's been no
18 evidence that he lacks that personal knowledge. Just
19 because he didn't put it in the testimony does not
20 mean he lacks that personal knowledge. Thus, those
21 rules do not apply.
22 MR. HEALEY: Your Honor.
23 EXAMINER SEE: Just a moment. Go back to
24 Mr. Healey's cross-examination. Just read it back
25 for me.

1 (Record read.)
2 EXAMINER SEE: Motion to strike is
3 denied.
4 Q. (By Mr. Healey) Mr. Higgins, Kroger is
5 not proposing that mercantile customers be permitted
6 to aggregate their energy usage for purposes other
7 than the USF rider in this case, correct?
8 A. Correct.
9 Q. Can you turn to page -- I guess you are
10 already on page 6 of your direct testimony. At the
11 very bottom starting on line 23, there is a question
12 "What is a mercantile customer" and you define
13 mercantile customer. Is Kroger a mercantile customer
14 under this definition?
15 A. Yes.
16 Q. Let's look at page 8 of your initial
17 testimony. Starting on line 18, the question is
18 "Does your proposal shift USF costs among the
19 customer classes of EDUs" and your response begins
20 with "No, it does not." Mr. Higgins, is it your
21 contention that residential consumers will pay the
22 exact same amount under the USF under both Kroger's
23 proposal and ODSA's proposal, all else equal?
24 A. Not necessarily, although it's possible.
25 There are a number of options that could be

1 implemented with respect to rate design to
2 accommodate Kroger's proposal. Under one option the
3 rate blocks could be changed proportionately. If
4 they were changed proportionately, then that would
5 affect residential customers probably very slightly,
6 but it -- but mathematically it would affect both
7 blocks.
8 It's also possible to implement it
9 strictly in the second block. I don't propose a
10 specific way to do that. I would really leave that
11 to the discretion of the Commission if the Commission
12 were to adopt Kroger's proposal. But if it were
13 implemented in the second block, then that would not
14 affect residential customers.
15 MR. HEALEY: That's all I have, your
16 Honor.
17 EXAMINER SEE: Mr. Hughes?
18 MR. HUGHES: No questions.
19 EXAMINER SEE: I'm sorry.
20 MR. SCHULER: Here, your Honor, just to
21 clarify what Mr. Hughes said early on behalf of the
22 DP&L, I was going to go ahead and take lead on
23 cross-examination, and I believe the other utilities
24 are not waiving their right to ask. If I do a good
25 enough job, we will be able to expedite the

1 cross-examination this morning.
2 EXAMINER SEE: Okay. Mr. Schuler.
3 - - -
4 CROSS-EXAMINATION
5 By Mr. Schuler:
6 Q. Good morning, Mr. Higgins.
7 A. Good morning.
8 Q. I think we touched upon this a little
9 bit, but just to clarify you are not aware of how
10 many mercantile customers would be eligible to take
11 advantage of Kroger's aggregation proposal, correct?
12 A. Correct. I have no way of independently
13 knowing that without the utilities performing that
14 analysis.
15 Q. And those mercantile customers would
16 obviously have multiple accounts, correct?
17 A. Correct.
18 Q. And you do not know the number of
19 individual accounts that those mercantile customers
20 would have that would be eligible to take advantage
21 of Kroger's proposal, correct?
22 A. As I said, I have no way of independently
23 knowing that without the utilities performing that
24 analysis.
25 Q. And you are not aware of how many

1 mercantile customers would be interested in taking
2 advantage of Kroger's proposal, correct?
3 A. Correct, although I do provide and
4 propose an application process that would require and
5 put the burden on the mercantile customer to announce
6 their interests in participating.
7 Q. Let's talk about that application process
8 that you propose. You would have no reason to
9 dispute that if a mercantile customer does not
10 specifically identify the accounts that they would
11 want to qualify for the Kroger proposal, that the
12 utilities would have no way of knowing what accounts
13 are associated with that mercantile customer,
14 correct?
15 MS. BOJKO: Objection. First of all,
16 that's beyond the scope of his testimony and proposal
17 because that's not his proposal so if it's a
18 hypothetical, I would appreciate the hypothetical
19 word to be added but that's not Mr. Higgins'
20 proposal.
21 MR. SCHULER: Your Honor, I am simply
22 asking about the application process that Mr. Higgins
23 has proposed in his testimony and whether he would
24 have any knowledge as to whether the EDUs would be
25 able to identify the eligible customers without that

application process.

EXAMINER SEE: Overruled.

MS. BOJKO: That was a different question.

EXAMINER SEE: Overruled.

You can answer the question, Mr. Higgins.

MS. BOJKO: Your Honor, could you clarify which question because they were two different questions?

MR. SCHULER: Would you like me to try again, your Honor?

EXAMINER SEE: Yes.

Q. (By Mr. Schuler) Mr. Higgins, regarding the application process that you set forth in -- let me strike that.

Mr. Higgins, you propose an application process in your direct and your reply testimony, correct?

A. Yes, I do.

Q. And that application process that you have recommended, would the EDUs, electric distribution utilities, have any ability to know what accounts are associated with each mercantile customer?

A. My experience many utilities make it

1 their business to know who their customers are and,
2 in fact, do keep track of the aggregated accounts of
3 individual customers. That's generally considered a
4 good business practice. However, I don't know
5 whether each EDU practices such good business
6 practices, and so I don't know specifically if each
7 EDU is -- would be prepared to know in advance which
8 accounts applied to each of its mercantile customers,
9 although I would expect businesses that are well run
10 to know such things. Nevertheless my proposal
11 doesn't require the EDU to know in advance; but,
12 again, it puts the burden on the mercantile customer
13 to identify the accounts and bring them to the EDU to
14 participate.
15 Q. Thank you, Mr. Higgins. The application
16 process that you have proposed will not limit the
17 amount of mercantile customers that can apply for the
18 Kroger proposal, correct?
19 A. It doesn't limit the number, per se.
20 The -- I would expect that it would -- the proposal,
21 in essence, is self-limiting in that I would only
22 expect mercantile customers that could qualify for
23 the two-tier rate to bother to apply. You might have
24 mercantile customers who qualify as mercantile
25 customers but still may not qualify for the

1 two-tiered rate. I would expect they would not
2 bother to apply.
3 Q. But you do not have any knowledge as to
4 the -- strike that.
5 Kroger's proposal also does not limit the
6 number of individual accounts associated with each
7 mercantile customer that can take advantage of the
8 proposal, correct?
9 A. Correct.
10 Q. Kroger has not proposed any sort of audit
11 of the applications, correct?
12 A. I have not specifically proposed an audit
13 of the applications. However, I would expect that in
14 applying and providing accounts to the EDU, that the
15 EDU would cross-check that information against its
16 own records, not simply take it on faith but would
17 expect that the application would be reviewed and
18 checked against the accounting numbers.
19 Q. Kroger is only making the -- this
20 proposal to aggregate mercantile accounts with
21 respect to the USF rider, correct?
22 MS. BOJKO: Objection. It was asked and
23 answered.
24 MR. SCHULER: Your Honor, I don't recall
25 that, but it doesn't seem to be a particularly

1 nefarious question.
2 EXAMINER SEE: The objection is
3 overruled. You can answer the question, Mr. Higgins.
4 A. As I stated before, Kroger is not
5 proposing that this aggregation proposal for anything
6 other than the USF rider at this time.
7 EXAMINER SEE: Please speak up,
8 Mr. Higgins.
9 Q. So under your proposal on behalf of
10 Kroger, the mercantile accounts would be treated as a
11 single customer for the USF rider but not for any
12 other rider or rate, correct?
13 MS. BOJKO: Objection. First of all, I
14 think it mischaracterizes both Mr. Higgins' testimony
15 and his response. He asked him if there was any
16 other proposal in this proceeding that he was -- he
17 was asking for this treatment. He did not say he was
18 speaking to any other rider at any other time. And
19 any other rider at any other time is not what's
20 before this Commission at this time.
21 MR. SCHULER: I can rephrase my question,
22 your Honor.
23 EXAMINER SEE: Please do.
24 Q. (By Mr. Schuler) With respect to Kroger's
25 proposal in this proceeding, the utilities would

be -- be required to treat the mercantile customers as a single customer for purposes of the USF only, correct?

A. Yes.

Q. Your proposal also requires the EDUs to issue a refund to a corporate entity even if they are not a customer of the electric distribution utility, correct?

A. I don't -- I am not aware of what aspect of my proposal would require that, so I don't know if there is something in the -- in the nuance of your phrasing that I'm not grasping, but my proposal is that in an attempt to make this as easy as possible for the EDUs, rather than have the EDUs attempt to prorate each account's bill in the current month, I proposed that each account could be billed as they currently are, and the credit for the second tier could be done on a single calculation and in a single credit and in an attempt to make it easy -- as easy as possible and to alleviate as much of the administrative burden as possible.

And so that credit would only be going to the corporate entity that was associated with the accounts that had already paid a bill in the prior month to the EDU, so presumably it is a customer in

1 the aggregate of the EDU. Now, if you're saying --
2 if you are asking me if it's possible that the
3 corporate headquarters might be some other place
4 other than the specific locations of the facilities,
5 I would certainly say that's -- that's possible; but,
6 of course, it would be associated only with customer
7 accounts of the EDU.
8 Q. Let me turn you to page -- page 10 of
9 your direct testimony which has been labeled as
10 Kroger Exhibit 1, I believe.
11 MS. BOJKO: Yes.
12 A. Yes.
13 Q. Starting on line 9, let me know when you
14 are there.
15 A. I'm there.
16 Q. "In the subsequent month, the EDU could
17 provide a credit in arrears, based on the aggregated
18 load of the Mercantile Customer, and provide the
19 credit adjustment via a single payment to the
20 registered Mercantile Customer's corporate entity."
21 Do you see that there, Mr. Higgins?
22 A. Yes.
23 MS. BOJKO: I don't. I'm sorry. Would
24 you say the line?
25 MR. SCHULER: I'm sorry, page 10, lines 9

to 12.

MS. BOJKO: Thank you.

Q. Under this proposal, we'll use Kroger for example, is Kroger headquartered -- strike that.

Is Kroger's registered corporate entity located in Cincinnati, Ohio?

A. Yes.

Q. So under your proposal the payment would be made to Kroger's corporate entity located in Cincinnati, Ohio?

MS. BOJKO: Objection, your Honor. It mischaracterizes testimony again. He read it as could provide, not would.

MR. SCHULER: I'll rephrase, your Honor.

EXAMINER SEE: Okay.

Q. The credit adjustment -- are you proposing that the EDU provide a credit to the registered corporate entity?

A. I'm proposing that this is a feasible and reasonable option for implementing this proposal in an attempt to minimize the administrative burden on the EDU. If there is a better way or a preferred way to do -- a simpler way to do it that the EDUs would prefer but would still accomplish the goal of allowing the mercantile customer to aggregate its

1 load for the purpose of the USF, then, you know,
2 Kroger is certainly open and amenable to that. I
3 offered this as a way of simplifying the process. I
4 don't -- I don't propose it as being a mandatory
5 feature of Kroger's proposal.
6 Q. But you've not proposed any other type of
7 way to credit this back to the customers in your
8 testimony, correct?
9 A. In my testimony, I -- in my reply
10 testimony, I enhance this idea slightly by expanding
11 upon the idea of providing a credit or other suitable
12 crediting mechanism, so the idea in my mind was to be
13 flexible about how this could be implemented.
14 Q. If the proposal that you set forth on
15 page 10 of your direct testimony is adopted, then
16 that would require a single payment to the registered
17 corporate entity and in our example that would go to
18 Kroger located in Cincinnati, Ohio, correct?
19 MS. BOJKO: Objection, your Honor. He
20 never uses the word "require." Again, we're -- we're
21 mischaracterizing his testimony.
22 MR. SCHULER: Your Honor, I started the
23 question if adopted as proposed in here.
24 MS. BOJKO: Right. That's not how it's
25 proposed.

1 EXAMINER SEE: Overruled.
2 A. There are certainly implementation
3 scenarios in which a check would be sent -- for
4 Kroger load would be sent to Cincinnati, Ohio.
5 Q. And if there was a mercantile customer
6 whose corporate entity was registered in another
7 state, for example, is Wal-mart, Minnesota, would
8 that credit be sent to Wal-mart's corporate entity in
9 that other state?
10 A. I believe Wal-mart is headquartered in
11 Arkansas.
12 Q. My apologies.
13 A. The U.S. postal service delivers there;
14 and, yes, under that example conceivably would be
15 sent to Arkansas, if that was the arrangement that
16 was made.
17 Q. Mr. Higgins, you've never been employed
18 by an electric distribution utility, have you?
19 A. I've been employed by a utility before
20 they were called electric distribution utilities, the
21 Utah Power and Light Company which was and in its
22 current form still is an integrated utility.
23 Q. You have no personal knowledge about how
24 any of the EDU billing systems operate, correct?
25 A. I have -- I am not involved in the EDU

1 billing system's operations, no. In my work as a
2 regulatory economist, I regularly hear testimony from
3 utilities on the topic of their billing systems, but
4 I do not work firsthand on the billing system side of
5 the business.
6 Q. You have no personal knowledge upon which
7 to dispute that the EDU billing systems don't
8 currently have the ability to complete the necessary
9 processes to accomplish Kroger's proposal, correct?
10 A. I find it hard to believe that the EDUs
11 would be incapable of performing the simple procedure
12 that I've recommended. I would agree that if the
13 proposal required the EDUs to prorate each month's
14 bill in anticipation or after aggregating the
15 accounts to the first threshold level, I would agree
16 that it would be unlikely that the billing systems
17 currently could accommodate that. But I have a hard
18 time believing that the EDUs could not perform
19 readily and competently the proposal that I've made
20 to make a single payment in arrears based on the
21 prior month's -- prior period's usage.
22 MR. SCHULER: Your Honor, I would move to
23 strike as his response is not responsive. The
24 question was does he have personal knowledge.
25 MS. BOJKO: Your Honor, I think he

1 explained his knowledge, that he does, in fact, have
2 personal knowledge; and he explained where it came
3 from. And he articulated where he got that knowledge
4 and how and how it would be applied to his proposal.
5 MR. SCHULER: I believe, your Honor, if I
6 could one more time, he started off his response with
7 it would be hard to believe but. It's not personal
8 knowledge nor is it answering the question as to
9 whether he has personal knowledge.
10 EXAMINER SEE: Motion to strike is
11 granted.
12 MR. SCHULER: Thank you, your Honor.
13 Could I have the question reread for Mr. Higgins,
14 please.
15 (Record read.)
16 A. In my personal experience, I have been
17 aware of utilities that have been able to address
18 questions of aggregation when it is part of a tariff,
19 and so I believe that particularly in light of the
20 simplified procedure that I proposed, that it is --
21 it would not be a significant accommodation. I would
22 agree that the billing systems as currently utilized
23 would likely not be able to immediately implement a
24 prorated bill for each account but that is not my
25 proposal.

1 MS. BOJKO: Your Honor, I'm sorry. I was
2 having a coughing issue. Could I have his response
3 reread?
4 EXAMINER SEE: Let's go to the question
5 and the response.
6 MS. BOJKO: My apologies, your Honor.
7 (Record read.)
8 MS. BOJKO: Thank you.
9 MR. SCHULER: Your Honor, I move to
10 strike again the question for two reasons. One,
11 there was another "I believe" in there as still not
12 responsive to the question with whether he has
13 personal knowledge. And, two, to the extent he began
14 his answer about aware of other utilities, the
15 question was about the EDUs referring to the four
16 EDUs -- six EDUs in this case.
17 MS. BOJKO: Your Honor, I think he did
18 give his personal knowledge and his explanation of
19 where he believes -- or why he believes they can
20 accommodate his proposal.
21 EXAMINER SEE: Let me hear Mr. Higgins'
22 response one more time.
23 (Record read.)
24 EXAMINER SEE: What was your motion
25 again, Mr. Schuler?

1 MR. SCHULER: It was --
2 EXAMINER SEE: Go ahead.
3 MR. SCHULER: It was to strike
4 specifically because the question asked about the
5 EDUs in this case and Mr. Higgins discussed his
6 knowledge based on other utilities and, again, it was
7 asking for his personal knowledge with respect to
8 these EDUs and he still has not answered that
9 question.
10 EXAMINER SEE: The motion to strike his
11 response is granted.
12 MR. SCHULER: Thank you, your Honor.
13 Could we have it read one more time?
14 EXAMINER SEE: The question?
15 MR. SCHULER: Let me rephrase it.
16 Q. (By Mr. Schuler) Mr. Higgins, you have no
17 personal knowledge upon which to dispute whether
18 these six EDUs in this case have billing systems that
19 are currently capable of completing the processes
20 necessary to calculate Kroger's proposal, correct?
21 A. In my personal experience, I am aware
22 that at least two EDUs in this case have been able to
23 take -- have been able to figure out a way to deal
24 with aggregated billing. And in light of the
25 simplified procedure that I have proposed, I believe

that it could be reasonably accommodated. I do agree that the current billing systems would unlikely be able to calculate a pro rata adjustment to each account's bill based on Kroger's proposed concept but, of course, that is not what we -- I am proposing. I am not proposing that the -- each account be prorated in real time but rather an after-the-fact calculation be made.

Q. You have no personal knowledge upon which to dispute that some of the EDUs in this case might have to conduct the billing processes proposed by Kroger manually, correct?

A. I don't dispute that there would likely be a manual after-the-fact review of the account information to perform the calculation. I believe it would be rather simple, but I don't dispute a manual calculation might be involved.

Q. Do you agree that Kroger's proposal would still require the EDUs to do monthly calculations to determine if a mercantile customer has used more than 833,000 kWh in that month, correct?

A. Correct.

Q. You also agree that Kroger's proposal would then require the EDUs to calculate the monthly charges based upon that aggregated amount, correct?

A. Correct.

Q. You would agree there is a cost associated with manual performance, correct?

A. I agree that it's not costless. I don't think it would be significant, but I agree that it's not completely costless.

Q. Do you have any personal knowledge of any of the EDU systems to form the basis that you don't believe that it would be much?

A. Not based on my -- on any knowledge of the EDUs' systems, just based on my knowledge of being able to look at kilowatt-hours usage, and enter it into a spreadsheet which is something that I do and my firm does on a routine basis.

MR. SCHULER: Your Honor, based upon that answer, I would ask that we strike the portion of his answer -- his prior answer to the fact that it said that he does not believe it would be much.

MS. BOJKO: Your Honor, I think he is asking him open-ended questions, and he is answering them what his personal knowledge is. He keeps asking him what his personal knowledge is and that's what the witness is responding to.

EXAMINER SEE: Let me have the last two questions and answers read back, please.

1 (Record read.)
2 EXAMINER SEE: Motion to strike is
3 denied.
4 MR. SCHULER: Your Honor, if I could have
5 a brief moment, I might be done here.
6 EXAMINER SEE: Okay.
7 Mr. Schuler.
8 MR. SCHULER: Thank you, your Honor.
9 Just a few more quick questions.
10 Q. (By Mr. Schuler) Mr. Higgins, in
11 preparing for your testimony today, did you review
12 any discovery that was provided in this case?
13 A. I don't believe I have.
14 Q. Are you aware of whether Kroger conducted
15 any discovery in this case?
16 A. I'm not aware.
17 MR. SCHULER: Nothing further, your
18 Honor.
19 EXAMINER SEE: Thank you.
20 Mr. McNamee?
21 MR. McNAMEE: No questions, your Honor.
22 Thank you.
23 EXAMINER SEE: Mr. Stinson?
24 MR. STINSON: Just a few questions.
25 - - -

CROSS-EXAMINATION

By Mr. Stinson:

Q. Mr. Higgins, you testified as to an application process for the mercantile customers to take advantage of your proposal. How does that application process work? How are mercantile customers notified to apply?

A. I don't have a specific proposal as to how they would be notified to apply but that principle would be that the burden would be on them to apply. There is many different ways to provide notes to apply. Account reps could inform customers. That sort of thing could take place. But the thrust of the proposal is that the burden would be on the mercantile customers to make an application.

Q. And by the account reps, you're talking about the EDU account reps?

A. That would be one option.

MS. BOJKO: Your Honor, excuse me. Could you instruct the witness to speak up? When his head is turned that way, I am having difficulty hearing him.

