

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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Direct Energy Business, :  
LLC, :  
:   
Complainant, :  
:   
vs. : Case No. 17-791-EL-CSS  
:   
Ohio Edison Company and :  
The Cleveland Electric :  
Illuminating Company, :  
:   
Respondents. :

Ohio Edison Company and :  
The Cleveland Electric :  
Illuminating Company, :  
:   
Complainants, :  
:   
vs. : Case No. 17-1967-EL-CSS  
:   
Direct Energy Business, :  
LLC, :  
:   
Respondent. :

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PROCEEDINGS

before Ms. Megan Addison, Attorney Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-C, Columbus, Ohio, called at  
10:04 a.m. on Monday, May 7, 2018.

- - -

PUBLIC SESSION

- - -

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On behalf of Ohio Edison Company and The  
Cleveland Electric Illuminating Company.

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Monday Morning Session,  
May 7, 2018.

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

The Public Utilities Commission of Ohio  
calls for hearing at this time and place, Case No.  
17-791-EL-CSS, being In the Matter of the Complaint  
of Direct Energy Business, LLC, versus Ohio Edison  
Company and The Cleveland Electric Illuminating  
Company; and Case No. 17-1967-EL-CSS, being In the  
Matter of the Complaint of Ohio Edison Company and  
The Cleveland Electric Illuminating Company versus  
Direct Energy Business, LLC.

My name is Megan Addison. I'm the  
Attorney Examiner assigned by the Commission to  
preside over this hearing.

And we will begin by taking appearances,  
starting with Mr. Whitt.

MR. WHITT: Thank you, your Honor. On  
behalf of Direct Energy Business, LLC, Mark Whitt and  
Rebekah Glover from the law firm of Whitt Sturtevant,  
88 East Broad Street, Suite 1590, Columbus, Ohio  
43215.

EXAMINER ADDISON: Thank you.

1 Mr. Lang.

2 MR. LANG: Good morning, your Honor. On  
3 behalf of Ohio Edison Company and The Cleveland  
4 Electric Illuminating Company, I'm Jim Lang of  
5 Calfee, Halter & Griswold, 1405 East Sixth Street,  
6 Cleveland, Ohio 44114; and with me, Mark Keaney, also  
7 from Calfee Halter; and Erika Ostrowski, in-house  
8 with the FirstEnergy utilities.

9 EXAMINER ADDISON: Thank you very much.

10 And I don't believe we have anything to  
11 discuss before diving into it. So, Mr. Whitt,  
12 whenever you are ready to proceed, you may call your  
13 first witness.

14 MR. WHITT: Thank you, your Honor.  
15 Direct would call Ms. Teresa Ringenbach.

16 EXAMINER ADDISON: Please raise your  
17 right hand.

18 (Witness sworn.)

19 MR. WHITT: Your Honor, I will be marking  
20 for identification a copy of the witness's prefiled  
21 testimony. There is a public and confidential  
22 version of the testimony. I don't know if there's a  
23 preference to use the same exhibit number. Call one  
24 of the exhibits, for example, Direct Exhibit 1 and  
25 then Direct Exhibit 1 Confidential?



EXAMINER ADDISON: I think it would be my preference to call the public version, Direct Exhibit 1; and the confidential, Direct Exhibit 2-C, if we could.

MR. WHITT: Fair enough.

EXAMINER ADDISON: Thank you.

MR. WHITT: So let's start, we'll have co-counsel write 2-C on the confidential version and meanwhile I'll hand a public version of Direct Exhibit 1.0 to the court reporter.

(EXHIBITS MARKED FOR IDENTIFICATION.)

- - -

TERESA RINGENBACH

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

DIRECT EXAMINATION

By Mr. Whitt:

Q. Could you state your name and business address, please.

A. Teresa Ringenbach. Business address is 5200 Upper Metro Place, Dublin, Ohio.

Q. Ms. Ringenbach, do you have in front of you a document marked Direct Exhibit 1?

A. Yes.

Q. What is this document?

1           A.    This is my direct testimony in this case.

2                   MR. WHITT:  And if I may approach, your  
3 Honor.  Let me also just for the record have the  
4 witness identify Direct Exhibit 2-C.

5                   EXAMINER ADDISON:  Thank you very much.

6           Q.    And is it your understanding, ma'am, that  
7 Direct Exhibit 2-C is a confidential version of  
8 Direct Exhibit 1?

9           A.    Yes.

10          Q.    Do you have any corrections to make to  
11 your direct testimony?

12          A.    Yes.  I have four.

13          Q.    Okay.

14          A.    So the first is page 4, line 15.  
15 Correcting the the spelling of "Phillips."  So it  
16 should be P-h-i-l-i-p-s.  So one l, not two.