THE WITNESS: I'm sorry. I will do so.

EXAMINER SEE: Your counsel wants to be able to hear you.

Q. (By Mr. Stinson) Also you've discussed some -- the credits situation. Now, as I understand it, the USF rider rate is tariffed with the PUCO; is that correct?

A. I didn't hear what you said.

Q. That the USF rate rider is tariffed with the PUCO?

A. Yes.

Q. And just so I understand, what you are proposing is from that tariff that mercantile customers who qualify would be charged for all their usage under the first tier, correct?

A. They would -- yes, they would. I mean, to the extent that their individual account usage is within the first tier, which is a reasonable assumption, so -- so, yes, that's -- they would be charged per the tariff, and the crediting mechanism would happen after the fact, again, in an attempt to make it simpler to implement.

Q. Okay. So all the mercantile customers that qualify for aggregation, their accounts would all be under 833,000 kilowatts per month, correct?

A. I would expect that to reasonably be the case.

Q. So those accounts are charged under the

first tier.

A. Yes.

Q. And once the EDU charges those customers, the EDU collects that revenue from each account, correct?

A. Correct.

Q. And the EDU then passes through that money to ODSA, correct?

A. Correct.

Q. The entire amount collected.

A. Well, I would imagine that the entire amount collected would be passed through in the very first month. But once the EDU was crediting mercantile customers for the second-tier credits, if you will, it would seem to me then that the reasonable passthrough would be the net of that amount. So, in essence, in month one, month one of the program, the mercantile customers would pay the full amount of the tariff. There would be a full crediting through from that amount.

In month two when the EDU was performing the crediting of, in essence, what would have been an overpayment, then the commonsense passthrough would be the net of that amount.

Q. So I was confused when you talked about

1 the first month crediting. I was under the
2 impression the first month wouldn't be a credit, but
3 the entirety of the revenues would be passed through.
4 A. I was referring to -- and perhaps I used
5 a confusing word. I meant crediting to -- from the
6 utility to the ODSA. So that was what I was
7 referring to. So the EDU is passing through -- money
8 through the agency, and in the first month I would
9 imagine it to be the very full amount per tariff. In
10 let's say the second month when the EDU has
11 identified the credit back to the mercantile
12 customer, then the amount passed through to the
13 agency would reasonably be net of that credit.
14 Q. So say beginning in month two then the
15 EDU would still be collecting the full tariffed
16 amount from the mercantile customers that qualify,
17 correct?
18 A. Yes.
19 Q. And the EDU would then not pass through a
20 portion of that to ODSA, but the EDU itself would
21 return a portion of that collection to the mercantile
22 customer that qualified.
23 A. Yes.
24 MR. STINSON: No further questions, your
25 Honor.

EXAMINER SEE: Redirect, Ms. Bojko?

MS. BOJKO: Yes, your Honor. May we have a few minutes?

EXAMINER SEE: Yes.

MS. BOJKO: Thank you.

(Discussion off the record.)

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

Ms. Bojko.

MS. BOJKO: Yes, your Honor, thank you. I do have redirect.

- - -

REDIRECT EXAMINATION

By Ms. Bojko:

Q. Mr. Higgins, in questioning by the Consumers' Counsel counsel, you suggested that the threshold was 10 million kWh. To clarify is that an annual number?

A. Yes. 833,000 kilowatt-hours per month translates into 10 million kilowatt-hours per year. So when I referred to the 10 million kilowatt-hours, I was referring to the annual number. I think it's an easier number quite frankly to keep track of for these purposes.

Q. And when questioned by DP&L's counsel

about the monthly calculation that would have to be under gun -- undergone under your proposal, he asked you if -- if the utility would have to determine on a monthly basis whether the 833 kilowatt-hour threshold was met. Do you recall that?

A. 833,000 kilowatt-hours.

Q. Thank you. And is -- do the utilities have to do that today under the current implementation of the USF rider? Do they have to look at each account and determine whether they fall under the first tier or the second tier for purposes of the USF rider charge?

MR. SCHULER: Your Honor, I object. How it's operating today is irrelevant for purposes of this proposal going forward.

MS. WATTS: I would further object, your Honor, because the witness has admitted he has no personal knowledge of the EDUs' billing systems.

MS. BOJKO: Actually, your Honor, we will get into that in a minute. I don't believe -- I think that's mischaracterizing what he did testify to and what his personal knowledge was. But he was asked if this would be arduous on the utility, if it's a change in the process. I have a right to further explore how it's done today and how it will

be different under Kroger's proposal.

EXAMINER SEE: The objection is overruled.

A. Well, today for a utility that has a two-tier USF rate, it obviously has to identify what portion of an account's load falls within 833,000 kilowatt-hours in a month because any amount over that is subject to a different rate.

Q. Mr. Higgins, do you recall the question of whether you included in your testimony specifically any mention of who the larger employers in the state were?

A. Correct.

Q. Do you have personal knowledge of who the largest employers in the state of Ohio are?

A. Well, I have -- I did review a list of the 100 largest employers in the state of Ohio that is available on Cleveland.com, so while I did not personally compile the list, I am aware that such a compilation is made, and I did review that list prior to my testimony.

Q. Mr. Higgins, you were asked three times, I believe, if you had personal knowledge with regard to the EDU billing systems, and you responded that you were aware that two EDUs have, in fact, agreed to

1 aggregate accounts. Do you recall that?
2 A. Yes.
3 Q. And the two utilities that you are
4 referring to, could you name those two utilities,
5 please.
6 A. One is Dayton Power and Light Company,
7 and the other is AEP Ohio.
8 MS. BOJKO: Your Honor, at this time I
9 would like to mark as Kroger Exhibits 3 and 4, 3
10 being the DP&L case that was just mentioned titled
11 "Amended Stipulation and Recommendation," Case No.
12 16-0395-EL-SSO that was filed with this Commission on
13 March 13 of 2017; and then I would like to mark as
14 Kroger Exhibit 4 the "Joint Stipulation and
15 Recommendation" filed in Case No. 10-2929-EL-UNC, et
16 al., that was filed December 21, 2016.
17 May I approach?
18 MR. SCHULER: Your Honor, at this time I
19 would object, at least with respect to Kroger Exhibit
20 3 and any questioning relating to it. The document
21 is first off not relevant to this case, and more
22 importantly if memory serves me correct, I didn't
23 even bother to bring a copy of it with me today
24 because I recall there being a provision in there
25 that the stipulation should not be used as precedent

1 in any other proceeding before the Public Utilities
2 Commission of Ohio.
3 MS. BOJKO: And let me speak to that,
4 your Honor. I am not using it as precedent. Counsel
5 brought up the fact that -- or tried to claim
6 Mr. Higgins has no personal knowledge, that this has
7 never been done by a utility. We are merely using it
8 to show that utilities have, in fact, agreed to it,
9 and they are actually either in the process of doing
10 it or will be doing it in the future.
11 We are not raising it for precedential
12 concerns that this should have any effect or
13 implication of the approval of such a thing in this
14 case or in the future. It is merely to show that
15 it's not -- it's to refute and to rebut the testimony
16 that's being provided here today both on
17 cross-examination as well as by the utilities'
18 witness that the billing systems cannot do this and
19 cannot handle it.
20 It's a direct response to that alleged
21 problem with Mr. Higgins' proposal, and we intend to
22 use it to demonstrate that there isn't a problem and
23 that it has, in fact, been done. We are not using it
24 for the precedential purposes of agreement or
25 stipulation as implied by counsel.

1 MR. PRITCHARD: I will join Mr. Schuler's
2 objection as to what has been marked as Exhibit 3,
3 the stipulation in 16-395, and I will also object to
4 10-2929. We have taken a long position, IEU-Ohio, as
5 relying on stipulations in future proceedings. And
6 as a party to both of those cases, I would,
7 therefore, object to relying on those stipulations as
8 precedent for or against any principal in another
9 case.
10 MS. BOJKO: Your Honor, if I may respond
11 to that, there is a difference between putting it in
12 his direct testimony and using it for rebuttal
13 purposes. This is purely for rebuttal purposes.
14 They are saying they can't do it and that it's too
15 hard to do it, and I am showing you that it's been
16 done. He asked if he knew if it's ever been done.
17 He opened the door. We did not put it in his direct
18 testimony for that very reason but that's not how we
19 are using it. We are using it as rebuttal to the
20 claims it hasn't been done, it can't be done, and it
21 won't be done in the future. There is a distinction
22 in the testimony.
23 MR. HUGHES: May I be heard for Ohio
24 Power, your Honor?
25 EXAMINER SEE: You may in one second.

Ms. Bojko, complete what you were referring to as Kroger Exhibit 4 and let the Bench see a copy of what you're talking about.

MS. BOJKO: May I approach, your Honor?

EXAMINER SEE: Yes.

MR. HEALEY: We would like a copy too before we weigh in.

EXAMINER SEE: Copies can be provided to everybody so we can discuss.

MR. SCHULER: Your Honor, I do have more I would like to be heard on unless you are going to summarily grant my objection.

EXAMINER SEE: No. I would rather give you the opportunity to speak; and you too, Mr. Hughes.

MR. HUGHES: Thank you, your Honor. I wanted to make sure that the record reflected Ohio Power's objection to Kroger Exhibit 4 for the reasons expressed by Mr. Schuler.

MR. SCHULER: Your Honor, Ms. Bojko's explanation sounds very much like the definition of using something for precedent. Simply because it is not put in direct testimony being used on rebuttal still holds the same evidentiary and precedential value before the Commission, hence why it should not

be permitted.

Secondarily, the explanation that was then given that this is being used to prove that this billing has been done before, aside from further reaffirming she's using this as precedent, it is merely a stipulation and recommendation that had been filed before the Public Utilities Commission. It has not yet been ruled on. It does not necessarily indicate whether those systems have been done or whether -- what it would require for those systems to be done. There are simply commitments in a publicly-filed document that has not yet been approved.

MS. WATTS: Your Honor, may I add my 2 cents' worth?

EXAMINER SEE: Go ahead.

MS. WATTS: On behalf of Duke Energy, I would also like to point out whatever material is contained within those stipulations that have not yet been approved, they are totally irrelevant with respect to Duke Energy.

MS. BOJKO: Your Honor, just for clarity purposes, one has been approved and one has not for the record.

EXAMINER SEE: Okay. Kroger Exhibit 4

has been ruled on. It has been approved by the Commission.

MR. SCHULER: Your Honor, I was only speaking to Exhibit 3. I apologize.

EXAMINER SEE: Okay. Same for Ms. Watts. I believe you were also speaking.

MS. WATTS: I haven't seen them. I don't know anything about them, so I'm sorry if I misrepresented that.

MR. SCHULER: Your Honor, though --

EXAMINER SEE: Was counsel not provided a copy of the two exhibits we were referring to?

MS. BOJKO: I have two more. I thought I got everybody. I thought I got everybody.

MR. SCHULER: Your Honor, my relevance objections would also, I would assume, apply to the Kroger Exhibit 4 which is the AEP stipulation. We can take a look here and see if there is also a provision in here regarding precedent. But for ease of the Bench, page 37 of Exhibit 3 is the paragraph we are referencing.

MS. BOJKO: Your Honor, again, it's not being used for precedential purposes. It's being used to rebut or refute an argument that billing systems cannot handle this or have not handled it

1 currently or in the past.
2 EXAMINER SEE: Ms. Bojko.
3 MR. STINSON: Your Honor, I would just
4 add to the general --
5 EXAMINER SEE: Just a minute,
6 Mr. Stinson. Just a minute. Is there a provision
7 within Kroger Exhibit 3 that you are referring to?
8 MS. BOJKO: Oh, yes, your Honor. In
9 Kroger Exhibit 3 it is on page 10 -- no, Kroger
10 Exhibit 3, I'm sorry. That was Kroger Exhibit 4.
11 Kroger Exhibit 3 it is on page -- you have to look at
12 9 and 10 as well as 15 and 16.
13 EXAMINER SEE: And did you have a
14 reference in 4 that you are referring to?
15 MS. BOJKO: Yes. In Kroger Exhibit 4
16 it's on page 10.
17 EXAMINER SEE: Okay.
18 Mr. Stinson.
19 MR. STINSON: I was going to say as a
20 general policy matter, the reason that these
21 documents aren't to be afforded any precedential
22 value is because it is going to chill parties from
23 entering into stipulations in the future.
24 EXAMINER SEE: Okay.
25 MR. HEALEY: Your Honor, I hate to jump

1 on the bandwagon, I would also point to Kroger
2 Exhibit 3, the provision on page 37 is more broad
3 than precedential. It reads "nor is it to be offered
4 or relied upon in any other proceeding except as
5 necessary to enforce the terms of this stipulation."
6 Kroger is not seeking to enforce the terms of this
7 stipulation. It says nothing about precedential
8 value in that clause.
9 MS. BOJKO: Your Honor, that's not the
10 point of it to dispute a fact which is completely
11 different. And I did -- I want to correct on the
12 record. I said the page numbers wrong. For Exhibit
13 4, AEP's, it is pages 9 and 10 and it's 15 and 16;
14 whereas, for 3 it is page 10. My apologies.
15 EXAMINER SEE: Anyone else want to be
16 heard on the record?
17 MS. BOJKO: Your Honor, what are you
18 entertaining? A motion? I haven't moved the
19 documents, so I guess I'm not sure what the motion is
20 that I am supposed to be responding to.
21 MR. SCHULER: Your Honor, could I clarify
22 I would object to any questions on the basis of these
23 documents.
24 MS. BOJKO: Thank you.
25 MS. WATTS: And Duke --

MS. BOJKO: Thank you. I didn't know what was pending before your Honor that I was supposed to be responding to.

EXAMINER SEE: I thought you had responded to Mr. Schuler's objection; then others had offered a reason that these should not become a part of the record. Is that not what you were responding to before?

MS. BOJKO: No. I had not moved these to become part of the record, your Honor.

EXAMINER SEE: Okay.

MR. SCHULER: Your Honor, I would agree she has not moved them in yet, but she is obviously putting them before the witness to ask questions about it, and we would object to any questioning on these documents in this proceeding.

MS. WATTS: And Duke Energy Ohio joins for the reasons previously stated to any questioning with respect to the documents.

MR. HUGHES: As does Ohio Power, your Honor.

MR. ECKERT: As does the FirstEnergy utilities, your Honor.

MR. HEALEY: Me too.

MR. McNAMEE: And for the staff, I

haven't seen these documents because you ran out of copies, if we signed them, I object too.

EXAMINER SEE: You did, Mr. McNamee.

MR. McNAMEE: Then I object as well.

EXAMINER SEE: Do you need a copy, Mr. McNamee?

MR. McNAMEE: I have them now, thoughtfully provided by Ms. Bojko.

EXAMINER SEE: Okay. Now, and you indicated, Ms. Bojko, that you had not moved -- you had not marked these.

MS. BOJKO: I asked to mark them for identification purposes, your Honor.

EXAMINER SEE: Okay.

MS. BOJKO: That's all I did. There is no question pending. All I did was ask to mark them for identification purposes.

EXAMINER SEE: Okay.

MR. SCHULER: Your Honor, I simply made an objection for the efficiency of the Bench, so we don't have to go through the objection for every question she would ask about it. I would be happy to renew with any question that relates to these documents, however.

(EXHIBITS MARKED FOR IDENTIFICATION.)

EXAMINER SEE: Okay. They're marked. Go ahead, Ms. Bojko.

MS. BOJKO: Thank you, your Honor.

Q. (By Ms. Bojko) Mr. Higgins, the documents that I've given you, are these the cases where you stated you had personal knowledge with regard to the utilities' billing systems and whether they could or could not perform your proposal in this case?

MR. SCHULER: Your Honor, I object to any questions related to these documents for the reasons that were previously stated.

MS. WATTS: And Duke Energy joins that objection. And, your Honor, may it be a standing objection to further questioning?

MR. HUGHES: The same from Ohio Power, your Honor.

MR. ECKERT: The same from the FirstEnergy utilities, your Honor.

MR. HEALEY: OCC as well.

MR. McNAMEE: Ditto for the staff.

MR. SCHULER: I would also caution Ms. Bojko on actually asking any further questions on it because it could arguably be read as violating the stipulation.

MS. BOJKO: Your Honor, his personal

1 knowledge was challenged. The only thing I asked him
2 is did he have a basis for his statements and his
3 personal knowledge, and he said yes. That does not
4 violate in any way the stipulations. I have not used
5 them as precedent. I asked him if this is what his
6 personal knowledge was based upon. That is all I
7 asked him. And this was opened by counsel asking him
8 three times whether he had any personal knowledge.
9 Mr. Higgins was involved in these cases, and he can
10 say whether his personal knowledge was based upon
11 that.
12 MR. SCHULER: Your Honor, that would
13 probably also require, because this is a stipulation,
14 Mr. Higgins to reveal confidential discussions that
15 were had to reach these stipulations in this case.
16 EXAMINER SEE: Read the question back for
17 me, please.
18 (Record read.)
19 EXAMINER SEE: You can answer the
20 question, Mr. Higgins. Are -- "yes" or "no," are
21 these the two cases that you were referring to?
22 THE WITNESS: Yes.
23 MS. BOJKO: I have no further questions,
24 your Honor.
25 EXAMINER SEE: Ms. Bojko -- I'm sorry.

1 Did you have any questions?
2 MR. SCHULER: Your Honor?
3 EXAMINER SEE: No. Just a second.
4 Mr. Schuler.
5 MR. SCHULER: Yes, your Honor. Not to
6 prolong this any further, I at this time would move
7 to strike Mr. Higgins' answer previously provided in
8 his testimony as I did not realize the basis upon
9 which he had been formulating that was on these two
10 stipulations which were not to be referenced,
11 specifically the question about that he was relying
12 on these two cases to indicate that two utilities
13 were already capable of doing this as Ms. Bojko has
14 used her rebuttal to establish.
15 EXAMINER SEE: Any response, Ms. Bojko?
16 MS. BOJKO: Your Honor, he asked a
17 question, and he got a response. He can't take back
18 that question and response after it was more fully
19 explained on redirect. That was the point. He was
20 challenging his personal knowledge and his character
21 for his statements in his testimony and we have a
22 right to on redirect reestablish credibility of the
23 witness as well as explain the response. That's all
24 that we did was ask him if he had the personal
25 knowledge and what that personal knowledge was based

upon.

He asked the question, and we're responding to that question. He can't now go back in the record and pick and choose which answers and questions he would like to strike. There are many times in a cross-examination I wish I wouldn't have asked a question when I didn't get the answer I wanted.

MR. SCHULER: Your Honor, hopefully my last statement is we did not challenge his statements yet. Ms. Bojko has now characterized this as rebuttal.

EXAMINER SEE: The motion to strike Mr. Higgins' response is denied.

The Bench doesn't have any questions for Mr. Higgins.

And with that, Ms. Bojko.

MS. BOJKO: Thank you, your Honor. At this time the Kroger Company would move Exhibits 1 and 2, the testimony and the reply testimony of Mr. Higgins.

EXAMINER SEE: Are there any objections to the admission of Higgins Exhibit 1 and Exhibit 2?

MR. HEALEY: Your Honor, I will note that my previous objections, which have been overruled,

no.

EXAMINER SEE: Hearing no objections to the admission of Higgins Exhibit 1 and Exhibit 2, they are admitted into the record.

(EXHIBITS ADMITTED INTO EVIDENCE.)

MS. BOJKO: Thank you, your Honor.

EXAMINER SEE: Now, on behalf of Duke and the other EDUs, Ms. Watts.

MS. WATTS: Yes, thank you, your Honor. Your Honor, Duke Energy Ohio and the other electric distribution utilities call James Ziolkowski.

(Witness sworn.)

EXAMINER SEE: You may have a seat.

MS. WATTS: May we approach, your Honor?

EXAMINER SEE: Yes.

Ms. Watts.

- - -

JAMES E. ZIOLKOWSKI

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

DIRECT EXAMINATION

By Ms. Watts:

Q. Sir, would you state your name.

A. My name is James E. Ziolkowski.

Q. And, sir, where are you employed?

A. I'm employed by Duke Energy Business Services.

MS. WATTS: And, your Honor, I would ask that the direct testimony of James Ziolkowski be marked as Joint Exhibit 1, please.

EXAMINER SEE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Ziolkowski, do you have the document that has just now been marked as Joint Exhibit 1?

A. Yes.

Q. And can you identify that, please?

A. This is the -- my direct testimony in this case.

Q. And did you prepare that testimony?

A. Yes.

Q. And is your testimony today on behalf of all of the Ohio electric distribution utilities that are shown on the cover of your testimony?

A. Yes.

Q. And do you have any additions or corrections?

A. No.

Q. If I were to ask you the questions contained therein again today, would your answers be the same?

A. Yes.

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

EXAMINER SEE: Okay. Mr. Pritchard?

MR. PRITCHARD: I have no cross-examination.

EXAMINER SEE: Ms. Mooney?

MS. MOONEY: No questions.

EXAMINER SEE: Mr. Healey?

MR. HEALEY: Yes, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Healey:

Q. Could you please turn to page 4 of your testimony.

A. Yes.

Q. Direct you to the sentence that starts on page -- on line 17, page 4, where you state "According to calculations provided by Kroger in discovery, the total savings to Kroger statewide would be of very little consequence and certainly an amount that does not justify the work that would be required for the EDUs to implement the changes proposed." Do you see that?

A. Yes.

1 EXAMINER SEE: Could I get that reference
2 again, Mr. Healey?
3 MR. HEALEY: Page 4, lines 17 to 20, of
4 the witness's testimony.
5 EXAMINER SEE: Okay. Thank you.
6 Q. Now, you are aware under Kroger's
7 proposal other merchant customers would be eligible
8 to participate as well, correct?
9 A. Yes.
10 Q. And you referred to calculations provided
11 by Kroger in discovery. Those calculations don't
12 calculate how much savings Kroger would achieve in
13 future years, correct?
14 A. That's correct.
15 MR. HEALEY: That's all I have, your
16 Honor.
17 MS. BOJKO: May I have that question and
18 answer read back, please?
19 EXAMINER SEE: Sure.
20 (Record read.)
21 EXAMINER SEE: Mr. McNamee?
22 MR. McNAMEE: No questions, your Honor.
23 Thank you.
24 EXAMINER SEE: Mr. Stinson?
25 MR. STINSON: I just have a follow-up to

1 OCC's question.
2 - - -
3 CROSS-EXAMINATION
4 By Mr. Stinson:
5 Q. When you are talking about the
6 calculation provided by Kroger in discovery, is that
7 only figures related to Kroger?
8 A. Yes.
9 MS. BOJKO: Objection.
10 EXAMINER SEE: I missed the last part of
11 that.
12 MS. WATTS: Your Honor, I would just like
13 to -- the discovery provided by Kroger was marked as
14 confidential, so to the extent we are getting into
15 great detail about that discovery, I think we all
16 need to be careful about that.
17 MS. BOJKO: And, your Honor, I would also
18 note that that discovery hasn't been identified for
19 the record. I have no idea which discovery they are
20 talking about. We are making general statements
21 about it, so I object to the vagueness of the
22 question.
23 MR. HEALEY: Your Honor, I believe the
24 witness has answered all the questions that have been
25 asked.

1 EXAMINER SEE: He has and the only thing
2 that -- I appreciate the reminder it was marked
3 confidential, and the witness needs to be cognizant
4 of that fact. I was just trying to hear the last
5 part of Mr. Stinson's question.
6 MS. BOJKO: Could I hear the question
7 back, your Honor?
8 EXAMINER SEE: Mr. Stinson's question?
9 MS. BOJKO: Yes, please.
10 EXAMINER SEE: Yes.
11 (Record read.)
12 MS. BOJKO: Your Honor, I move to strike.
13 I did actually insert an objection. I guess I wasn't
14 quick enough. I move to strike the response. Again,
15 the question is vague and uninformative of which
16 discovery and there's been no identification of the
17 discovery. It's not an evidentiary document, so I
18 would object.
19 MR. STINSON: It's already been answered,
20 your Honor.
21 MS. BOJKO: I didn't hear.
22 EXAMINER SEE: I think this started with
23 Mr. Healey's question to the witness. Your
24 objection -- note your objection.
25 Did you have any further questions,

Mr. Stinson?

MR. STINSON: Just was the objection sustained or overruled?

EXAMINER SEE: At this point it's overruled.

MR. STINSON: Okay. Thank you. I just have one other question.

Q. (By Mr. Stinson) Did you provide to Kroger the number of mercantile customers in Duke or any other EDU service territory?

A. I don't recall if we provided that number or not.

Q. Do you recall if you provided that number?

MS. BOJKO: Your Honor, I didn't hear his question.

EXAMINER SEE: Speak up.

Q. I am just asking if you're aware whether Duke or any other EDUs provided Kroger with the number of EDUs -- with the number of mercantile customers in each EDU's service territory?

A. I don't recall providing that number. We've done a lot of discovery in a lot of cases and I do not recall that and I probably would remember it if I had provided that.

MR. STINSON: Thank you. Nothing further.

EXAMINER SEE: Ms. Bojko.

MS. BOJKO: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Bojko:

Q. Good afternoon.

A. Good afternoon.

Q. Just so I'm clear, the statements you're making in your testimony are statements on behalf of all of the Ohio distribution companies; is that correct?

A. That's correct.

Q. And are you personally familiar with all of the Ohio EDUs' billing systems?

A. No. I am personally familiar with Duke Energy Ohio's billing systems. And, however, I have had discussions with subject matter experts with the other Ohio EDUs, and I am representing them, but I have not -- I am not personally familiar with the other billing systems or of the other EDUs.

Q. And are you aware whether Duke or other utilities currently track mercantile accounts on an aggregated basis?

1 A. At Duke Energy Ohio we do have some
2 databases that track mostly from marketing purposes
3 all the accounts associated with many of the
4 customers. None of those tracking systems are used
5 for billing purposes. They are mainly used for
6 marketing, or they are used by our account reps or
7 for other purposes, but we do not track those
8 accounts within our billing system, and we never
9 have.
10 Q. So you're familiar that account reps
11 often provide their customers with aggregated data;
12 is that correct?
13 A. Yes.
14 Q. And it's true that the utilities have
15 ongoing communications between account reps and large
16 customers, correct?
17 A. It's true that the utilities attempt to
18 have ongoing communications, yes, it's true.
19 Q. And could you turn to page 8 of your
20 testimony, please. On line 14 you discuss ongoing
21 communications. Do you see that?
22 A. Yes.
23 Q. And you discuss that ongoing
24 communications would have to occur under Mr. Higgins'
25 Kroger's proposal and that a manual process would

1 have to occur; is that true? Or do you see that?
2 A. Yes, I do state that.
3 Q. Isn't it true that EDUs perform manual
4 calculations today?
5 A. It is true, and it's not a desirable
6 circumstance.
7 Q. And on lines -- I think it begins on line
8 13 and goes to line 17, you state that the proposal
9 would require EDUs to ensure that all associated
10 accounts, including new ones, are factored into the
11 monthly calculations. Do you see that?
12 A. Yes.
13 Q. And you've read -- I take it you've read
14 Mr. Higgins' testimony?
15 A. Yes, I have.
16 Q. And isn't it true that this is not his
17 proposal? As he explained here this morning, that
18 the burden of explaining or identifying the counts is
19 on the mercantile customer?
20 A. He did but there is a problem with that.
21 Accounts don't always change hands or change
22 ownerships on September 1 of each year. There are
23 changes that occur throughout the year. One
24 mercantile customer can sell an account to another
25 customer and so there is going to have to be tracking

of all of these accounts all throughout the year and not just September 1.

Q. Well, sir, isn't it true that Mr. Higgins' proposal is that the identified accounts in the application process that's submitted by September 1 would not be changed throughout the year?

A. That's what he proposed and that's a problem because in accounts -- that works pretty well for new accounts that are coming in that are owned by, say, Kroger, new store that opens but that does not work very well for a store that it -- a former Kroger store that is sold to Thrift Way, for example. All of a sudden we may be providing a credit to Kroger in arrears per Mr. Higgins' proposal associated with usage at a store that Kroger no longer owns because, as I mentioned, these accounts do not change hands always on September 1 of each year, so it's going to require lots of ongoing tracking to make this -- to make this work.

Q. So you would propose that the application process -- that the mercantile customer not identify the customer accounts and that that does not remain stagnate for a year? You would propose ongoing fluctuation of those accounts?

A. Well --

1 MS. WATTS: Objection. This witness is
2 not making any proposal. This witness is explaining
3 how it would work.
4 EXAMINER SEE: Sustained.
5 MS. BOJKO: Thank you, your Honor.
6 Q. (By Ms. Bojko) You understand, sir, that
7 Kroger's proposal as in Mr. Higgins' reply testimony
8 on pages 3 and 4 does not propose modifying the
9 accounts within the year, only on an annual basis
10 through an application by the mercantile customer
11 requesting this application of the two-tier rate
12 design block?
13 A. My understanding of Mr. Higgins'
14 testimony is that on September 1 of each year, the
15 mercantile customer would -- would apply for this,
16 and they would designate the accounts that would be
17 applicable. My position is things happen during --
18 between September 1 of each year. Accounts go,
19 accounts -- you have new accounts, you have old
20 accounts and, therefore, certainly if this proposal
21 were adopted, the September 1 application would be
22 very useful, but it's far from sufficient to make
23 this work.
24 It's going to require constant ongoing
25 tracking by EDU personnel to make this work because

1 we're talking about cutting checks for real dollars,
2 and it has to be accurate. This isn't an academic
3 exercise that Mr. Higgins is proposing. This is real
4 dollars in play.
5 Q. And let's turn back to page 4, the
6 sentence you were referring to earlier about the
7 savings would have little consequence. You agree
8 that if Kroger's proposal was adopted and Kroger
9 participated, they -- there would not be a
10 substantial impact on the revenue requirement or
11 adjustments that would need to be made to the USF
12 rider; is that correct?
13 A. Based on the -- I don't want to get into
14 confidential information, but based on the data
15 request for the rates that are currently in effect,
16 the savings would be small but that just applies to
17 Kroger. In future years it could be larger than that
18 because rates are adjusted, the USF rates are
19 adjusted for each EDU each year, so the savings could
20 be substantially larger, but more importantly when we
21 start applying this process to all the other
22 mercantile accounts who presumably would want to get
23 in on the deal, then the dollars could expand
24 dramatically and there could be cost shifting.
25 Q. Let's talk about that a little bit. It's

also true that the savings could be less and there would be even more minimal impact on the revenue fund; is that -- the revenue requirement for the USF fund.

A. Are you referring to the savings for Kroger?

Q. That's what you are referring to in your testimony, yes, sir.

A. It could be, but I think that in reality it would be more. And the reason for that is currently Duke Energy Ohio's USF rate is an aberration where the first step is equal to the second step, but in most years the second step is cheaper than the first year and that's happened I think every single year up until now. So in future years, those dollar figures for Kroger will be higher than what was stated in the discovery.

Q. And if -- if the rate blocks are the same, there's no impact on the revenue fund for Kroger's proposal; is that correct?

A. Yes, of course.

Q. And let's talk if the impact is not large enough, which is what you said, there would be of little consequence, I want to talk about that situation for a minute. If there is not a large

1 impact on the revenue requirement, there may be no
2 change in that USF rider rate blocks; is that
3 correct?
4 A. Would you state that once again?
5 Q. Sure. If there is not a large impact on
6 the revenue limit based on the proposal, then there
7 may be no change in the actual USF rates in the
8 two-tier block; is that correct?
9 A. Well, that's a hypothetical but if there
10 were -- but, for example, and let me just make up a
11 number, if there was only $1,000 of savings and you
12 add a thousand dollars of revenue requirement to the
13 first step, when you divide that by 20 billion
14 kilowatt-hours in the Duke Energy service territory,
15 that rate change would come out to the fifth decimal
16 place, so it would not be billable, would not impact,
17 but we are talking much larger dollars here for
18 Kroger, and when you apply that to all the mercantile
19 customers, it's much larger than that so.
20 Q. But you said it would be of little
21 consequence; is that correct?
22 A. The answer depends -- the amount of
23 consequence depends completely on the amount of
24 savings which depends upon the number of mercantile
25 customers and the differential between the first and

1 second step.
2 Q. Okay. So there are other factors
3 involved in this calculation such as if a customer
4 consumes more electric, then they are paying a higher
5 amount for their share of the USF rider; is that
6 correct?
7 A. Would you state that again?
8 Q. If a customer consumes more electricity
9 than today, if they add another line, then they will
10 be contributing a higher or greater amount under the
11 application of the USF rider, correct?
12 A. Are you referring to current rates?
13 Q. Yes.
14 A. The way it is currently structured?
15 Q. Yes.
16 A. Well, it's a -- it's a per kWh rate, so
17 if a customer uses more kWh, then they have a higher
18 charge.
19 Q. Right. And that would, in turn, increase
20 the revenue that's received by the utilities and
21 then, in turn, again to UDSA so that would have an
22 effect of lowering the USF if that change was
23 significant going forward; is that correct?
24 A. Well, yes.
25 Q. And if a customer -- similarly if a

customer goes out of business and that customer is no longer paying their share of the USF rider, then similarly that would affect the revenue requirement. If the change is significant enough, that would affect the revenue requirement that ODSA -- the revenue ODSA receives which would, in turn, affect the next year's revenue requirement, correct?

A. That's correct. Customers come and go.

Q. Customers come and go and usage among the existing companies rises and falls, correct?

A. Yes, it does.

Q. And all of those factors will have an impact on the amount and level of revenue that is received from customers to fund the USF; is that correct?

A. That's correct.

Q. And when those customers come and go, or their usage rises and falls, you do the annual calculation and there may be an impact on the rates in the two-tier revenue block such that the first block customers under 833 kWh may pay more or less depending on what had happened that previous year?

A. Correct. The rates change each year based on the annual changes in both revenue requirement and kWh billing determinates that are --

Q. And that situation would not change regardless of whether Kroger's proposal was implemented or not implemented, correct?

A. Correct. That's just basic ratemaking.

Q. And if Kroger's proposal was implemented and Kroger was able to take -- let's clarify something. So under Kroger's proposal, does Kroger still pay the USF rider rate per kWh up to the 833 kWh?

A. Under the proposal Kroger only pays it once.

Q. Up to --

A. Currently each account pays -- pays mostly -- and presumably each store is -- typically each Kroger store is under 833,000 kilowatt-hours a month. Right now, all the stores are paying under the first step, but under Mr. Higgins' proposal, when it's aggregated and we only do one calculation, they would only pay once at the higher rate, and then all additional kWh would be at the lower rate.

Q. Right. So current -- let's say under the current implementation of the USF, Kroger is paying the higher rate for every single kWh consumed, every single account; is that correct?

MR. HEALEY: Objection, your Honor. That

1 assumes facts not in evidence. We don't have
2 evidence of what Kroger's actual usage is.
3 MS. BOJKO: I think the witness just said
4 that.
5 EXAMINER SEE: Based on -- based on the
6 discussion that counsel was having with the witness,
7 that's true. The objection is overruled.
8 MS. BOJKO: Thank you.
9 Q. (By Ms. Bojko) So today if Kroger is
10 paying all of its usage under the first rate block,
11 assuming as you just did that the 833 applies to most
12 Kroger stores, if that's true, and a large commercial
13 customer goes out of business and they are no longer
14 paying the USF rider, either the first tier or the
15 second tier, then those revenue shortfalls would
16 fall -- flow through the USF fund, and Kroger would
17 be one of the customers that would have to make up
18 that shortfall; is that true?
19 A. When the customer -- when a customer goes
20 out of business or -- then that does affect the
21 billing determinants for the rate for the next year.
22 Q. So Kroger would be affected; is that
23 correct?
24 A. Along with everybody else.
25 Q. And -- and the customer -- a customer

1 that is using -- let's take two customers. Let's
2 take a megawatt, one megawatt customer that is a
3 single site customer, okay? That one megawatt
4 customer under today's implementation of the USF rate
5 design, that one megawatt customer will pay up to 833
6 kWh of its usage under the first rate block, and then
7 the remaining usage would be under the second rate
8 block; is that correct?
9 A. Well, I mean, talking technically here
10 you talk one megawatt. That's a thousand kW. There
11 is only 730 hours in an average month so the most I
12 think you could have is 730 kWh, so I think we need a
13 little bigger customer than that.
14 Q. Thank you for bringing the lawyer back to
15 reality. I appreciate that. Let's talk about --
16 let's talk about a 10 megawatt customer. Are you
17 more comfortable with that?
18 A. Yes.
19 Q. So if a 10 megawatt customer today under
20 the USF implementation rider, if that USF -- if that
21 customer is 10 megawatts, they would pay up to 833
22 kWh per -- on a per month calculation for their usage
23 under the first tier, and then the remaining amount
24 above that would be billed under the second tier; is
25 that correct?

1 A. That's correct.
2 Q. Okay. So if Kroger Companies, if you --
3 if Kroger has -- let's just go on the hypothetical,
4 not if it's technically possible, okay? If Kroger
5 had 10 stores and if you aggregate their data for
6 those 10 stores to equal 10 megawatts, so they have
7 the same load as the single-site customer but they
8 are a multi-site customer, under today's USF rider
9 implementation, Kroger consuming the same amount of
10 electricity would pay a higher USF rider rate
11 collectively than the single-site customer that uses
12 the exact same kWh; is that correct?
13 MR. HUGHES: Your Honor, I'll object to
14 the vague reference to Kroger in the latter portion
15 of that question. I am getting confused as between
16 Kroger the corporate entity or each individual Kroger
17 site that she's referring to in her question.
18 MR. SCHULER: Same objection, your Honor.
19 MS. BOJKO: I can rephrase, your Honor.
20 I thought it was pretty clear, my hypothetical was,
21 that we're assuming Kroger has multiple facilities
22 within the EDU's same territory, and I am comparing
23 the aggregation of those multiple facilities that
24 equal the same demand as the single-site customer.
25 And I'm asking under that scenario if Kroger, who

1 consumes the same amount of energy or electricity as
2 the single-site customer, if Kroger would pay more
3 for their USF rider rate charges.
4 MR. SCHULER: Your Honor, I would renew
5 the objection. I think it's still unclear when we
6 are saying Kroger at the very end of that question,
7 is Kroger the corporate entity or is that each
8 individual Kroger site?
9 MS. BOJKO: I said three times the
10 Krogers collectively paying, and we're aggregating
11 their load under my hypothetical. I can try again,
12 your Honor. I think the witness can answer if he
13 knows.
14 EXAMINER SEE: Yeah. Did you understand
15 the question, Mr. Ziol --
16 THE WITNESS: Ziolkowski.
17 EXAMINER SEE: Mr. Ziolkowski, thank you.
18 A. First off, the rates -- the same rates
19 apply to everybody, but the sum of the individual USF
20 charges for each Kroger store would be higher when --
21 when billed individually than would the total charge
22 be if you aggregated all the stores and then ran it
23 through the rate calculation once.
24 Q. So you would agree with me under the
25 current rate design structure under the two-tier,

1 that some customers pay more for their share of the
2 USF than other customers?
3 MR. ECKERT: Objection, your Honor, vague
4 as to customers.
5 MR. SCHULER: And fair share.
6 EXAMINER SEE: Sustained.
7 Q. I'll rephrase. Thank you. You would
8 agree that some customers pay more under the current
9 proposal than other customers. Residential customers
10 pay something different than large commercial
11 customers; is that true?
12 A. First off --
13 Q. Wait. Excuse me. Assuming that the
14 utility is implementing a two-tier rate design that's
15 different, that has two different rates for the rate
16 structure.
17 MR. HEALEY: Object to that as compound
18 and incomplete hypothetical. She asked one question
19 and shifted to a new question halfway through
20 involving residential customers that was not part of
21 the first hypothetical.
22 MS. BOJKO: Do you want me to try again?
23 EXAMINER SEE: Yes.
24 Q. (By Ms. Bojko) You would agree, sir, that
25 there are -- there are -- you would agree that

1 mercantile customers under today's proposal could in
2 the same EDU service territory and assuming that the
3 EDU has a two-tier rate block that's -- that has two
4 rates, that there are some mercantile customers that
5 pay more than other mercantile customers.
6 MR. SCHULER: Object, incomplete
7 hypothetical. Are we talking about two customers
8 that use the same amount of usage? Still pretty
9 vague.
10 MS. BOJKO: It doesn't matter.
11 MR. STINSON: I object too. I don't know
12 what more is, on what basis the more is.
13 MS. BOJKO: It could be a dollar more.
14 Do some customers pay more? Do they pay more under
15 the current USF rider rate design than other
16 mercantile customers?
17 MR. STINSON: Again, my question -- my
18 problem is with more, whether it's a per
19 kilowatt-hour basis, whether it's on a monthly basis.
20 It's just a vague question.
21 EXAMINER SEE: Try it again, Ms. Bojko.
22 Q. (By Ms. Bojko) I was trying to simplify,
23 but you talk in your testimony about
24 nondiscriminatory and fairness; is that correct?
25 A. That's correct.