17                   The second is -- I can't read my  
18 handwriting here.

19                   Page 13, line 15.  Delete the date.  So  
20 it would be a period after the word "telephone."

21                   Page 14, line 22.  Again, correcting the  
22 name "Phillips" to only have one l.  P-h-i-l-i-p-s.

23                   And page 19, line 5.  Again, correcting  
24 "Phillips" to only have one l.

25          Q.    Apart from the corrections you have just

1 identified, if I were to ask you the same questions  
2 that appear in your direct testimony today, would  
3 your answers be the same?

4 A. Yes.

5 Q. Let me also, just so we have a clear  
6 record, identify the exhibits attached to your  
7 testimony and just confirm that your direct testimony  
8 includes exhibits thereto labeled Direct Exhibit 1.1  
9 through 1.7?

10 A. Yes.

11 MR. WHITT: Thank you. The witness is  
12 available for cross.

13 EXAMINER ADDISON: Thank you, Mr. Whitt.  
14 Mr. Lang.

15 MR. LANG: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Lang:

19 Q. Good morning, Ms. Ringenbach.

20 A. Good morning.

21 Q. Now, your responsibilities include  
22 handling midwest government regulatory affairs,  
23 anything legislative or regulatory, correct?

24 A. Yes.

25 Q. So you do not have responsibilities at

1 the federal level, correct?

2 A. I do not.

3 Q. And you're not a lawyer.

4 A. I'm not a lawyer.

5 Q. But you are a registered lobbyist in  
6 Ohio, correct?

7 A. Yes.

8 Q. And at no time in your career have you  
9 performed any billing resettlement activity.

10 A. I have not done the operational aspect of  
11 billing resettlement activity.

12 Q. And, in fact, Direct has a Settlements  
13 Group which reports to a gentleman by the name of  
14 Juan Padron; is that correct?

15 A. That's correct.

16 Q. Juan Padron does not report to you.

17 A. That's correct.

18 Q. And you do not know who he reports to; is  
19 that right?

20 A. So I went back and looked after the  
21 deposition. He reports to Warren Pereira.

22 Q. Now, fair to say you've testified in many  
23 state regulatory proceedings, yes?

24 A. Yes.

25 Q. And one of your job responsibilities is

1 providing testimony as regulatory support in state  
2 regulatory proceedings, correct?

3 A. Yes.

4 Q. Now, you have not previously offered  
5 testimony in a proceeding where the underlying  
6 dispute involves resettlement of billing errors,  
7 correct?

8 A. Where the underlying dispute was  
9 resettlement, no, I have not.

10 Q. You did offer testimony in another case  
11 at this Commission involving Direct's dispute with  
12 Duke concerning a billing error, I was going to say  
13 allegedly but I think that's accepted, a billing  
14 error committed by Duke, correct?

15 A. The error was Duke misread the meters and  
16 knew they misread those meters, which led to other  
17 errors, one of which was billing of customers.

18 Q. So your position is that resettlement was  
19 not an issue in that case?

20 A. Resettlement was something that was  
21 attempted in that case. Only 4 of 55 suppliers  
22 agreed to it. So at that point, following the PJM  
23 requirements that you don't mandate resettlement, we  
24 moved on to a complaint against Duke for misreading  
25 their meters.

1           Q.    Now, in the Duke case, Direct and Duke  
2 followed what was called the Resettlement C process;  
3 is that right?

4           A.    Yes.

5           Q.    And Direct expected Duke to cooperate  
6 with Direct in that process, correct?

7           A.    I just want to clarify. That was before  
8 the case was filed.

9           Q.    Okay.

10          A.    But yes, as part of Resettlement C, we  
11 expected us to all agree that we would attempt  
12 resettlement through that process.

13               EXAMINER ADDISON: Mr. Lang, I'm sorry to  
14 interrupt.

15               MR. LANG: Sure.

16               EXAMINER ADDISON: Would you mind just  
17 referencing the actual case number on the record for  
18 clarity purposes.

19               MR. LANG: Sure.

20               MR. KEANEY: 14-1277.

21               MR. LANG: Case No. 14-1277.

22               EXAMINER ADDISON: Thank you very much.

23          Q.    And, Ms. Ringenbach, you argued in the  
24 Duke case that Duke and the Advantaged Suppliers  
25 should be compelled to participate in resettlement,

1 correct?