Q. And isn't it true that in my hypothetical a mercantile customer that has multiple accounts that uses the same amount of energy as a mercantile customer with a single site could pay more under the current USF rate design structure?

MR. SCHULER: Objection, asked and answered.

MR. ECKERT: Objection, your Honor, vague, "in my hypothetical."

MS. BOJKO: It's not a hypothetical. It's a reality.

EXAMINER SEE: Read the question back, please.

(Record read.)

MR. HEALEY: I would make the same objection. She refers to "in my hypothetical," and I don't know that there is any context for that statement, what hypothetical we are now talking about.

MS. BOJKO: Okay. You're right. Your Honor, it is not a hypothetical because it's the existing rate design structure.

Q. (By Ms. Bojko) So in the existing rate design structure, a single-site customer that uses 10 megawatts will pay less than a multi-site mercantile

customer that pay -- that uses 10 megawatts; is that true?

MR. SCHULER: Your Honor, I would object. Which EDU is she talking about? And when she says "current rate structure," is that the one that is in place for 2017 or the proposal for 2018?

MS. BOJKO: Current means current.

MR. HEALEY: I would object to relevance. If we are talking about the current rate structure as ODSA's proposed for 2018, the 2017 is not in play here, so any questions about that is not really relevant.

MS. BOJKO: Your Honor, they are asking to continue the 2017 rate design structure into 2018, so this question is very relevant.

EXAMINER SEE: The objection is overruled.

Reread the question for the witness.

(Record read.)

A. First off, I want to point out it's not true for Duke Energy Ohio because currently our two blocks are the same. So that's the first thing I want to mention.

Second of all, I do think we need to talk about what is a customer here. You referred to

1 mercantile customer as if that is a billing entity,
2 and for Duke Energy Ohio and for all the other Ohio
3 EDUs that are representing -- we do not bill
4 mercantile customers. My understanding of the term
5 mercantile customer that comes from Senate Bill 212
6 is as related to energy efficiency opt out and
7 qualifications for opting out of the energy
8 efficiency, but we do not bill mercantile customers.
9 All of the EDUs bill on an account-by-account basis.
10 However, to get back more to your point though, yes,
11 aggregated billing will normally result in lower
12 rates than -- than single-site billing.
13 Q. And you do realize, sir, mercantile
14 customer is a -- is a definition under the law; it's
15 not my use of mercantile. It is actually a
16 definition; is that correct?
17 A. Yes.
18 Q. It's a defined term in the statute?
19 A. Yes. I've seen it defined.
20 Q. 4928.01 is defined.
21 A. Yes.
22 Q. And on line 17 you talk about a subset of
23 customers that could be created under this proposal.
24 Do you see that?
25 A. What page are you on?

Q. Page 5 still, line 17.

A. Yes.

Q. And today currently there is a separate set of customers, and I am using your words, sir, there is a second -- a subset of customers that are eligible to receive application of the second-tier USF rate -- USF rate --

MR. ECKERT: Objection, your Honor, to the word "eligible," vague.

Q. -- structure; is that true?

MS. BOJKO: I didn't hear the objection.

EXAMINER SEE: His objection was eligible.

MR. ECKERT: Vague as to what she means by "eligible," "eligible to receive."

MS. BOJKO: I will a rephrase, your Honor.

EXAMINER SEE: Okay.

Q. (By Ms. Bojko) Are there certain customers that are eligible to take advantage of the second tier of the USF rate structure?

A. Accounts that have monthly usage greater than 833,000 kilowatts hours take advantage partially of the two-tiered rate structure.

Q. So when I use the words "eligible

1 customers that are allowed to take advantage of the
2 second tier of the USF rate structure," you know what
3 I mean?
4 A. No, not really because you're talking
5 about eligible customers and our billing is based on
6 an account basis, not on a customer -- aggregated
7 customer basis, and I -- I believe that you're using
8 the term eligible customer as meaning Kroger in the
9 aggregate.
10 Q. No. That's not what I asked. I'm saying
11 there are certain customers today that are eligible
12 that are able to take advantage of the second-tier
13 rate design block; is that true?
14 A. I would not agree with your phrasing. I
15 will say there are eligible accounts that are able to
16 take advantage of that second tier.
17 Q. Fair enough. And that -- and those
18 accounts that are eligible to take advantage of the
19 rate design block is only available to certain
20 customers; is that correct? Certain accounts, excuse
21 me.
22 A. The second step in the rate is available
23 actually to all accounts, even residentials, if they
24 use enough kilowatt-hours but obviously there aren't
25 a whole lot of accounts that use multiple megawatts

of demand.

Q. Right. So there are only certain customers that could possibly exceed the 833 kWh to be available to take advantage of that second tier; is that correct?

A. 833,000 kilowatts-hours, there are not a lot of customers that are that large.

Q. Okay. So you would agree with me that there's a certain group of customers that are large enough to be able to take advantage of the two-tier rate design?

A. I would not use the term "group" because that implies some sort of organization among themselves in my mind but there are a -- there are customers that are large enough to take advantage of that second block. There are accounts large enough to take advantage of that second block.

Q. And would you -- would you call those a subset? Those accounts are a subset that are available to take advantage of that?

A. The term subset to me has connotations meaning they meet some other kind of criteria. But to me you are either -- the account is either large enough or it's not large enough. All of our billing is done on an account basis.

1 Q. And you would agree with me that Duke and
2 other utilities are required by the statute to
3 recognize mercantile customers; is that correct?
4 MR. HEALEY: Objection, the statute, what
5 does "recognize" mean? It's very vague.
6 MR. ECKERT: Objection also to the extent
7 it calls for a legal conclusion.
8 MS. BOJKO: Your Honor, he brought up the
9 statutory provision actually, so I'll rephrase.
10 Q. (By Ms. Bojko) In your regulatory
11 experience, there are provisions, 4928.01, and in
12 Chapter 4928 of the statute, there are -- of the
13 Revised Code, there are provisions that require the
14 utility to designate or recognize, identify
15 mercantile customers; is that true?
16 MS. WATTS: Objection, your Honor. If
17 Ms. Bojko could give Mr. Ziolkowski an example of
18 what she's inquiring about, that might be helpful but
19 just an open-ended question like that is really
20 improper for him to answer.
21 MS. BOJKO: Your Honor, the witness just
22 said one, so I think he has experience, but
23 absolutely I will be happy to provide him with
24 documentation.
25 MR. SCHULER: Your Honor, I further

1 object. She is asking a nonlawyer to apply -- to
2 draw legal conclusions based on what's provided in
3 the statutes.
4 MR. STINSON: And also, your Honor, the
5 statutes speak of themselves -- speak for themselves,
6 rather, as to which sections mercantile customer
7 applies.
8 EXAMINER SEE: Did you want to respond,
9 Ms. Bojko?
10 MS. BOJKO: I'm sorry, I didn't hear you.
11 EXAMINER SEE: Did you wish to respond?
12 MS. BOJKO: Obviously I think that the
13 experts and regulatory experts are often here to talk
14 about the Commission's rules and how the utilities
15 actually implement those rules and statutory
16 provisions. I am not asking him to give a legal
17 conclusion. I am asking him if their utility systems
18 actually designate mercantile customers.
19 MS. WATTS: Objection as to what is meant
20 by utility systems.
21 MR. SCHULER: I am not sure that was the
22 pending question, your Honor.
23 EXAMINER SEE: Well, let's have the
24 question read back and Ms. -- let's have the question
25 read back. Let's start there.

1 (Record read.)
2 EXAMINER SEE: To the extent that
3 Mr. Ziolkowski is not an attorney, he can answer the
4 question based on his experience. I butchered his
5 name. So sorry.
6 A. I have been aware of the term mercantile
7 customer since 2008 or 2009. And I am not a lawyer.
8 My experience with that term has always been in
9 dealing with energy efficiency rider matters and the
10 ability of mercantile customers to be able to opt out
11 of energy efficiency. I am not aware of mercantile
12 customers having any other rights or under any
13 other -- any of our rates other than energy
14 efficiency but it's an EE matter in my experience but
15 I am not an attorney.
16 Q. And I am merely asking for your
17 regulatory experience. You reference the EE so that
18 is -- there is a couple of different provisions under
19 energy efficiency wherein a mercantile customer
20 designation would be recognized by the utility; is
21 that correct?
22 A. Could you repeat that again, please?
23 Q. Sure. Under energy efficiency 4928.66 --
24 I am happy to provide it to you just so you have it
25 because I know that's the next objection from your

1 counsel.
2 MS. BOJKO: May I approach?
3 MR. STINSON: Well, your Honor, I am
4 going to object because we're talking about the USF
5 statutes. We are not talking about energy
6 efficiency. I object as to the relevance of this
7 line of questioning.
8 MS. BOJKO: Happy to respond, your Honor.
9 EXAMINER SEE: Go ahead.
10 MS. BOJKO: First of all, he opened the
11 door by talking about the energy efficiency statute
12 and the mercantile provision in that, but then he
13 also said he didn't understand the proposal to
14 designate Kroger as a mercantile customer, so I'm
15 asking him about that designation and if that's
16 recognized anywhere else on their system is what the
17 question is.
18 MS. WATTS: And, your Honor, I believe
19 the witness has already answered that question.
20 MR. STINSON: There was a reference in
21 the statutes to a mercantile customer with respect to
22 the USF statutes. The question should be restricted
23 to those statutes. It's irrelevant.
24 MS. BOJKO: Your Honor, for the record --
25 EXAMINER SEE: The witness can answer the

1 question. I believe he also -- he indicated what --
2 what his knowledge was about mercantile customers and
3 what purpose it was designated for. He did discuss
4 that earlier, but I believe we're talking about other
5 matters and what the EDU can do to bill certain
6 customers, so I am going to allow the question.
7 MS. BOJKO: I will rephrase, your Honor.
8 EXAMINER SEE: Okay.
9 Q. (By Ms. Bojko) For energy efficiency
10 purposes it's your understanding that the utilities
11 must include the effects of all demand response for
12 mercantile, so they need to know who those mercantile
13 customers are, correct?
14 MS. WATTS: And, your Honor, I will
15 object to the extent these questions involve energy
16 efficiency programs which this witness is not
17 qualified to respond to nor did he make any
18 representations that he would be.
19 EXAMINER SEE: And the witness can answer
20 the question.
21 A. It sounded like your question is now
22 referring to our annual update filings in our EE/PDR
23 cases and including the impacts of mercantile
24 customers? Those customers that have opted out; is
25 that your question? I'm concerned now it sounds like

1 we are starting to get into our EE case filings here.
2 So maybe I don't understand your question here.
3 Q. No. I am asking for purposes of
4 implementing -- and for purposes of operating in Ohio
5 there are certain requirements that the utilities
6 have to meet; would you agree with that?
7 A. That is -- that's a vague question. You
8 said certain requirements that a utility has to meet?
9 We have lots of requirements.
10 Q. I was trying to break it up for you.
11 I'll ask -- I don't want any compound objections, but
12 I'll ask. If -- there are certain requirements that
13 utilities must meet to operate in Ohio and one of
14 those requirements is energy efficiency and the
15 designation of a customer as mercantile for purposes
16 of excluding their demand response; is that correct?
17 A. My understanding is that customers
18 designate themselves as -- as mercantile when they
19 make application to the Commission to opt out of EE.
20 Q. So you don't believe that the onerous or
21 the burden is on the utility company for excluding
22 the effects or including the effects of demand
23 response with regard to mercantile customers?
24 A. Are you referring to when we make our
25 annual EE update filings?

Q. That's -- that's one case.

A. If so, we do include the impacts of mercantile opt-out customers in our EE filings but --

Q. And there's also --

EXAMINER SEE: Just a second. Were you finished with that response? You said "but."

THE WITNESS: Yes, I'm done.

MS. BOJKO: My apologies.

Q. And there's also a provision in Chapter 4928 where the definition of mercantile customer lies that you're not -- the utility is not allowed to aggregate mercantile customers; is that true?

A. I'm not familiar with that provision. I'm not a lawyer.

Q. I am not asking you if you're a lawyer. I am asking you if the utilities have to designate the accounts as mercantile in order to not aggregate those customers in governmental aggregation programs per 4928.20.

MS. WATTS: And, again, your Honor, these are questions that are very far afield of what Mr. Ziolkowski's testimony is and also very clearly EE related, and Mr. Ziolkowski handles the financial aspects of our EE filings, but he's not an EE witness and never has been.

MS. BOJKO: Your Honor, that's not my question at all. My questions are going to he is saying that they can't do it. They don't know how to do it. It's so hard. They don't have mercantile -- they don't have the billing systems available to designate the merchant customers, and I am asking him if they do it already per other requirements in the same chapter of the law.

MR. SCHULER: Your Honor, I think part of the problem with these questions is the second part, the "per the statutes." Asking a question about whether the utilities do it is different than whether they are doing it pursuant to the law. She is requiring a witness to answer legal questions.

EXAMINER SEE: And Mr. Higgins has indicated that he is not an attorney.

MS. BOJKO: Mr. Ziolkowski.

EXAMINER SEE: Oh, I'm sorry. Mr. Ziolkowski has indicated he is not an attorney, nor is Mr. Higgins. And with that he can answer the question as best he can.

A. In terms of our energy efficiency filing, when a customer notifies us and the Commission that they want to opt out of our EE because they are a mercantile customer, certainly we stop billing them

1 for the rider EE/PDR, and we include those accounts
2 or the -- and any -- the impacts in our annual EE
3 filings, and certainly we comply with the law and are
4 able to do that.
5 Now, in that situation though it requires
6 lots of manual intervention. The people tracking our
7 programs have to do that manually. The impacts get
8 updated in our filing and in that case and once -- in
9 our billing system for those accounts we actually do
10 have a switch to turn off EE/PDR, but somebody needs
11 to go to each of those accounts and turn off the
12 rider EE -- EE/PDR billing for that account. So
13 there is no master button that says do this for all
14 Kroger accounts. That does not exist at Duke and my
15 understanding is does not exist at any of the other
16 EDUs in Ohio.
17 Q. Thank you for talking about the opt-out
18 provision of the energy efficiency statute. I -- my
19 question asked you that if the utilities are required
20 to include -- include the effects of all demand
21 response programs for mercantile customers, if that
22 is a requirement of the utilities, that the utilities
23 have to designate who the mercantile customers are in
24 order to accomplish that requirement.
25 MR. SCHULER: Your Honor, objection.

Now, it is blatantly only asking a legal conclusion.

MS. BOJKO: It's not a legal conclusion at all. It is saying isn't it true the utilities have to designate certain customers as mercantile in order to operate under Ohio rules.

EXAMINER SEE: The objection is sustained.

MS. BOJKO: Okay.

Q. (By Ms. Bojko) Isn't it true that in order to operate that, there are times when the utility will have to designate customers as mercantile customers?

A. Yes, and if I could just take a step further, under the EE and in our EE filings, in our EE programs, the only reason we are concerned with whether one customer or another is a mercantile customer is because they can opt out of EE, and then we also do include those impacts in our programs. But if you -- you could have a mercantile customer who for whatever reason isn't interested and they never take any action to opt out, and they could be a mercantile customer, have lots of facilities all over, be a national account and all that, but if they don't take action to opt out of EE, then we don't do anything special for them. They just get billed

every month, and so we don't go around -- we don't proactively go and say, hey, these customers could possibly be mercantile and those could be mercantile. We don't do that unless there is a need to do that.

Q. So you are not testifying here today that the utility has to designate customers as mercantile in order to comply or not comply with the law? That's not your -- that's not your purpose here today; is that correct?

A. Could you say that one more time?

Q. Well, you are not here to -- you keep talking about opt out, and I am not talking about opt out whatsoever. There is a requirement in the law that requires the utility to consider, include certain demand response from mercantile customers, and I'm asking if the utility designates customers as mercantile in order to accomplish that utility function.

A. The reason I stated what I stated was because when we consider the demand response for mercantile customers in our EE filings, it's because those customers have opted out and that's why I am tying in opting out. But if they haven't opted out of EE, we don't really care if they are mercantile or not mercantile or whatever. They are just treated as

normal account billing so that's the only reason they get any special attention in our EE filings.

Q. So you think that only applies to opt-out customers.

A. The mercantile designation, that is relevant only for an EE for opting out.

Q. Okay. And you would -- you don't believe that the utilities have a mercantile designation -- mercantile designation to not aggregate certain customer -- mercantile customers in aggregation programs?

MS. WATTS: Objection, vague.

EXAMINER SEE: Could you read that question back for me. I didn't catch the beginning of it.

(Record read.)

EXAMINER SEE: Okay. Try again.

Q. (By Ms. Bojko) Do the utilities -- are the utilities required to designate customers that are mercantile customers with respect to aggregation programs?

MS. WATTS: And, your Honor, I would like to object just because I think if -- it's not clear to me are we moving into the -- the supplier world of aggregation programs; is that what you are talking

about, when aggregations are done by communities to do competitive shopping?

MS. BOJKO: Yes. I will not mention the statutory provision of 4928.20 but, yes, that's what I'm referring to.

MS. WATTS: So we move into a sort of different world here since we have gotten so far afield of USF, but I just want to be clear what kind of operation within the utility we are talking about so that the witness can respond appropriately.

MS. BOJKO: Your Honor, in my defense I have been trying to get off of EE opt out for at least a half hour now and I already mentioned opt-out aggregation programs and whether the utilities were required to designate customers that met the definition of mercantile as such for purposes of not including them in those programs.

EXAMINER SEE: Sir, do you understand the question?

A. So now -- just now we are talking about customer Choice aggregation and mercantile under customer Choice aggregation; is that correct? Is that what we are talking about?

Q. Yes.

A. I am not familiar with those rules.

Q. Okay. And you are not familiar with whether the utilities need to specifically designate mercantile customers as mercantile customers for that purpose.

A. I am not familiar for that purpose.

Q. And it's your understanding that the basis of the USF rider is also in Senate Bill 221 that you mentioned. It's in the same chapter as the definition of mercantile, 4928; is that correct?

A. I don't know. I'm not familiar enough. I have to read that again.

Q. Would you agree with me, sir, that if Kroger is -- if Kroger's proposal is approved and Kroger is allowed to aggregate their load for purposes of applying the USF rider two-tier rate design to them and they are in a service area where there are two separate rates for the two-tier rate design, that Kroger would pay less than what Kroger is currently paying under the existing USF as well as the proposal to continue the existing USF rider?

MR. STINSON: Objection. Can I have that reread, please.

(Record read.)

MR. STINSON: I object to the form. It's compound.

MR. SCHULER: Your Honor, I would further object that it's asked and answered. We have gone down this path before, and I renew the objection I had at that time. It doesn't identify which EDU's billing system -- or, excuse me, EDU's rate we're talking about.

MS. BOJKO: Your Honor, in my defense I can't break it out because every time I try to break it up and simplify, they all say -- OCC is saying I'm missing the point about current proposal versus the future; then the utilities say I'm missing the point about the two-tier rate design and which utility we are under. I think if the witness can answer the question, he can answer it.

EXAMINER SEE: Take another shot at it, Ms. Bojko, because I believe Mr. Stinson is correct.

MS. BOJKO: I'm sorry. Which part? That it's compound? I am be happy to take it in pieces. Every time I do an assumption is missing, and it's objected to.

EXAMINER SEE: Make sure you hit all the pieces and try again.