2 A. So what we actually said in my testimony,  
3 the beginning of my testimony it says that Duke  
4 should be held responsible for their metering errors.  
5 And then later in my testimony I walked through the  
6 Resettlement C process as an option for resettlement,  
7 requesting that if the Commission felt that the  
8 authority was there at that time, that they mandate  
9 resettlement through Duke. Later, in a separate  
10 case, the Commission actually said no, we will not  
11 mandate resettlement. So there were a bunch of  
12 things happening over the course of that very long  
13 case.

14 Q. But to my question that you argued in the  
15 Duke case that Duke and the Advantaged Suppliers  
16 should be compelled to participate in resettlement,  
17 the answer is yes, you did make that argument.

18 A. I believe if you read the beginning of my  
19 testimony, what we really said is Duke should be held  
20 responsible as metering agent. Then I walked through  
21 Resettlement C and whether or not the Commission  
22 could mandate resettlement. I think we're ignoring  
23 the first half of my testimony.

24 Q. Well, I'm not asking you about the first  
25 half of your testimony. If you could answer my

1 question, please, which is a simple question, which  
2 is you argued in the Duke case that Duke and the  
3 Advantaged Suppliers should be compelled to  
4 participate in resettlement. Did you make that  
5 argument or not?

6 MR. WHITT: I'll just object, your Honor.  
7 The witness has indicated she's not a lawyer. The  
8 witness didn't make any arguments in the Duke case.  
9 The witness did testify. So if we can reference  
10 testimony, as opposed to argument, that would more  
11 accurately reflect the witness's participation in the  
12 the case.

13 EXAMINER ADDISON: Thank you for the  
14 clarification, Mr. Whitt.

15 You can answer.

16 A. So in my testimony, near the end, I asked  
17 that one of the options be that the Commission  
18 determine that Duke could mandate resettlement.

19 Q. That Duke could mandate resettlement or  
20 that the Commission could?

21 A. That the Commission could tell Duke that  
22 you have the ability to mandate resettlement.

23 MR. LANG: If we could approach, your  
24 Honor?

25 EXAMINER ADDISON: You may.



1 MR. LANG: If we could ask to have marked  
2 the Direct Prepared Testimony of Teresa L. Ringenbach  
3 filed in Case No. 14-1277-EL-CSS marked as, we'll  
4 call ourselves the Companies No. 1.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Ms. Ringenbach, do you recognize this  
7 document as the testimony that you filed in Case  
8 No. 14-1277?

9 A. Yes.

10 Q. And this was the dispute between Direct  
11 and Duke that we were just discussing; is that right?

12 A. That is the complaint case, yes.

13 Q. And this testimony shows -- would you say  
14 this document shows your testimony, your answers in  
15 response to the questions asked in that case,  
16 correct?

17 A. Yes.

18 Q. Now, you agree that the -- you agree that  
19 Supplier Tariff language can require CRES providers  
20 to consent to resettlement of errors at PJM, correct?

21 A. I agree that the Supplier Tariff language  
22 says that everyone uses the PJM OATT and Business  
23 Practices Manual which allows them to decide whether  
24 or not to agree to resettlement.

25 Q. I'm asking more generally. You agree

1 that the Supplier Tariff language generally can  
2 require CRES providers to consent to resettlement of  
3 errors at PJM, correct, that's your belief?

4 MR. WHITT: Objection.

5 EXAMINER ADDISON: Grounds?

6 MR. WHITT: It calls for a legal  
7 conclusion.

8 EXAMINER ADDISON: She's already stated  
9 that she's not an attorney. So in her capacity as a  
10 regulatory expert, you can answer the question.

11 A. I agree -- can I clarify? I mean, are we  
12 talking FirstEnergy's Supplier Tariff or are we  
13 talking general Supplier Tariffs?

14 Q. Generally.

15 A. Generally, Supplier Tariffs in Ohio say  
16 that you use the PJM requirements which are that you  
17 can consent to resettlement.

18 Q. You believe that the Ohio Commission can  
19 amend a tariff, if necessary, to require CRES  
20 providers to consent to resettlement, correct?

21 A. The Ohio Commission has amended tariffs  
22 to require consent for resettlement, yes.

23 Q. And you're okay with that?

24 A. I'm okay with a tariff change at one  
25 point moving forward. I'm not okay with changing the

1 rules of the road going back four years.

2 MR. LANG: Your Honor, I move to strike  
3 the second part of that response as argumentative.

4 EXAMINER ADDISON: I'll stick with my  
5 general rule of allowing one bite at the apple. I  
6 believe everyone is very familiar with that rule.  
7 But from this point forward if you can just answer  
8 Counsel's question. Any additional information, if  
9 you want to bring that up during redirect, your  
10 Counsel can do so.

11 THE WITNESS: Okay.

12 EXAMINER ADDISON: Thank you.

13 Q. Ms. Ringenbach, your position in this  
14 Duke case was that CRES providers in the Ohio market  
15 have the responsibility to make sure that the market  
16 is functioning properly, correct?

17 A. I don't see where I said that in the Duke  
18 case. I see where I've said that the utility has a  
19 responsibility. Do you see it in my testimony? I  
20 might be missing it. It's been a while since I read  
21 it. I see where we say the utility has a  
22 responsibility to the market to do what they're  
23 required to do under the tariff. I don't see where  
24 I've said that suppliers have to, to keep the market  
25 going. I see where we've asked the Commission to

1 deem nonresponse as consent.

2 Q. Ms. Ringenbach, do you remember being  
3 deposed in this case on April 30th?

4 A. Yes.

5 Q. And you were under oath at that time?

6 A. Yes.

7 Q. I was the one asking you questions, if  
8 you remember?

9 A. Yes.

10 MR. LANG: May we approach, your Honor?

11 EXAMINER ADDISON: You may.

12 Q. Ms. Ringenbach, we've put in front of you  
13 your deposition transcript from that April 30th  
14 deposition. If you could turn to page 26, please.

15 A. Do you mean page 26 of the deposition  
16 pages or the pages at the bottom?

17 Q. Fair question. Of the deposition pages,  
18 right, since there's four per page. And I'm going to  
19 read a question and answer starting on line 19 of  
20 page 26, and if you could just tell me if I read it  
21 correctly.

22 Starting at line 19, the question is  
23 "Uh-uh. Okay. Now, it was -- it was Direct's  
24 position in the Duke case that CRES providers in the  
25 Ohio market have responsibility to make sure that the

1 market is functioning properly, correct?"

2 And on line 23 you answered "Yes."

3 Did I read that correctly?

4 A. Yes.

5 Q. And in addition to this deposition done  
6 what, last week, I guess, you were also deposed in  
7 the Duke proceeding, the 14-1277 case, correct?

8 A. Yes.

9 MR. LANG: Your Honor, may we approach?

10 EXAMINER ADDISON: You may.

11 Q. And, Ms. Ringenbach, you were deposed in  
12 the Duke case on April 21st, 2015. Do you remember  
13 that?

14 A. I vaguely remember.

15 Q. Vaguely?

16 A. Yes.

17 Q. And do you remember, as with the standard  
18 deposition process, you were sworn in, correct?

19 A. Yes.

20 Q. And do you remember being given the  
21 standard instructions that if you did not understand  
22 the question, you know, ask for clarification, the  
23 usual?

24 A. I'm sure the usual was provided, yes.

25 Q. And the deposition transcript that we put

1 in front of you was put into evidence in the Duke  
2 case as a Duke exhibit. Are you aware of that?

3 A. I honestly, I'm going to assume yes, that  
4 it was.

5 Q. Now, in the Duke case -- in the Duke  
6 case, Direct was called what we've been referring to  
7 as a Disadvantaged Supplier or the harmed supplier;  
8 is that right?

9 A. Yes.

10 Q. And that meant as a result of the error  
11 you had mentioned earlier, Direct had been  
12 overcharged on its PJM bill, correct?

13 A. That was one of the things that had  
14 happened, yes.

15 Q. And Direct asked Duke to get confirmation  
16 from the other suppliers that they would transfer  
17 funds using this resettlement process to fix the  
18 mistake, correct?

19 A. Yes.

20 Q. Okay. And in the Duke case, after that  
21 process did not work, Direct sought compensation  
22 directly from Duke for the error, correct?

23 A. For the metering error, yes.

24 Q. Okay. And other than that Duke case, you  
25 don't know of any other cases where Direct has been a

1 Disadvantaged Supplier seeking compensation from an  
2 EDU, correct?

3 A. Yes.

4 Q. But you believe that EDUs are subject to  
5 claims made by Disadvantaged Suppliers when the EDU  
6 makes a billing error, correct?

7 A. Yes.

8 Q. And Direct's preference is that the EDU  
9 that commits the error, compensate the Disadvantaged  
10 Suppliers, correct?

11 A. To clarify, if we're talking about Duke,  
12 it was a metering reading error, and yes, that is our  
13 position.

14 Q. And that would be a settlement with the  
15 Disadvantaged Supplier, Direct in the Duke case, that  
16 is outside of PJM's resettlement process, correct?

17 A. That would be the complaint case is  
18 outside of the PJM process because it doesn't deal  
19 with just wholesale issues.