Q. (By Ms. Bojko) If -- if Kroger's proposal is approved and Kroger is allowed to aggregate its load for purposes of applying a two-tiered rate

1 design under the USF rider in a service territory
2 that has two separate ratings for each of the rate
3 blocks, would Kroger pay less under Kroger's proposal
4 than under the current proposal or under the existing
5 rate design?
6 EXAMINER SEE: You can answer the
7 question.
8 A. If the second transmission expansion plan
9 is lower than the first step, has a lower rate than
10 the first step, yes, they would save money.
11 Q. And isn't it required that the second
12 step be the same or lower?
13 A. Yes.
14 Q. So it would never -- the second step
15 could never be higher, correct?
16 A. That's -- that's an issue for all the
17 parties to and that's beyond the scope of my
18 testimony.
19 Q. Well, that's how it currently works,
20 right?
21 A. Yes.
22 Q. There is currently a requirement the
23 second tier cannot be greater than the first tier.
24 A. And the reason I'm not sure what the
25 requirement is for rate design because my

1 understanding is what you said earlier is that this
2 goes back 15 years to a stipulation, so I don't know
3 what could be done but that's beyond the scope of my
4 testimony in this case.
5 Q. Well, for purposes -- your purposes, it's
6 your understanding that the two blocks either are
7 equal, they are the same as it is in Duke's territory
8 today, or the second tier is lower, correct?
9 A. Yes.
10 Q. Could you go to page 5, you might still
11 be on page 5, page 5 of your testimony. On lines 20
12 you talk about -- 19 to 22 you talk about
13 Mr. Higgins' proposal that rates could fluctuate
14 dramatically in any given month. Do you see that?
15 A. Yes.
16 Q. And this could actually happen today if a
17 large steel company shuts down its operation,
18 correct?
19 A. If a large steel company were shutting
20 down operation, those reduced kilowatt-hours would be
21 reflected in the next USF calculation in the next USF
22 rate.
23 Q. So, yes, rates could fluctuate?
24 A. Yes, it could.
25 Q. And you explained yesterday -- or earlier

today that you -- the EDUs, you are aware that some EDUs perform manual calculations, correct?

A. Would you state that again?

Q. Manual, you are -- you are aware that some utilities perform manual calculations; is that correct?

A. Yes.

Q. And you are aware that some utilities already do manual billing for certain pilot programs that might be implemented.

A. Yes, and it's less than ideal. It's time consuming, costly to do that.

Q. And isn't it true that some of the utilities already aggregate customer data for various purposes, for customer accounting, for annual reports or quarterly reports to the Commission?

A. In the -- for Duke Energy Ohio, for example, for various reasons we do aggregate customer data but not for billing.

Q. But you just spoke for Duke Ohio. You are aware that other utilities may aggregate data for purposes of billing, correct?

A. I -- my understanding in having discussions is that they do not aggregate or do not do aggregated customer billing but that's my

1 understanding. But I can speak directly for Duke,
2 personal experience with Duke Energy Ohio.
3 Q. And isn't it your testimony here today
4 the proposal would just be too difficult or hard to
5 aggregate all of the customer data that might apply
6 for the mercantile -- for Kroger's proposal?
7 A. My testimony is that it will be
8 expensive. It's going to require additional manual
9 intervention, billing via spreadsheets, manual
10 processing of checks, manual verifications, auditing,
11 everything from picking selected accounts, write --
12 potentially writing computer programs and upkeep and
13 maintained every month to make sure we are collecting
14 the kWh data. And I envision that this will be quite
15 cumbersome and expensive for the utilities, and yet
16 utilities have no skin in the game on this.
17 Q. Utilities do not lose -- utilities get
18 full cost recovery for the USF rider rates; is that
19 correct?
20 A. What I am referring to here is that the
21 revenues we're -- this is a revenue issue. This is
22 not the USF costs. This is USF revenues where we --
23 the EDUs collect USF revenues from the retail
24 customers, and we remit those revenues to the ODSA
25 and those revenues are not even recorded on the EDU

1 books as revenue. They are reported as unpayables
2 and yet this -- this proposal would require the EDUs
3 to be cutting a check to some corporate entity
4 somewhere against revenues that aren't even -- the
5 utility's revenues in the first place.
6 Q. Okay. Let's talk about that for a
7 minute. Today currently or under the new 2018
8 proposal, you're not suggesting that the utilities
9 lose money from applying the second tier of the USF
10 rider declining rate block rate design, are you?
11 A. No.
12 Q. Okay. So just so we're clear, the
13 utility remits whatever is required to be paid under
14 the USF rider rate that they collect from the -- from
15 the customers and if there is any over or
16 underrecovery from the USF rider, you would receive a
17 refund, or you would be required to pay more. There
18 is a true-up?
19 A. No, that's not how it works. In the case
20 of the USF revenues, the EDUs act and I will use the
21 term almost like collection agencies -- agents. We
22 charge the retail customers the USF rates. Those
23 dollars are not even booked to the EDU ledgers as EDU
24 revenues. They don't show up on our income
25 statements even. They're recorded as payables, and

1 immediately we pass on those dollars each month, we
2 pass on those collected revenues to the ODSA. So
3 there is no true-up as far as that.
4 Now, there are other aspects of PIPP
5 accounting and USF but that's not what we are talking
6 about here. Now, we are talking here solely is USF
7 revenues and billing.
8 Q. Right. And I didn't mean to imply
9 otherwise. I guess what I was trying to ask you that
10 if there is an error in that reporting or collection,
11 the utility wouldn't be out any moneys. You would be
12 able to either go back to ODSA and ask for a refund
13 of moneys overpaid, or you would in turn have to
14 remit additional moneys for any underpayment that you
15 may have made.
16 A. In the event that the revenues are not --
17 there seems to be -- if there is an error in the
18 transmission -- transmittal of the USF revenues, then
19 the utility would talk with ODSA and work it out
20 somehow.
21 Q. It's your understanding that the utility
22 wouldn't be held responsible to pay any differential
23 in the rate design block whichever way the Commission
24 chooses to go.
25 A. I would not expect there to be an

1 earnings impact to the company.
2 MS. BOJKO: Thank you. Your Honor, may I
3 approach?
4 EXAMINER SEE: Yes.
5 MS. BOJKO: For identification purposes I
6 would like to mark this as Kroger Exhibit 5.
7 EXAMINER SEE: 5. And what are you
8 marking as 5?
9 MS. BOJKO: Thank you. For
10 identification purposes I am marking as Exhibit 5 an
11 aggregate list of Kroger's accounts.
12 MR. STINSON: Your Honor, would this be a
13 good time for a break?
14 EXAMINER SEE: Just a minute.
15 MS. BOJKO: Your Honor, I'm almost
16 finished.
17 EXAMINER SEE: Okay. Then let's go
18 ahead, finish with this witness, if we can. Or at
19 least finish with Ms. Bojko's cross-examination of
20 this witness.
21 MS. BOJKO: Thank you, your Honor.
22 (EXHIBIT MARKED FOR IDENTIFICATION.)
23 Q. (By Ms. Bojko) Mr. Ziolkowski, do you
24 have in front of you what's been marked as Kroger
25 Exhibit 5?

A. Yes.

Q. Do you see on this document the columns are listed as "Account Number" and then there is a "Customer Name," a "Service Address," a "Location" as well as a "Tariff Description"?

A. Yes.

Q. And then also you see redacted information regarding the kilowatt-hour usage by month?

A. Yes.

Q. Does this appear to be, sir, an aggregation listing of all of -- of a series of a customer -- of Kroger's accounts?

A. Yes, it does.

Q. And, sir, you know -- strike that.

MS. WATTS: Your Honor, I am going to object because this is not -- this witness has never seen this exhibit before and has no knowledge about what -- I think that counsel needs to lay a foundation for this.

EXAMINER SEE: Sustained.

Q. Sir, would -- does this appear -- does this look to be a spreadsheet of a listing of customer accounts you would typically see a utility produce?

MR. SCHULER: Your Honor, objection. A utility typically produce is pretty vague.

MS. BOJKO: Your Honor, he is here representing six -- did we say six? Six utilities. I think it's a fair question.

MR. SCHULER: Not even really sure what that means.

EXAMINER SEE: To the extent you can answer the question, Mr. Ziolkowski, please do. The objection is overruled.

A. This looks like something an EDU would prepare.

Q. And it looks like something that would be pulled from your billings -- utility's billing system such as Duke's, correct?

A. Your question is a little more complex because ultimately the kilowatt-hours that would appear in each of these cells and it's all blacked out but there are a lot of cells but each of those kilowatt-hour numbers would come from the EDU billing system.

But the issue here is how does it get from the billing system to here. And our position is that just -- that just the preparation of a spreadsheet in this form can actually take a lot of

1 time. Ultimately potentially we can write code to
2 reduce the process, but a spreadsheet like this can
3 take -- can take hours or let's say even an hour but
4 multiply that times multiple mercantile customers
5 that are potentially participating in USF, and then
6 we are talking a lot of analytical work every month
7 plus it all has to be fixed in the case that some of
8 these readings here are bad so. So your question is
9 a little more complicated.
10 MS. BOJKO: Your Honor, I move to strike
11 everything after the word "but." He answered my
12 question.
13 EXAMINER SEE: And the question is --
14 reread her question for me, please.
15 (Record read.)
16 MS. WATTS: And, your Honor,
17 Mr. Ziolkowski explained how it would be pulled.
18 EXAMINER SEE: Motion to strike is
19 denied.
20 Q. Mr. Ziolkowski, it wouldn't surprise you
21 that this spreadsheet came from an account rep at an
22 Ohio EDU, would it?
23 A. No.
24 Q. And it wouldn't surprise you that this
25 report is prepared on a monthly basis for a

1 mercantile customer, would it?
2 A. No.
3 MS. BOJKO: If I could have just 2
4 minutes, your Honor.
5 EXAMINER SEE: Sure. Let's go off the
6 record.
7 (Discussion off the record.)
8 EXAMINER SEE: Let's go back on the
9 record.
10 Ms. Bojko?
11 MS. BOJKO: Thank you, your Honor. I
12 have no further questions at this time.
13 Thank you, Mr. Ziolkowski.
14 EXAMINER SEE: Okay. Mr. Schuler? I'm
15 sorry. Whose witness is Mr. Ziolkowski?
16 MS. WATTS: He is my witness, your Honor.
17 EXAMINER SEE: Sorry about that,
18 Ms. Watts. Go ahead.
19 MS. WATTS: Thank you.
20 - - -
21 REDIRECT EXAMINATION
22 By Ms. Watts:
23 Q. Mr. Ziolkowski, could you look at the
24 document that Kroger asked to have marked for
25 identification purposes as Kroger Exhibit 5.

A. Yes.

Q. And you've -- I think you testified that you've never seen this document prior to just now on the stand, correct?

A. That's correct.

Q. And do you have any knowledge as to why this document might have been prepared?

A. Not specifically.

Q. Do you have any knowledge as to who prepared it?

A. No.

Q. And do you have any knowledge as to when it might have been prepared?

A. You can see the months across the top, but I don't know that -- when it was prepared exactly.

Q. Okay. And have you ever prepared any similar spreadsheet in your duties for Duke Energy Ohio?

A. Yes. Over the past 20 years, I've done many spreadsheets similar to this.

Q. And based upon that experience, can you tell me what it might take to put together a spreadsheet like this?

A. It depends. The difficulty in doing a

1 spreadsheet like this depends upon the systems that
2 you have access to and the systems that are in place.
3 A person -- some people might go in a month by month
4 and row by row and go into the billing system and to
5 look up that account number and find out the
6 kilowatt-hours and then type it in. In situations
7 like that it could take hours because there is
8 actually a lot of accounts here. Don't know the
9 exact number but I'm thinking a hundred or so.
10 I've done that before. It's hard. If
11 you have -- ideally you might have access to other
12 systems. You can write some computer code or some
13 kind of SAS program language and pull it up but even
14 there you have to maintain the program to pull it in.
15 So overall it can be time consuming. It can take
16 hours to put this together, and then it needs to be
17 reviewed if it's going to a customer.
18 Q. And you have no knowledge obviously about
19 how long it might have taken to do this specific
20 spreadsheet.
21 A. No.
22 Q. And, sir, you noticed that all of the
23 entities on this particular spreadsheet appear to be
24 Kroger affiliates or Kroger entities; is that
25 correct?

A. They all appear to be Kroger entities, yes.

Q. And you understand that Kroger is not the only customer that could be classified as a mercantile customer in Duke Energy Ohio's service territory, correct?

A. That's correct.

Q. And so if there were other mercantile customers interested in participating in an aggregated rate under the USF tariff, these spreadsheets would need to be prepared for each of those customers, correct?

A. That's correct.

Q. And you don't know how many of those customers there could potentially be in Duke Energy Ohio's service territory?

A. No. And I do not know how many accounts would be associated with them too.

MS. WATTS: Nothing further, your Honor.

- - -

EXAMINATION

By Examiner See:

Q. Mr. Ziolkowski, go to your testimony on page 5, please.

A. Did you say page 5?

1 Q. Page 5, yes.
2 A. Yes. I'm there.
3 Q. On line 4 -- well, starting on line 3
4 continuing through line 6, you discuss why Kroger's
5 proposal is problematic, and one of the reasons you
6 give is regulatory principles, correct?
7 A. Yes.
8 Q. You just generally say regulatory
9 principle. What regulatory principle specifically do
10 you believe that it violates?
11 A. The term regulatory principles -- and as
12 I stated before, I am not an attorney nor am I a
13 regulator, so I'm assuming that my testimony will be
14 given the appropriate weighting on this. However, in
15 general I am just talking about fairness and
16 nondiscriminatory rates.
17 Q. Okay. If you move to -- and I believe
18 you talked a little bit about this with counsel for
19 Kroger. Line 20 and continuing on line 21, you say
20 "rates could fluctuate." The sentence 19 through 22,
21 the proposal referred to Mr. Higgins' proposal in
22 regard to how it affects rates. You make a reference
23 that "rates could fluctuate dramatically in any given
24 month based upon the number of mercantile customers."
25 Explain that sentence to me a little more.

A. In -- I should change that -- the word "given month" -- or the phrase "given month" and in row 2 is 0 given year because in reality once the rates are established, they are going to be there until the ODSA makes its next filing.

Q. Okay.

A. But then they could -- so that's a misstatement. They should -- they will change from year to year.

Q. Okay. Thank you. And in response to questions posed to you by Ms. Bojko, you indicate that mercantile customer data is compiled for energy efficiency purposes, correct?

A. If a mercantile customer wants to opt out of energy efficiency, then we compile the data associated with that customer; and, first, we turn off the billing of our rider EE/PDR and also include the impacts of that mercantile customer in our annual updated EE filings. Otherwise we do not for EE purposes compile the -- or treat mercantile customers any different from any other customer.

Q. Okay. And how is that mercantile data compiled? Is that manually or is there a system to do that?

A. It would be done manually.

1 Q. Okay. You also indicated, I believe,
2 that mercantile customers are tracked for marketing
3 purposes, or might be tracked for marketing purposes.
4 A. Yes. And when I use the term
5 "marketing," really it's not so much that we are
6 trying to market or sell stuff. I really should say
7 "customer relations purposes" would be more accurate.
8 Q. Where -- the number of mercantile
9 customers are tracked for customer relation purposes
10 and for use by customer service representatives?
11 A. Yes. And also our executives too when,
12 for example, the president of the EDU was meeting
13 with the CEO of Kroger, for example, it's nice to
14 know all that information.
15 Q. And they are tracked by what unit?
16 A. Did you say -- ask by what means?
17 Q. What means, yes. Are they tracked within
18 systems -- you implied they are tracked by -- at
19 least tracked in an aggregate basis by what system
20 within Duke? We will use Duke as the example.
21 A. We aggregate -- at Duke Energy Ohio we
22 track and aggregate those customers via spreadsheet.
23 We have large spreadsheet datasets that were -- and
24 typically we put them to set it up as a pivot table
25 where we can click on Kroger, and then it will show

all the accounts, but it has to be manually updated, and all the data is put into a large spreadsheet for each of the accounts. And it's not -- but it is not directly from our billing system nor is it billing quality data.

Q. And is it part -- you said -- you indicated a pivot. You called it a pivot system.

A. It's a pivot. It's just a function in Microsoft Excel, way to tabulate data.

Q. Some of the -- you indicated -- earlier in your testimony you indicated that there were several issues or concerns that the EDUs had with implementing Kroger's proposal, correct?

A. Yes.

Q. Would your -- would the issues that you raised in your testimony be resolved by -- are they addressed by the check being given to Kroger corporate -- hold on, Kroger corporate as opposed to a credit on the bill? Does that serve to address any of the issues that you raised? If it goes from being issuing a check in arrears as opposed to being a credit on the merchant -- on at least one account of the mercantile customer?

A. The credit would still have to be issued in arrears just like a check would be paid in arrears

because we would need to add all the billing data from the prior month in order to know what that credit in arrears would be. But the only problem that that would prevent or issue is having to actually physically cut a check to the customer. But from a cash flow standpoint, cutting a check and sending a payment is the same as putting a bill credit on the bill. Each of those affects either our revenues or expenses for the company.

Q. Okay. You indicated that there would be some cost incurred by the company to implement Kroger's proposal, correct?

A. Yes.

Q. And that cost would be whether it is done manually or whether the systems are implemented to process the proposal and the credit to a mercantile customer, correct?

A. Yes. The company -- the EDUs would either have to perform these calculations manually, or we would have to invest and upgrade our existing billing systems to be able to handle this but there is a cost either way in our opinion.

MS. BOJKO: Your Honor, I'm sorry. Can I object or ask for clarification? I just -- it's very difficult because he's here for all the utilities,

1 but I think he is speaking on behalf of Duke, and I
2 just don't know who "we" or "our" is. If I could ask
3 clarification on that for the record.
4 MS. WATTS: And, your Honor --
5 EXAMINER SEE: Let me hear when
6 Mr. Ziolkowski used the word "our."
7 MS. WATTS: If we were going to go down
8 that path, there would be a whole punch of things I
9 would want to clarify so.
10 EXAMINER SEE: Well, let me hear his
11 response read back, please.
12 (Record read.)
13 Q. (By Examiner See) Mr. Ziolkowski, when
14 you said "we," were you referring to each of the six
15 EDUs that you are representing here today, Duke
16 included?
17 A. Yes.
18 MS. BOJKO: Thank you.
19 Q. In your experience, Mr. Ziolkowski, would
20 Duke and the other EDUs you are representing want to
21 recover the cost of implementing such systems? Has
22 that been your experience in the past?
23 A. My experience is that the EDUs, and
24 specifically with Duke, would want to recover the
25 costs if they become material. And so then the

1 question is what is material. But, for example, if
2 the cost were $20,000 a year, we're not going to file
3 the rate case for that amount of money, but we might
4 ask for a deferral though on the costs. That is one
5 thing we might ask for. So it's a difficult
6 question. And generally EDUs like to recover costs.
7 EXAMINER SEE: Okay.
8 MR. HEALEY: That's going in every one of
9 my briefs from now on.
10 MS. WATTS: This is news to you, Chris?
11 EXAMINER SEE: Thank you, Mr. Ziolkowski.
12 Okay. Ms. Watts, did you already move
13 for the admission of Joint Exhibit 1?
14 MS. WATTS: I did not, your Honor, and I
15 would so move.
16 EXAMINER SEE: Are there any objections
17 to Joint Exhibit 1?
18 Joint Exhibit 1, the direct testimony of
19 Mr. Ziolkowski, is admitted into the record.
20 (EXHIBIT ADMITTED INTO EVIDENCE.)
21 MS. BOJKO: Your Honor, at this time I
22 would like to move Kroger Exhibit 5.
23 EXAMINER SEE: Are there any objections
24 to the admission of Kroger Exhibit 5?
25 MS. WATTS: Oh, yes, your Honor.

1 EXAMINER SEE: Go ahead, Ms. Watts.
2 MS. WATTS: Thank you. Your Honor,
3 this -- Mr. Ziolkowski is the utilities' witness
4 obviously and this isn't a document he has ever seen
5 before. It was placed before him. He has no
6 understanding of anything related to where this
7 document came from, who prepared, what it -- what it
8 represents. There's no foundation for it. It
9 absolutely should not be an exhibit in this case.
10 EXAMINER SEE: Ms. Bojko, you wanted to
11 respond?
12 MS. BOJKO: Yes, your Honor. Actually he
13 said himself has done similar spreadsheets for his
14 utility. He said he would not be surprised if
15 account reps of utilities -- it is the type of data
16 that is pulled from utility systems. He is here
17 representing a utility that this data was actually
18 provided by. He is the witness for all of the
19 utilities.
20 So this data is from one of those utility
21 companies. He specifically said that he has
22 performed such compilations in Excel and that
23 utilities do perform such compilations either for
24 their customer reps or for other purposes that you
25 highlighted and went through, your Honor. And I

would also add that Ms. Watts asked several questions on it, so for the record it would be fair to have it into the record when it was referenced several times by counsel herself.

MS. WATTS: Your Honor, contrary to counsel's assertion this was prepared by a utility, we have no foundation for that. We have no testimony in the record to establish that. It's just a random document that somebody could have pulled out of the trash can on the front street.

MS. BOJKO: Your Honor, it's a -- it's admitted by a party opponent; it is a party opponent document and that --

MS. WATTS: We have no foundation for that.

MR. SCHULER: We don't know that.

MS. BOJKO: The foundation is you can see it in the rate codes as well as the tariff codes and service addresses embedded in the document.

MS. WATTS: Which are entirely redacted.

MS. BOJKO: No, they are not. They are not redacted.

MS. WATTS: That's all public record.

MS. BOJKO: The only thing that is redacted is the usage and the account number.

MR. SCHULER: Your Honor, if I may, I represent one of the utilities, and I don't even know what utility this came from.

EXAMINER SEE: I'm sorry. Say that a little slower.

MR. SCHULER: I represent one of the utilities and don't know what utility provided this.

MS. BOJKO: Many of us know the utilities' rate codes as well as their nomenclature, and I think there are many people that could tell which utility this came from.

MR. HEALEY: None of those people have done so on the record.

EXAMINER SEE: What was that, Mr. Healey?

MR. HEALEY: Ms. Bojko can identify this, but no one has done so on the record. It's irrelevant.

MS. BOJKO: No. The witness said this is the type of document that a utility would produce and that he himself has produced it and his company has produced it. That was on the record.

MS. WATTS: That doesn't mean --

MS. BOJKO: Your Honor, I would also add there wasn't a motion at the time it was used, and counsel used it herself in redirect. So if we are

1 going to strike the document, then all of the
2 redirect would have to be stricken as well. There
3 was no objection during the time the document was
4 used.
5 MR. HEALEY: Ms. Watts did make an
6 objection on foundation.
7 EXAMINER SEE: Just a minute.
8 MS. BOJKO: It was overruled, denied.
9 EXAMINER SEE: In light of the testimony
10 offered about the document so that the record is
11 clear, I'm going to admit Kroger Exhibit 5, and the
12 Commission can use this document for what we find it
13 to be worth.
14 MS. BOJKO: Thank you, your Honor.
15 EXAMINER SEE: With that Kroger Exhibit 5
16 is admitted into the record.
17 (EXHIBIT ADMITTED INTO EVIDENCE.)
18 EXAMINER SEE: One more witness; is that
19 correct?
20 MR. KUMAR: The OCC would like to call
21 Jim Williams to the stand. Your Honor, may I
22 approach?
23 EXAMINER SEE: Yes, you may.
24 (Witness sworn.)
25 EXAMINER SEE: Thank you. Have a seat.

1 Who is doing cross-examination of Mr. Williams?
2 MR. KUMAR: I am doing the direct
3 examination, your Honor.
4 EXAMINER SEE: Go ahead.
5 MR. KUMAR: Your Honor, I would like to
6 mark the reply testimony of James D. Williams as OCC
7 Exhibit 1.
8 EXAMINER SEE: So marked.
9 (EXHIBIT MARKED FOR IDENTIFICATION.)
10 - - -
11 JAMES D. WILLIAMS
12 being first duly sworn, as prescribed by law, was
13 examined and testified as follows:
14 DIRECT EXAMINATION
15 By Mr. Kumar:
16 Q. Mr. Williams, would you please state your
17 full name and address for the record.
18 A. My name is James D. Williams. My
19 business address is 10 West Broad Street, Suite 1800,
20 Columbus, 43215.
21 Q. You are the same James D. Williams whose
22 direct testimony was filed in these cases?
23 A. I am.
24 Q. On whose behalf do you appear?
25 A. I'm appearing on behalf of the Office of

1 the Ohio Consumers' Counsel.
2 Q. Do you have your prepared testimony with
3 you on the stand?
4 A. Yes, I do.
5 Q. Did you prepare the testimony or have it
6 prepared at your direction?
7 A. I did.
8 Q. Do you have any changes or corrections to
9 your testimony?
10 A. I have one small correction. Page 9,
11 footnote 12, is the -- the rate for the first 833,000
12 kWh, there should be an extra zero in there. The
13 rate is .10772 cents per kilowatt-hour. For the
14 second block there should also be an extra zero. The
15 rate in AEP's tariff is .01681 cents per
16 kilowatt-hour. And that's the only correction.
17 Q. Okay. With that correction, if I asked
18 you the same questions that are in OCC -- that are
19 found in your direct testimony, OCC Exhibit 1, today,
20 would your answers be the same?
21 A. Yes, they would.
22 MR. KUMAR: Your Honor, the OCC moves for
23 the admission of OCC Exhibit 1 and would like to make
24 Mr. Williams available for cross-examination.
25 MS. BOJKO: Your Honor, at this time

1 would you entertain motions to strike?
2 EXAMINER SEE: Uh-huh, yes.
3 MS. BOJKO: Thank you, your Honor. I
4 would move to strike Attachment JDW-2 to Mr. Williams
5 testimony. This document on -- should be stricken on
6 multiple grounds, one being relevancy. This is about
7 nutrition and food and has nothing to do with energy
8 rates or the USF rider rate.
9 Secondly, this document is hearsay.
10 Mr. Williams did not produce this document.
11 Thirdly, there's hearsay within hearsay.
12 It seems that this document is relying on a dashboard
13 that is cited to in the document but that is in no
14 way referenced, cited to. There is no links.
15 There's no way to review where this information came
16 from. There is no exception to hearsay that applies
17 to this rule. This is not a public agency. There's
18 not a specific link available for this particular
19 document that we could obtain it or verify the
20 accuracy of it.
21 Therefore, for all of these reasons we
22 believe that a document about health policy should be
23 stricken from Mr. Williams' testimony.
24 MR. KUMAR: Your Honor.
25 EXAMINER SEE: Mr. Kumar.

1 MR. KUMAR: So I will address I guess
2 each of Ms. Bojko's objections in turn. The first is
3 relevance. This document is about food insecurity.
4 We are here discussing a case that primarily deals
5 with access of low income consumers to electricity.
6 Food insecurity is a huge issue for low income
7 consumers. To sit here and say that the food -- the
8 ability of low income consumers to pay their bill,
9 electricity bills is not connected to their ability
10 to buy food is, I think, something that Kroger should
11 probably know something about.
12 Furthermore, with regards to this hearsay
13 document, the notion that this document is hearsay,
14 it is clearly -- it is clearly a document that
15 Mr. Williams relied upon for a portion of his
16 testimony. It is -- it is produced by, you know, the
17 Ohio State University. It is a document that is
18 produced -- that is commonly used by individuals
19 working in low income areas to discuss food
20 insecurity and there is a link at the end. I believe
21 Miss Bojko does have access to the internet when she
22 is not in this room.
23 MS. BOJKO: Just for the record, your
24 Honor, that link is for something different. That is
25 a fact sheet. There's a series of tools. That is

1 not a link to this direct document. This is not a
2 public agency. This is not a state agency that falls
3 under one of the records. We have no idea of knowing
4 whether this is a business record. It doesn't fall
5 within any of the exceptions, and we are not here
6 today, contrary to counsel's claim, to discuss
7 whether there should be a USF rider or not. We are
8 here today to discuss whether the rate design
9 methodology that actually discriminates against one
10 customer is applicable or should be revised.
11 So I think that counsel's misrepresenting
12 the purpose of the proceeding and misrepresenting --
13 no one is challenging whether there should be a USF
14 rider today or whether there is a need for any kind
15 of public funding or public funds to go to the USF
16 rider.
17 MR. KUMAR: Your Honor, first of all,
18 there are extensive footnotes at the end of the
19 document that provide the sources this document is
20 based on.
21 Secondly, this is a document produced by
22 a state agency, the state university, depends on how
23 you define state agency but they are a reputable
24 source, the Health Policy Center for Public Health
25 Practice at the Ohio State University.

1 Furthermore, to address the questions --
2 part of the reason we are litigating this case today
3 is because Mrs. Bojko's proposal has been -- it is
4 the testimony of many witnesses it could affect rates
5 that customers do pay, and so to the extent that it
6 affects the rates that residential and low-income
7 customers pay, it does have a food -- food insecurity
8 does have a relationship to that.
9 EXAMINER SEE: Is the only place that
10 this -- that JW-2 is referenced in Mr. Williams'
11 testimony is on page 5 in the footnote?
12 MR. KUMAR: I believe.
13 EXAMINER SEE: Page 5, footnote 6.
14 MR. KUMAR: I believe that's correct,
15 your Honor.
16 EXAMINER SEE: Motion to strike is
17 granted. So the associated footnote and the sentence
18 on page 5 and the attachment are out.
19 MR. KUMAR: Your Honor, if I may ask for
20 specific line numbers there?
21 EXAMINER SEE: 13, starting on line 13 to
22 line 15.
23 MR. KUMAR: Okay.
24 EXAMINER SEE: Footnote 6, Attachment
25 JW -- DW-2.

MS. BOJKO: Thank you, your Honor. That concludes my motions to strike.

EXAMINER SEE: Did you have any cross-examination -- did you want to go ahead with your cross-examination?

MS. BOJKO: Sure, your Honor.

EXAMINER SEE: Go ahead.

- - -

CROSS-EXAMINATION

By Ms. Bojko:

Q. Good afternoon, Mr. Williams.

A. Good afternoon.

Q. Sir, you are a senior policy analyst; is that correct?

A. That is correct.

Q. And although you state today that you are a member of PBAB, the Public Benefits Advisory Board, you are not here today testifying as a member of PBAB; is that correct?

A. No, I am not. I am just -- as part of my background and experience, I serve as a member on the PBAB.

Q. And, sir, you're not an attorney; is that correct?

A. That is correct.

1 Q. And when you refer to statutory sections
2 in your testimony, you are doing so as a
3 non-attorney; is that correct?
4 MR. KUMAR: Objection.
5 A. Yes.
6 MR. KUMAR: Objection, your Honor. I
7 think if Ms. Bojko wants to specifically probe
8 specific portions of Mr. Williams' testimony, she
9 should provide him a reference to those specific
10 sections.
11 EXAMINER SEE: Last question I heard,
12 which Mr. Williams answered, was whether he was an
13 attorney or not so which -- the objection is
14 overruled.
15 MS. BOJKO: Thank you, your Honor.
16 Q. If you could turn to page 2 of your
17 testimony, sir.
18 A. I'm there.
19 Q. Footnote 1 you reference 4928.58(A); is
20 that correct?
21 A. Yes, I do.
22 Q. And, sir, that statutory section creates
23 the Public Benefits Advisory Board and its members;
24 is that correct?
25 A. Again, speaking as a nonlawyer, it

1 discusses the PBAB.
2 Q. And your footnote 2 on the same page,
3 page 2, you reference 4928.58(E); is that correct?
4 A. I do.
5 Q. And is that a reference to the duties of
6 the advisory board members?
7 A. I provided a summary of the duties of the
8 PBAB.
9 Q. So that's what that statutory section is
10 referencing?
11 A. That's my understanding.
12 Q. Sir, you're familiar with the two-step
13 declining rate block that allows customers who
14 consume over 833,000 kWh to potentially reduce their
15 USF charges for the -- their portion of their usage
16 that's over the 833,000 kWh?
17 MR. KUMAR: Your Honor, may I have --
18 Q. Is that correct?
19 MR. KUMAR: May I have that question
20 reread?
21 EXAMINER SEE: Yes.
22 (Record read.)
23 MR. KUMAR: I object to that question as
24 both compound and vague as to defining customers and
25 defining reduce their usage.

EXAMINER SEE: Okay. Try it again, Ms. Bojko.

Q. (By Ms. Bojko) Are you familiar with the two-step declining rate block in the USF rider?

A. Yes, I am.

Q. Okay. And you're familiar that this two-step declining rate block allows customers -- any customer who consumes over 833,000 kWh to take advantage of the second tier of that rate block; is that correct?

A. That's my understanding of the declining rate structure, yes.

Q. And if that second tier is lower than the first tier, then customers who are able to take advantage of that would reduce their USF charges; is that correct?

MR. STINSON: Objection.

MR. KUMAR: Objection.

MR. STINSON: Object. Mischaracterizes the rider, your Honor. It's a usage-based rider. So anybody that goes over the 833 kilowatt-hour is going to increase their rates.

MS. BOJKO: Is what? I didn't hear the last part.

MR. STINSON: Any user that exceeds

833,000 kilowatt-hours is going to increase the rates because it's based on usage.

MS. BOJKO: Is going to increase the rates. I asked if it would reduce that customer's USF charges by taking advantage of the second tier if the second tier is lower.

MR. KUMAR: Your Honor, I would also join in Mr. Stinson's objection. I believe it does mischaracterize the USF rider, and I don't believe it would reduce anyone's charges. They are being charged the rate they are charged under the USF rate. There's no reduction.

MS. BOJKO: Your Honor, I'll rephrase. I mean, if we have to -- we are going to have to go through this all again. I thought Mr. Williams agreed with me that he understood the two-step declining rate block, but I'll try again.

Q. If a customer -- without the two-step declining rate block, all customers would pay the same USF rider rate per kWh regardless of their usage; is that correct?

MR. PRITCHARD: Objection. It assumes a rate that's doesn't exist. There is no other -- there is no other applicable rate under this hypothetical.

EXAMINER SEE: The objection is overruled.

Mr. Williams, do you need the question?

THE WITNESS: Can we have the question reread?

EXAMINER SEE: You certainly can.

(Record read.)

A. Customers would pay whatever the rate for the usage up to a certain level and then whatever rate from there.

Q. Okay. So under the two-step declining rate block if the utility's second step is a lower rate than the first step, customers that exceed the 833,000 kWh would begin paying a lower rate after they increased their usage or meet that threshold; is that correct?

MR. KUMAR: Your Honor, may I have that question reread?

EXAMINER SEE: Sure.

(Record read.)

MR. KUMAR: I am going to object to that question as compound.

EXAMINER SEE: Overruled. And make any clarification you need, Mr. Williams, to answer the question.

A. Customers will pay whatever the rate is in the second block per kWh per the tariff.

Q. And under the proposal that second block will either be equal to or lower than the first block; is that correct?

MR. KUMAR: Your Honor, just an objection to the extent that Ms. Bojko hasn't clarified which proposal we are actually discussing.

EXAMINER SEE: Correct.

Q. It's any proposal on the table. The USF two-step declining rate block is the same under any proposal.

EXAMINER SEE: Well, let's be clear which one you are speaking of if you want the witness to answer, Ms. Bojko.

Q. Under the USF two-step declining rate block, a -- the second block is -- the rate is lower, is that correct, or equal to the first block?

A. My understanding is that the rate is lower than or equal to the rate of the first block.

Q. And that's true whether we're talking about Kroger's proposal or whether we are talking about the ODSA's application; is that correct?

MR. KUMAR: I would object to the extent that Kroger's proposal hasn't exactly defined how

they would calculate the second block of the rate structure, so it's not clear to me. It's vague.

MS. BOJKO: Well, your Honor, he just mischaracterized the record.

EXAMINER SEE: Correct. The objection is overruled.

Mr. Williams, answer the question to the best of your ability with any clarifications you need.

THE WITNESS: Can I get the question again, please?

EXAMINER SEE: Uh-huh.

(Record read.)

A. The two-block -- the declining rate structure is the same regardless of. It's just the two-block rate structure.

Q. Thank you. Can you turn to page 3 of your testimony, please.

A. I'm there.

Q. In parentheses starting on line 11, you said "and presumably many other similarly-sized businesses." Do you see that?

A. I do.

Q. You don't know how many or if there will be any other similarly-sized businesses that

1 participate in Kroger's proposal, is that correct, if
2 it is adopted?
3 A. No, I don't know.
4 Q. And, sir --
5 A. I'm sorry. I don't know any other
6 business that's made a proposal like this.
7 Q. And, sir, you don't know how many
8 mercantile customers would apply under Kroger's
9 application process; is that correct?
10 MR. KUMAR: Objection. I would say
11 that's outside the scope of Mr. Williams' testimony.
12 Mr. Williams is not here to provide the details of
13 Kroger's proposal for them.
14 EXAMINER SEE: Overruled.
15 You can answer the question,
16 Mr. Higgins -- I'm sorry, Mr. Williams.
17 A. No. I don't -- I don't really know any
18 of the details in terms of how that would be
19 structured. I didn't find any of the -- those
20 details in Mr. Higgins' testimony.
21 Q. And maybe you didn't need the question
22 because of your counsel's response but what I asked
23 you was whether you know how many mercantile
24 customers would apply.
25 A. No, I don't.

Q. I didn't ask you about the proposal. I asked you if you knew how many customers would apply.

A. No, I don't.

Q. On line 13, page 3, you use the term "avoid paying." Do you see that?

A. Yes, I do.

Q. Isn't it true that under Kroger's proposal all mercantile customers will still pay USF charges?

A. I believe that all customers will continue to pay the USF. It's the amount of the USF -- it's the level of the USF contribution that I'm referring to here.

Q. Right. You are not suggesting that Kroger's proposal would somehow allow a mercantile customer to completely avoid paying USF charges, are you?

A. It's just reducing the amount that Kroger's would be contributing to the USF.

Q. Similar to other large customers who have a reduced amount that they are contributing if they take advantage of the two-tiered rate block versus only being charged under the first-tier rate block; is that correct?

MR. KUMAR: Your Honor, I would object to

that question, first, as compound. Second, as we have established earlier, there is no -- customers pay the USF rate they are charged. It's -- there is no reduction in use that we can compare it to. It's unclear what reduction we are comparing it to.

MS. BOJKO: Your Honor, he is using the word "avoid," and I'm trying to explore what his use of that phrase is.

EXAMINER SEE: Go ahead and answer the question to the extent you can, Mr. Williams. Would you like it reread?

THE WITNESS: Yes, please.

(Record read.)

EXAMINER SEE: On second thought take another run at it, Ms. Bojko.

Q. (By Ms. Bojko) You asserted before you are charged what you are charged under the rate structure; is that correct?

A. Based upon a customer's usage, it's billed at a certain rate per kilowatt-hour.

Q. Right. And you also, I believe, agreed that customers, large mercantile customers, that are able to take advantage of the two-tiered rate block would pay a reduced amount under a two-tiered system versus a one-tiered system, is that correct, assuming

1 that the utility has two different rates for those
2 two blocks?
3 A. Assuming that the second block is a lower
4 rate, then, yes, there would be -- they would be
5 paying less.
6 Q. Okay. And if you look at page -- or line
7 15 on that same page, 3, you do -- let's back up a
8 minute. You do agree with me that under the current
9 rules of the USF rider, the two-tiered rate block and
10 how it's proposed to continue going forward, that the
11 second tier has to either be equal to or lower than
12 the first-tier rate; is that correct?
13 A. That would be my understanding.
14 Q. On line 15 on page 3, you're talking
15 about whether the proposal is discriminatory,
16 Kroger's is discriminatory. Do you see that?
17 A. Yes, I do.
18 Q. I'm assuming, you didn't use the words
19 Kroger's proposal, but so the record is clear, you
20 are referring to Kroger's proposal in that sentence,
21 right?
22 A. Just the proposal to aggregate accounts
23 for purposes of, you know, reducing the amount of
24 money that's collected -- or paid to the USF is what
25 I am referring to.

1 Q. You just used the word "proposal." I
2 want to make sure we are all on the same page about
3 which proposal I am asking about. Under your
4 definition of what you stated that proposal means on
5 line 15, that you are talking about Kroger's
6 proposal, isn't it true under Kroger's proposal a
7 mercantile customer using 10 megawatts at a single
8 site and a customer using 10 megawatts at multiple
9 sites would be treated differently? Or, I'm sorry,
10 would be treated equally under Kroger's proposal?
11 MR. KUMAR: Objection to the extent it
12 requires Mr. Williams to characterize the proposal of
13 another party and provide details that he hasn't
14 provided in his testimony on the proposal of another
15 party.
16 MS. BOJKO: Your Honor, he is saying --
17 he is characterizing the proposal; and, I mean, we
18 can move to strike his testimony if he's not
19 responding to Kroger's proposal. He is
20 characterizing it as being discriminatory, and I am
21 asking him if a situation exists under Kroger's
22 proposal.
23 EXAMINER SEE: And the witness can answer
24 the question. The objection is overruled.
25 A. My understanding is that the difference

1 in the proposals that you're talking about, the
2 difference is kind of comparing one customer to the
3 usage of an aggregated group of customers and then
4 considering that to be a customer.
5 For my purposes I can consider each
6 customer to be the customer, just to be the facility,
7 the stand-alone location just like a residential
8 home. They are the customer. So in talking about
9 different proposals, you know, the tariff speaks to
10 what the rate would be per kilowatt-hour based upon
11 usage. Customers now pay a certain rate based upon
12 their usage. Under what I understand to be the
13 proposal, some customers would be allowed to
14 aggregate their usage for purposes of qualifying for
15 the second block. That's what I considered in line
16 15.
17 Q. Okay. So but isn't it true that under
18 Kroger's proposal, a mercantile customer using 10
19 megawatts at a single site and a customer using 10
20 megawatts at multiple sites would be treated equally
21 for USF rider responsibility purposes?
22 A. I'm not sure what you mean by treat
23 equally. They are going to be billed at whatever
24 their usage is for this individual, for individual
25 facilities.

1 Q. I'm saying under Kroger's proposal a
2 mercantile customer has multiple sites and they can
3 aggregate under Kroger's proposal and they use 10
4 megawatts of energy and you compare that to a
5 single-site customer that uses 10 megawatts of
6 energy, under that situation both of those mercantile
7 customers using 10 megawatts of energy would both be
8 charged the same for USF purposes; is that true?
9 A. Assuming within the same EDU service
10 territory and all those types of things, yes.
11 Q. Thank you for that clarification. And
12 isn't it true that those two mercantile customers
13 that we just discussed under the proposed 2018 ODSA
14 proposal as well as how it is currently operating,
15 those two customers are not treated equally with
16 respect to the non-aggregated mercantile customer
17 would have to pay higher USF charges if they are in a
18 utility service territory that had a two-tiered USF
19 rate that was different in each tier?
20 MR. KUMAR: Your Honor, may I have that
21 question reread?
22 EXAMINER SEE: Okay.
23 (Record read.)
24 MR. KUMAR: Your Honor, I am going to
25 object to that question as compound, and I am not

1 quite sure what the question is.
2 EXAMINER SEE: Overruled.
3 Mr. Williams, you can answer the question
4 with any clarification you need to make.
5 A. As I would understand, the 2018 USF
6 proposal, there's -- follows the utility practice of
7 calculating usage based upon individual facilities.
8 And so, you know, because each facility is considered
9 separately, then I don't believe that -- that, in
10 fact, it's not included within the 2018 USF, where
11 supporting aggregation of those customers.
12 Q. Right. If they are not aggregated, then
13 the utility -- or, excuse me, it's not aggregated,
14 then the customer with multiple sites will be paying
15 more if they cannot take advantage of the second tier
16 assuming that the second tier is lower in the service
17 territory that they are in; is that correct?
18 A. But those customers are no different than
19 any other customer that's paying a certain rate per
20 kilowatt-hour up to 833,000 kWh. They're essentially
21 the same, and it seems as though the aggregation is
22 looking for a separate treatment of those customers
23 as opposed to a customer that, you know, couldn't
24 possibly aggregate to be able to get to the level of
25 being able to take advantage of the declining rate

structure.

Q. Well, is it your understanding that large commercial customers under the current proposal and the one for 2018 pay less than smaller commercial customers under the USF rate if the utility has two separate rates for the two-step declining rate block?

MR. ECKERT: Objection, vague, "pay less."

MR. KUMAR: Objection. Your Honor, the USF rate is a per kilowatt rate. By its nature you will pay less depending on your usage. It's very -- the question is very unclear.

MS. BOJKO: I will rephrase. He could answer that question too so. I think he could have, but I'll rephrase.

Q. (By Ms. Bojko) Is it your understanding that but for the two-tiered declining rate block, that large customers -- commercial customers would pay more than what they are paying under the two-tiered rate block?

MR. KUMAR: Objection. I am going to object to that because it presents a hypothetical that Mr. Williams has not discussed in his testimony and has not addressed in this case.

EXAMINER SEE: Mr. Williams, did you

1 understand the question?
2 THE WITNESS: No, I didn't.
3 EXAMINER SEE: Try it again, Ms. Bojko.
4 Q. (By Ms. Bojko) Mr. Williams, do you
5 believe that large commercial customers are getting
6 a -- would get a benefit by taking advantage of a
7 two-tiered rate block methodology if the utility's
8 second tier is lower than the first tier?
9 A. Not necessarily. It all depends upon the
10 level of usage.
11 Q. Right. So if a -- if a 10 megawatt
12 customer was charged purely by the first tier for
13 most utilities, would their charges be more or less
14 than under the two-tiered methodology?
15 THE WITNESS: Repeat the question,
16 please.
17 (Record read.)
18 A. My understanding of the two tier is any
19 usage above that threshold is going to be billed at
20 the rate of the second tier. And that could be equal
21 to or less than the rate of the first tier.
22 Q. Right. So if you didn't have a
23 two-tiered rate block system, would that same
24 customer that you just referenced -- well, let's just
25 use a number to your point. Would a 10 megawatt

customer pay more or less under a two-tiered system?

MR. KUMAR: Again, I am going to object to that question because it presented a hypothetical outside the scope of Mr. Williams' testimony and outside the scope of any proposal that we have discussed at this hearing.

EXAMINER SEE: Overruled.

Mr. Williams, answer the question as best you can.

A. Again, it all comes down to usage above -- any usage that's within the second tier is going to pay the two-tiered rate, not the first-tiered rate. If that rate is lower, then, yes, the contribution to the USF would be lower.

Q. And you would agree that the two-step declining rate block policy limits the total financial impact of the rider on large customers, correct?

MR. KUMAR: Your Honor, may I have that question reread?

EXAMINER SEE: Sure.

(Record read.)

A. It's my understanding that's the intent of it is to limit that exposure to some level that was set back in 1999.

Q. So the two-step declining rate block that you just mentioned, that was created by settlements; is that correct?

A. That would be my understanding.

Q. You don't know of any statutory or Commission rule that establishes it?

MR. KUMAR: Objection, just to the extent the witness is not, as we have already established, not a lawyer.

EXAMINER SEE: Okay.

A. Not that I'm aware of.

Q. Isn't it true that mercantile customers come and go off of an electric distribution utility system?

A. I have no idea.

Q. You don't -- some customers might move into the utility system, some customers leave?

A. You're talking about mercantile customers, and it's not data that I track.

Q. So -- so you don't know of any situations where there might be a new commercial customer or a commercial customer might go out of business.

MR. KUMAR: Objection, your Honor. Mr. Williams has answered this question already. He stated he doesn't know, and he doesn't track this

1 information.
2 EXAMINER SEE: Okay. Yes, he did.
3 Q. Well, is it your understanding,
4 Mr. Williams, that the USF revenue collected is based
5 upon the amount of consumption?
6 A. It's my understanding.
7 Q. And if that consumption increases or
8 decreases, the USF rider collection would either
9 increase or decrease?
10 MR. KUMAR: Objection, your Honor. It's
11 not clear to me whether she's talking about the
12 consumption of the rate structure or the aggregate
13 consumption of low-income customers which would also
14 affect the USF rates for the next year. I am just a
15 little confused as to what Ms. Bojko is asking.
16 EXAMINER SEE: Okay. Take another run at
17 it, Ms. Bojko.
18 Q. (By Ms. Bojko) Do you know what the word
19 "consumption" means, Mr. Williams?
20 A. Yes, I do.
21 Q. And you agreed with me that if the
22 consumption of electricity changes, then the USF
23 collection would change; is that correct?
24 MR. KUMAR: Again, I would like to object
25 because it's not clear whose consumption are we

1 talking about.
2 MS. BOJKO: I don't know who else
3 consumes, customers consume. There is no -- the
4 animals don't consume electricity that I know of.
5 MR. KUMAR: But, again --
6 MS. BOJKO: Your Honor, if the witness
7 can answer the question, it doesn't matter if counsel
8 is confused or doesn't understand what the word
9 consumption means. I just asked the witness if he
10 knew what he meant, and he said that he did.
11 MR. KUMAR: It's not what the word
12 consumption means, your Honor. It's not clear to me
13 whose consumption we are talking about because the
14 USF would vary based on how much low income customers
15 are part of the program. It also varies based on how
16 much in aggregation all customers use.
17 Q. That wasn't the question. I asked if USF
18 collection -- if the money collected for the USF
19 riders would vary depending on the consumption level
20 of customers within a service territory.
21 A. Yes, it does. And then that would be
22 reconciled the following year as part of a revenue
23 requirement from the USF for the next year.
24 Q. And that happens all the time; is that
25 correct? Customers, residential customers, move in

1 and out of the electric distribution utilities;
2 residential customers add consumption to their meter,
3 they add an extension to their house, things like
4 this happen all the time; is that correct?
5 A. USF revenue requirement is going to
6 change every year based upon consumption and there is
7 a lot of factors that can influence that including
8 individual customer usage, people coming in, many of
9 the things you mentioned.
10 Q. And when that true-up occurs, those
11 fluctuations in usage that you just mentioned, that
12 would be recognized in the next USF rider proceeding
13 where the revenue requirement is established; is that
14 correct?
15 A. That's correct. My understanding is that
16 ODSA uses a test-year period, and of the 12-month
17 period as close as possible to the current year to be
18 able to forecast the requirements for the following
19 year.
20 Q. So as revenue collections in a year
21 fluctuate, so would the revenue requirement
22 established in the subsequent year for that USF
23 rider.
24 A. I'm a little confused because, first, we
25 were talking about consumption, and then it went to a

1 revenue requirement. In the initial year if
2 consumption changes and that has an impact on the
3 revenue requirement for the following year, that
4 would just carry itself through.
5 Q. Thank you. It does have an impact, you
6 said.
7 A. It does have an impact.
8 Q. And that happens to your knowledge every
9 year through the USF filing?
10 A. USF filing recognizes what has occurred
11 within the test year, be it people coming or people
12 going.
13 Q. And that would reflect the ultimate USF
14 rider rate that is set in those filings as well; is
15 that correct?
16 A. Ultimately, yes.
17 Q. And if customer consumption decreases in
18 a year, then the USF rider rate may have to be
19 increased in order to maintain the same revenue
20 collection; is that correct?
21 MR. KUMAR: Your Honor, may I have that
22 question reread?
23 EXAMINER SEE: Sure.
24 (Record read.)
25 A. All things being equal, the same number

of customers, same requirements, no changes in other parts of the program.

Q. Could you turn to page 6 of your testimony, please. And these are the number of factors -- what we've just been discussing is reference to the number of factors that can impact the USF revenue requirements on lines 14 through 16; is that correct?

A. It just mentioned two of them that impact the revenue requirement.

Q. And these factors do not have the effect of reducing the overall revenue requirement, correct?

MR. KUMAR: Objection, your Honor. I'm not clear which factors Ms. Bojko is actually discussing.

EXAMINER SEE: True. Ms. Bojko.

MS. BOJKO: I referenced his words on line 14. He uses "There are a number of factors."

Q. And my question is are these factors -- excuse me.

My question actually was these factors that you reference on line 14 do not have the effect of reducing the overall revenue requirement; is that correct?

A. I don't -- I don't know that they

1 couldn't have the impact of reducing the revenue
2 requirement. The number of PIPP customers went down,
3 there are other factors that are at play that could
4 result in reduction in the requirement, yes. It
5 doesn't always increase.
6 Q. It doesn't; you are referring to the
7 revenue requirement.
8 A. The revenue requirement.
9 Q. Right. Maybe you could explain what sets
10 the revenue requirement.
11 MR. PRITCHARD: Objection. This -- the
12 notice of intent, which sets forth the process for
13 establishing the revenue requirement, is already in
14 the record. At this time this is cumulative
15 questions. The detailed process for establishing the
16 revenue limit is already part of the record.
17 MS. BOJKO: Your Honor, I can -- that
18 wasn't my intent. He is talking about a number of
19 factors that can significantly impact the revenue
20 requirements including historical sales and rejected
21 enrollment patterns, and my question is what are the
22 costs that need to be considered in establishing the
23 revenue requirement?
24 MR. STINSON: I'll join the objection,
25 your Honors, and the NOI speaks for itself.

MR. KUMAR: Yeah. I would also object, your Honor. I am not sure what costs Ms. Bojko is talking about.

MS. BOJKO: Your Honor, these witnesses are all testifying on these issues. They are supposed to be the experts, and I believe that they can speak to these matters.

MR. STINSON: Your Honor, this is just a general question about what sets the revenue requirement. That's already stated in the NOI.

MS. BOJKO: And I rephrased the question not to be that general. I am asking him what costs -- are there PIPP costs involved in setting the revenue requirement.

EXAMINER SEE: That question, okay.

A. Yes, there are.

Q. I was trying to be more expeditious. My apologies. Are there administrative costs of ODSA that are involved in setting the revenue requirement?

A. I believe that was also included in the NOI.

MR. STINSON: Continuing objection.

EXAMINER SEE: Your objection is noted, Mr. Stinson, but I think Ms. Bojko changed the question and asked a specific cost.

1 MR. STINSON: My objection is related to
2 the fact that the NOI -- we can go down the list of
3 the NOI all day, and we have that information. We
4 don't need it on the record. It's already on the
5 record as Exhibit 1, ODSA Exhibit 1.
6 MS. BOJKO: Your Honor, I am happy to
7 move to strike all the testimony that talks about the
8 NOI, but he speaks to the NOI. I think I -- it's
9 proper for me to ask questions about the NOI and what
10 he's referring to when he talks about a number of
11 factors and what impacts or doesn't impact the
12 revenue requirements. He's making pretty general
13 statements on lines -- on line 14.
14 EXAMINER SEE: Yes, he did. But let's
15 move on. Go ahead.
16 Q. (By Ms. Bojko) The factors that you list
17 on 14 that could impact such as historical sales and
18 projected enrollment patterns, those factors do not
19 impact the low-income consumers or the services that
20 they receive under the USF; is that correct?
21 A. What I am trying to address here is just
22 a general explanation of the NOI, the applicants.
23 I'm not trying to identify each specific item or the
24 exact, you know. I haven't quantified each and every
25 one of those, merely saying that's the purpose of the

NOI.

Q. After the rate structure, the rate design methodology that's in the NOI, that methodology, whether it would be a single rate per kWh or a two-tiered rate per kWh, that methodology, that would not impact the actual USF services; is that correct? If it's changed, it wouldn't impact the services that customers received?

A. If we're talking about PIPP customers, for example, no, it doesn't impact. There are other ODSA rules that describe those programs and what those requirements are.

Q. And whether a customer is able to take advantage of or whether the second tier of the USF two-step rate block applies to a customer or not, that would also not affect the services that a PIPP customer receives under the USF.

A. It depends. I mean, to the extent that more costs are shifted from the second block to the first block and it drives up the rate, the customer bills, then perhaps it would have some impact.

Q. I'm asking if it affects the services under the PIPP program.

A. Customers pay a percentage of their income under PIPP, so it doesn't impact the amount

they pay for that. All customers though that pay the first block certainly pay the additional costs that weren't paid in the second block.

Q. Assuming that those additional costs would be pushed down to the first block; is that correct?

A. Yes. Any costs that aren't paid in the second block that are shifted to the first block would result in an increase.

Q. And you were here to hear Mr. Higgins' testimony regarding Kroger's proposal this morning; is that correct?

A. Yes, I was here.

Q. And did -- and you are aware that he stated that there are alternative ways of collecting the revenue differential if Kroger's proposal is put in place; is that correct?

A. I heard those words. I've done no analysis myself nor am I aware of anybody else that's been able to take that vague concept and to somehow make it reality for this year's USF.

Q. And the vague concept you are referring to is having a customer be deemed a mercantile customer for purposes of being -- and aggregating their load for purposes of applying the two-step rate

1 block for them?
2 A. No. The vague concept I'm talking about
3 is redoing the rate design for the USF which was also
4 apparently one of the things that Mr. Higgins talked
5 about this morning.
6 Q. If you turn to page 7 of your testimony,
7 line 10, you talk about your participation in the
8 PBAB. Do you see that?
9 A. I do.
10 Q. You are not suggesting in this question
11 and answer that members of PBAB have never discussed
12 the two-step declining rate structure and changing
13 it, are you?
14 A. The context of this QA is the particular
15 PBAB that I was at related to this NOI. Whether or
16 not people talk before or after, I don't know.
17 Q. Oh, you are only talking about that one
18 PBAB meeting in this Q and A?
19 A. Yes.
20 Q. And you are aware that there are parties
21 to this proceeding that have previously discussed the
22 two-step declining rate structure and changing it?
23 A. I'm not aware of that but.
24 Q. You are not aware of OPAE's comments or
25 objections filed in this case that propose to change

1 the two-step rate block?
2 A. Oh, yes, I am.
3 Q. And you are aware that OPAE has made that
4 request previously; is that correct?
5 MR. KUMAR: Objection, your Honor.
6 Mr. Williams here is not testifying about comments
7 that are not in the record in this proceeding. He's
8 also not testifying about -- that is outside the
9 scope of this proceeding, and it is also irrelevant
10 to the testimony that Mr. Williams has given -- is
11 giving today.
12 MS. BOJKO: Your Honor, he makes --
13 actually maybe I should move to strike based on
14 hearsay, but he makes a statement that there's not
15 any discussion of changes in the application, and I'm
16 exploring whether he knows that there have been
17 discussion of changes.
18 MR. KUMAR: He's talking about PBAB in
19 this instance and the PBAB's specific process through
20 which they approve the NOI process in this case. It
21 has nothing to do with what OPAE has proposed in this
22 case.
23 MS. BOJKO: Well, your Honor, that's not
24 what the question and answer says.
25 MR. STINSON: I object based on

relevance.

EXAMINER SEE: And Mr. Stinson's objection is sustained. Move on, Ms. Bojko.

MS. BOJKO: Sure.

Q. (By Ms. Bojko) Mr. Williams, have you only attended one PBAB meeting?

A. No. I've attended numerous PBAB meetings.

Q. Are you aware that proposals have been brought forth to PBAB for modification of the rate design?

MR. STINSON: Same objection, your Honor, relevance.

MR. KUMAR: And also, your Honor, I would add it assumes facts not in evidence.

MS. BOJKO: Your Honor, I asked if he attended other meetings and if he is aware, and it directly corresponds to his Q and A 7.

MR. STINSON: The Q and A pertains to this case, your Honor.

EXAMINER SEE: I am going to sustain the objection.

Q. (By Ms. Bojko) Are you aware in this proceeding that parties have proposed to change the two-tiered rate design?

1 MR. KUMAR: Objection to the extent that
2 it requires Mr. Williams to answer on comments that
3 are not in the record and that have not been
4 presented in testimony.
5 MR. PRITCHARD: I would join that
6 objection.
7 MS. BOJKO: Then, your Honor, I move to
8 strike the Q7 because that's exactly what it's
9 talking about, extra record evidence is talking about
10 discussions.
11 MR. KUMAR: It's talking about the PBAB
12 Mr. Williams attended and that discussed the NOI.
13 EXAMINER SEE: The question you just
14 posed -- what was the question Ms. Bojko just posed
15 to Mr. Williams?
16 (Record read.)
17 EXAMINER SEE: And I believe he
18 previously answered "yes" so let's move on.
19 MS. BOJKO: Thank you, your Honor.
20 Q. In your Q and A on page 7, Q and A 8.
21 A. I'm there.
22 Q. You state that "OCC does not oppose the
23 current NOI"; is that correct?
24 A. That is correct.
25 Q. Was this same methodology proposed and

adopted in the joint stipulation last year?

A. I believe the methodology was the same.

MR. KUMAR: Objection to the extent OCC is not a signatory party to any of the USF stipulations, especially the one that was adopted last year.

MS. BOJKO: Thank you. That was my next question. May I ask it, your Honor, instead of counsel testifying to it?

EXAMINER SEE: Yes.

Q. (By Ms. Bojko) Was OCC a signatory party to that stipulation in the last case that adopted the methodology that's being proposed in this case?

A. I don't believe so.

Q. Could you turn to page 9, please, of your testimony.

A. I'm there.

Q. And on line 8 you state "The revenue requirement for the USF does not change"; is that correct?

A. That's correct.

EXAMINER SEE: I'm sorry. What page are we on?

MR. McNAMEE: 9, line 8.

EXAMINER SEE: Got it. Thank you,

Mr. McNamee.

Q. And you also have a statement that says "any reduction in the amount of money that is being collected for the USF from one or more customers must be collected from all customers, including those" -- stop it there. That's exactly what happens today; is that correct?

A. That is correct.

Q. And, similarly, if there is any increase in the amount of money that is being collected for the USF for one or more customers, that would also work to modify the amount that's collected from other customers.

MR. KUMAR: Your Honor, may I have that question reread?

EXAMINER SEE: Sure.

MS. BOJKO: Your Honor, I'll strike -- I will withdraw. I'll rephrase.

Q. This statement that you have here, it would also have the effect of reducing the costs if customers produce more energy and their rider charge is increased; is that correct?

A. Yes, it should.

EXAMINER SEE: I'm sorry. What was that answer? What was that answer, Mr. Williams?

1 THE WITNESS: Yes, it should.
2 EXAMINER SEE: Okay.
3 Q. So if -- today if Kroger expands and
4 Kroger grows and adds a new store, theoretically the
5 overall amount of money that is collected would
6 increase, and Kroger would be paying more and other
7 customers would be paying less; is that correct?
8 A. I haven't done that type of analysis.
9 That's -- certainly you would need to have data
10 specific things to be able to do that, so I couldn't
11 reach that conclusion as I sit here today.
12 Q. And it's also true that not every utility
13 company has different rates for the two blocks; is
14 that correct?
15 A. It's my understanding.
16 Q. So in your analysis in Table 1, if the
17 utility did not have different rates for the two
18 blocks, that would show no difference in the
19 collection; is that correct?
20 A. All kilowatt-hours used would be billed
21 at the same rate.
22 Q. So if a utility has the same rate block,
23 there would be no shifting of costs, is that correct,
24 if Kroger's proposal is adopted?
25 THE WITNESS: Can you repeat that

1 question for me, please?
2 (Record read.)
3 A. If there is not a second block, then
4 there would be no change. But, then again, that
5 doesn't make sense. That hypothetical doesn't make
6 sense in terms of why we are here today. Presumably
7 there is some type of a reason for proposing this
8 change.
9 Q. And if the overall consumption for
10 commercial customers would increase and commercial
11 customers would pay more under the rider as it
12 currently exists today -- excuse me. Strike that.
13 If overall customer consumption increases
14 and commercial customers were paying more for the
15 rider, Kroger's proposal also could have no impact on
16 other customers, correct?
17 MR. KUMAR: Your Honor, may I have that
18 question reread?
19 EXAMINER SEE: Sure.
20 (Record read.)
21 MR. KUMAR: Your Honor, I am going to
22 object to the extent that's an incomplete
23 hypothetical, and it doesn't present enough
24 information to -- for Mr. Williams to provide an
25 answer to.

1 EXAMINER SEE: Mr. Williams, if you can
2 answer the question, answer it.
3 A. If the consumption increases, then above
4 the two-block rate structure threshold, then there's
5 going to be a certain contribution made in the second
6 block and there's a contribution to the first block.
7 Any revenues that are not collected through the
8 second block as part of the proposal would
9 necessarily have to be in the first block.
10 Q. Well, I think your -- your point on lines
11 9 through 13, tell me if I am wrong, that you don't
12 know the impact of Kroger's proposal; is that right?
13 A. I don't believe that Kroger knows the
14 impact of Kroger's proposal from what I've read and
15 seen and heard today.
16 Q. Were you -- did you review discovery in
17 this case?
18 A. Not as related to this testimony.
19 Q. Did you review discovery from Kroger that
20 provided an impact analysis for its proposal?
21 A. I've seen some of the discovery. Again,
22 that would be somewhat irrelevant to me though
23 because this is a 2018 USF case that's relying upon
24 data rates, everything else that are not -- that
25 aren't at play in terms of the scope of this case.

1 MR. KUMAR: Your Honor, I would also -- I
2 am not going to object. I am just going to caution
3 we be very careful because I know Kroger has labeled
4 all that information in their discovery confidential.
5 EXAMINER SEE: Thank you.
6 Q. I just want to be clear that I think you
7 said that Kroger doesn't have any idea, and I want to
8 make sure that you do know that Kroger did provide an
9 estimate of what the impact would be under today's
10 rates; is that correct?
11 MR. KUMAR: Your Honor, this is
12 discussing discovery that is outside the record of
13 this proceeding, and Mr. Williams has testified he
14 did not use that discovery in his testimony in this
15 proceeding. So I'm going -- I am going to say that
16 that question is outside the scope of Mr. Williams'
17 testimony.
18 MR. STINSON: I'll join, your Honor.
19 It's outside the scope. Kroger could have presented
20 that on direct had it wanted to.
21 MS. BOJKO: Actually, your Honor, he made
22 a statement, and I was refuting his statement through
23 my question.
24 EXAMINER SEE: The objection is
25 sustained.

1 Q. So you have no knowledge because you
2 didn't review discovery in this case of what Kroger
3 did or did not do with regard to an analysis of its
4 proposal in this case; is that correct?
5 MR. KUMAR: Objection.
6 MR. STINSON: Objection again, your
7 Honor, on the same basis.
8 MR. KUMAR: Also it mischaracterizes the
9 previous statements Mr. Williams has made.
10 EXAMINER SEE: Sustained.
11 Q. Did you review any analysis from Kroger
12 regarding impacts in this proceeding?
13 A. Not as related to my testimony being
14 presented here today.
15 Q. And you are not testifying that Kroger
16 made no such analysis; is that correct?
17 MR. STINSON: Objection, your Honor. We
18 are getting to the point where Kroger allegedly made
19 some analysis that's not in the record.
20 MR. KUMAR: I would also object on that
21 ground and argue that it's also asked and answered.
22 MS. BOJKO: Your Honor, I raised similar
23 objections to discovery requests for Mr. Higgins, and
24 I was overruled on those objections on similar
25 grounds because counsel had not put the discovery in

1 the record. And that was overruled and so now he
2 made a statement that Kroger did not do something,
3 and I'm asking if he knows or has personal knowledge
4 whether they did or did not.
5 MR. KUMAR: Your Honor, I would also
6 renew my objection because Mr. Williams --
7 EXAMINER SEE: I'm sorry. What's your
8 objection? Speak up.
9 MR. KUMAR: I would renew my objection to
10 an additional point of fact that Mr. Williams is not
11 here to testify as to what Kroger -- Mr. Williams
12 only has knowledge of what Kroger has done or not
13 done based on the testimony that Kroger has
14 presented. He can't speak to what Kroger does
15 internally.
16 MS. BOJKO: Your Honor, that's a bit
17 unfair when counsel for the witness asked discovery
18 responses and those are produced and because they now
19 apparently ignore them, they can argue that Kroger
20 did or did not do something. He made a statement on
21 the stand, and I'm exploring that statement on the
22 stand.
23 EXAMINER SEE: The objection is
24 sustained. Move on, Ms. Bojko.
25 Better yet let's go off the record for a

minute.

(Recess taken.)

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

Ms. Bojko.

MS. BOJKO: Thank you, your Honor.

Q. (By Ms. Bojko) Mr. Williams, if you know, are customers able to receive data regarding other customers' usage and load characteristics from the utility company?

A. I wouldn't know. Are customers able to receive other customers' data?

Q. Yes.

A. I don't know.

Q. Would you -- from the representing residential perspective, would you support a policy that allowed one residential customer to receive data and usage and load characteristics from another -- or about another customer from the utility?

MR. KUMAR: Objection, your Honor, relevance.

MS. BOJKO: It's relevant to his testimony, your Honor. He is talking about what Kroger did or did not provide and I'm asking from his regulatory experience whether he knew something and

1 whether he would support a position of allowing an --
2 a customer to access data.
3 MR. KUMAR: Your Honor, I still don't see
4 the connection.
5 MS. BOJKO: Line 13, your Honor, Kroger
6 did not provide any information about other large
7 customers. I'm asking if he knows whether that's
8 even a possibility.
9 MR. KUMAR: What page are you on, Kim?
10 Sorry.
11 MS. BOJKO: 10, where we left off.
12 EXAMINER SEE: Okay. I'll allow the
13 question.
14 Mr. Williams.
15 THE WITNESS: And the question was?
16 MS. BOJKO: I'll rephrase, your Honor.
17 EXAMINER SEE: Please.
18 Q. (By Ms. Bojko) You mention in your
19 testimony on page 10, lines 13 to 14, that
20 customer -- that Kroger did not provide information
21 about other large customers. Do you know if a
22 utility is permitted to provide one customer's data
23 to another customer?
24 A. I certainly -- I doubt they are able to,
25 although there may be other ways to obtain that

1 information, if Kroger's was to talk to other
2 customers or develop this more through a trade
3 association or something like that.
4 Q. On line 16 of your testimony, you
5 reference "other costs." Do you see that reference,
6 page 10, line 16?
7 A. I do.
8 Q. Do you know if there would be other
9 costs, in fact?
10 A. I think from the testimony that we've
11 heard today it sounds like there could be substantial
12 costs.
13 EXAMINER SEE: There could be what?
14 THE WITNESS: Substantial costs.
15 EXAMINER SEE: Okay.
16 Q. But you're not personally -- personally
17 aware of what those costs would be or how much those
18 costs would be?
19 A. No, I'm not.
20 Q. Are you aware that some of the utilities
21 already provide this data to customers?
22 MR. KUMAR: Objection, vague. I'm not
23 quite sure what data Ms. Bojko is speaking of. If
24 she could provide us with like a line number, it
25 might be helpful.

1 MS. BOJKO: We're talking on 17 about --
2 I am referring to his testimony on 17, line 17, page
3 10, he talks about other costs that would be borne by
4 the customers to implement and administer the
5 proposal. And I'm asking him if he knows that --
6 whether some utilities already provide data to
7 customers that Kroger -- or that he is saying would
8 be costly to customers. I'll rephrase, your Honor.
9 EXAMINER SEE: Okay.
10 Q. (By Ms. Bojko) Mr. Williams, I believe,
11 and maybe I am misunderstanding your testimony, but I
12 believe your testimony on page 10 is that there could
13 be a cost to Kroger's proposal of aggregating data
14 for mercantile customers; is that correct?
15 A. Yes.
16 Q. Okay. So with that in mind, are you
17 aware that some utilities already provide the
18 aggregation data to their customers?
19 A. I'm not saying data in here. I am saying
20 other costs, and in general what I'm talking about is
21 cost to implement this type of a proposal. I don't
22 mean specifically data, things like that, just what's
23 required to actually do it.
24 Q. Okay. And I guess the cost you are
25 referring to is the cost to implement Kroger's

1 proposal which would be aggregating its accounts; is
2 that correct?
3 A. Yes.
4 Q. Okay. And instead of using the word
5 "data," I apologize, are you aware that some
6 utilities already aggregate the accounts of a
7 customer and share that information with the
8 customer?
9 A. No, I'm not. You're talking about though
10 mercantile customers, not like aggregated customers,
11 residential customers.
12 Q. I thought we were talking about Kroger's
13 proposal which is the aggregation of the accounts of
14 the mercantile customer.
15 A. Then, no, I'm not.
16 Q. On page 11 of your testimony, line 10,
17 you state that Kroger's proposal is discriminatory to
18 the extent that not all customers of a utility would
19 be able to aggregate their load data; is that
20 correct?
21 A. That is correct.
22 Q. And would you agree with me that the
23 current policy when all -- not all customers can take
24 advantage of the two-tiered rate block, that that
25 also is discriminatory to certain customers?

1 MR. KUMAR: Objection. I think that's
2 outside the scope of Mr. Williams' testimony.
3 EXAMINER SEE: Mr. Williams can answer
4 the question. The objection is overruled.
5 A. I would say the two-block rate structure
6 came about through an extensive -- through years of
7 regulatory proceedings and there's -- an established
8 method for determining which specific customers would
9 qualify for that second block and which wouldn't. In
10 the case of Kroger's proposal, that's somewhat
11 different because it's not really modifying the
12 second block. It's -- it's -- it's proposing a new
13 application for the second block.
14 And since all customers can't be
15 aggregated, then that's the context of my comments.
16 Some customers simply couldn't be aggregated for the
17 purposes of getting lower rates in the second block,
18 similar to what Kroger's is proposing.
19 Q. On line 20 you talk about the "requiring
20 residential customers to pay more" and that this is
21 a -- "mercantile customers pay less is fundamentally
22 unfair considering the subsidies that residential
23 customers are already paying." Do you see that?
24 A. Yes, I do.
25 Q. And the -- isn't it true that only

residential customers can benefit from the PIPP and weatherization programs funded by the USF?

A. I believe that it's just residential low-income customers that participate in this program.

Q. So other residential customers are subsidizing the residential customers that participate in PIPP and the weatherization programs, correct?

A. I believe all customers contribute towards the USF.

Q. Including residential customers would pay for a portion of the PIPP and weatherization programs, correct?

A. Including the PIPP customers, the very PIPP customers that benefit from the program also pay the USF.

Q. And commercial customers are paying for the program even though that they cannot participate in the programs, correct?

A. That's correct.

Q. And would you be agreeable with Kroger's proposal if the revenue shortfall that you discuss in your testimony was only reflected in the second block?

1 MR. KUMAR: Objection. Your Honor, that
2 assumes facts not in evidence and incomplete
3 hypothetical and relevance as well, I guess.
4 MS. BOJKO: Your Honor, the relevance
5 there was an alternative proposal in testimony and so
6 that -- this question is very relevant. It's not an
7 incomplete hypothetical. It's actually a proposal on
8 the table. And I am asking if he would support that
9 alternative proposal put forth by a witness in this
10 case, so it's relevant and appropriate.
11 EXAMINER SEE: The objection is
12 overruled. You may answer the question,
13 Mr. Williams.
14 A. I've not performed an analysis to allow
15 me to conclude one way or the other what type of an
16 impact that would have or the position that -- that
17 might want to recommend to OCC.
18 Q. It would address your concern, however,
19 of residential customers paying more under Kroger's
20 proposal, correct?
21 A. Again, any costs that are shifted from
22 the second block to the first block are -- even
23 according to Mr. Higgins are going to be paid for by
24 everybody paying the first block.
25 Q. So this alternative proposal would

1 address your concerns about residential customers
2 paying more under Kroger's proposal?
3 A. I would need to perform more of an
4 analysis to be able to reach any kind of conclusion.
5 Q. You reference statutory provision on page
6 12 of your testimony. Do you see that?
7 A. I do.
8 Q. And could you tell me, sir, are at-risk
9 populations, is that considered those on PIPP?
10 A. I believe that the at risk can include
11 PIPP, but it could also include customers that are
12 working poor. It could include customers that are
13 low income but not on PIPP. It could include I
14 suspect seniors. It could include many different
15 populations.
16 Q. And, sir, to your knowledge is at risk
17 defined in the statute?
18 A. I don't believe that it is.
19 Q. On line 9 you say that "there are
20 hundreds of thousands of low-income customers who
21 depend upon the PIPP program." Do you see that?
22 A. Yes, I do.
23 Q. You would agree that Kroger's proposal
24 would not alter or reduce the PIPP program; is that
25 correct?

A. I don't believe that the Kroger program -- that Kroger's proposal would impact the number of customers -- the need for the PIPP program.

Q. And it doesn't eliminate any of the services or offerings under the PIPP or weatherization program, correct?

A. I don't believe it does.

MS. BOJKO: If I could just have one minute, your Honor, I believe I'm finished.

EXAMINER SEE: Okay.

MS. BOJKO: Your Honor, I have no further questions. Thank you.

Thank you, Mr. Williams.

THE WITNESS: Thank you.

EXAMINER SEE: Ms. Mooney?

MS. MOONEY: No questions.

EXAMINER SEE: Mr. Pritchard?

MR. PRITCHARD: No questions, your Honor.

EXAMINER SEE: Mr. McNamee?

MR. McNAMEE: No questions, your Honor. Thank you.

EXAMINER SEE: And Mr. Schuler? I assume you are going to be questioning the witness on behalf of the companies?

MR. SCHULER: We have no cross, your

Honor.

EXAMINER SEE: Okay. "We have no cross." You and Ms. Watts, okay. Mr. Eckert then?

MR. ECKERT: We have no cross, your Honor.

EXAMINER SEE: Mr. Hughes?

MR. HUGHES: No cross from Ohio Power, your Honor.

EXAMINER SEE: Mr. Stinson?

MR. STINSON: No cross, your Honor.

EXAMINER SEE: Mr. Kumar, any redirect for this witness?

MR. KUMAR: May I have just a moment, your Honor?

EXAMINER SEE: Sure.

(Discussion off the record.)

EXAMINER SEE: Mr. Kumar?

MR. KUMAR: We have no further questions, your Honor.

EXAMINER SEE: Thank you.

THE WITNESS: Thank you, your Honor.

EXAMINER SEE: Mr. Kumar.

MR. KUMAR: Your Honor, I would move for the admission of OCC Exhibit 1, direct testimony of Mr. Williams.

EXAMINER SEE: Are there any objections to the admission of OCC Exhibit 1?

MS. BOJKO: Your Honor, just with the notation that you've already stricken JDW-2 and footnote 6 in the corresponding sentence. I think it was footnote 6.

EXAMINER SEE: Yes, it was.

MS. BOJKO: I had no objection to the admission of the testimony in light of the granting of my motion to strike. So without that testimony in it, then I have no objection.

EXAMINER SEE: Okay. Seeing that there are no issues being raised as to this testimony, OCC Exhibit 1 is admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MS. WATTS: I have one housekeeping matter I would like to have on the record.

EXAMINER SEE: Okay.

MS. WATTS: In light of your ruling you did not wish to have the objections that were previously filed in this case admitted into the record, there was one issue raised by Duke Energy Ohio with respect to an accounting matter as between Duke Energy and ODSA, and we have jointly agreed that we will put that issue off until the fall hearing and

in the meantime hope to resolve it otherwise. So I didn't want it to get lost in the shuffle because it only appears otherwise in the objections.

MR. STINSON: That is in Ms. Meadows' direct testimony.

MS. WATTS: Thank you.

EXAMINER SEE: Is there anything else? I would note that there is already a schedule for the -- for briefs and reply briefs and that is August 25 and September 1. That was made at the request of the parties and it was -- that revision to the schedule was granted.

If there is nothing further --

MR. HEALEY: I want to make sure your dates were right.

EXAMINER SEE: Let's go off the record for a minute.

(Discussion off the record.)

EXAMINER SEE: As Mr. Healey brought to my attention, originally the request was to file reply briefs on September 5. The parties have now discussed and are making a number of proposals to, one, have the transcript filed in a more expeditious matter and dates for the briefs and reply briefs. The Bench -- I'm sorry. The companies have said that

they would incur the costs and divide it among themselves to have the transcript filed in the docket by the end of business on August 22.

And with that in mind initial briefs will be due August 28 and reply briefs will be due by the close of business on Friday, September 8, recognizing that the ODSA needs an order out hopefully by the end of September.

Is there anything else?

The Bench would request that you send a courtesy copy of your briefs directly to the assigned Attorney Examiner.

MS. BOJKO: In Word, your Honor?

EXAMINER SEE: No. It doesn't have to be in Word. Just send them directly. Don't wait for them to filter through the docket. That way I can see them over the weekend.

Anything else?

We're adjourned.

(Thereupon, at 3:32 p.m., the hearing was concluded.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Friday, August 18, 2017, and carefully compared with my original stenographic notes.

_____
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6413)

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