20 Q. Now, Direct's position is that if a  
21 utility makes an error in what is reported to PJM,  
22 it's the utility's obligation to settle with the  
23 Disadvantaged Supplier and everyone else should be  
24 left alone, correct?

25 MR. WHITT: I'll object. I guess my

1 objection is in the nature of clarification, whether  
2 the question is a position taken in the Duke case or  
3 a position taken here.

4 EXAMINER ADDISON: Mr. Lang.

5 MR. LANG: She can answer either one, but  
6 if you have a position different here than in the  
7 Duke case, let us know.

8 THE WITNESS: So our position is when not  
9 everybody agrees to the unanimous consent requirement  
10 for Settlement C and the utility has made an error,  
11 that it's between the utility and that impacted  
12 supplier, just as we did in Duke, to file a complaint  
13 and work it out.

14 So you used the word "settlement." I  
15 want to differentiate between when we're talking  
16 about the Settlement C process at PJM and an order of  
17 settlement through a normal Commission complaint  
18 case. I would make those two different categories.  
19 One is between the impacted supplier and the utility  
20 because of the utility error; the other is PJM  
21 requires unanimous consent in Resettlement C and not  
22 everybody consented.

23 Q. And that's your position both in the Duke  
24 case and here?

25 A. Yes.



1           Q.   And as part of that, that resolution  
2 between the EDU and the Disadvantaged Supplier, you  
3 would look to go forward, but then leave all other  
4 affected suppliers alone, correct?

5           A.   If they didn't -- if there wasn't  
6 unanimous consent, then yes, it leaves all other  
7 suppliers alone.

8           Q.   Okay. Now, Direct supported an amendment  
9 to Duke's Supplier Tariff to add language requiring  
10 all CRES providers to consent to resettlement,  
11 correct?

12          A.   Yes.

13               MR. LANG: If we could approach, your  
14 Honor?

15               EXAMINER ADDISON: You may.

16               MR. LANG: Your Honor, if I could ask to  
17 have this marked as Exhibit --

18               EXAMINER ADDISON: 2.

19               MR. LANG: -- 2.

20               EXAMINER ADDISON: It will be so marked.

21               (EXHIBIT MARKED FOR IDENTIFICATION.)

22           Q.   Ms. Ringenbach, do you recognize the  
23 document that's been marked as Exhibit 2 as the  
24 Application for Rehearing that Direct filed in Duke's  
25 I think it was their most recent ESP proceeding?

1           A.    Yes, but there's a more recent ESP  
2 proceeding going on right now, just to clarify that.

3           Q.    So this was in their ESP proceeding Case  
4 No. 14-841 and -842.

5           A.    Yes.

6           Q.    And did you have a role in preparing this  
7 Application for Rehearing?

8           A.    Yes.

9           Q.    What was your role?

10          A.    So the attorney at the time reported into  
11 me, he was inside counsel, so he wrote it up, and  
12 then it goes through me for a check, are we okay  
13 filing this.

14          Q.    So it's fair to say you had a review  
15 role?

16          A.    I would say review and just my role as  
17 managing the midwest government affairs means final  
18 decisions on filings come through me.

19               MR. LANG: Your Honor, I realize in going  
20 through a couple documents there were the two  
21 depositions. The second deposition transcript I did  
22 not ask to have marked as an exhibit, the deposition  
23 transcript from the Duke case, and I would like to  
24 ask to have that specific document marked as an  
25 exhibit.

EXAMINER ADDISON: The deposition from Case No. 14-1277-EL-CSS will be marked as Companies Exhibit 3.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. LANG: Thank you, your Honor.

EXAMINER ADDISON: Thank you.

Q. Was it your position, as expressed through this filing in Duke's ESP case, that the Ohio Commission has the authority to create tariff language that requires CRES providers to resettle billing errors at PJM?

MR. WHITT: I'll object at this point, your Honor. I've been waiting for some connection to be drawn between this line of questioning about the Duke case and how any of that relates to the Companies' Supplier Tariff which is what's at issue here, not Duke's tariff, so my objection is to relevance.

EXAMINER ADDISON: Thank you. Your objection is noted, but I'll afford Mr. Lang a little bit of latitude.

A. Can you just repeat the question real quick?

Q. Your belief and Duke's position, as expressed in the Application for Rehearing that was

1 filed in that Duke ESP, is that the Ohio Commission  
2 has the authority to create a tariff or a tariff  
3 provision that requires CRES providers to resettle  
4 billing errors at PJM, correct?

5 A. Yes, Direct believes that the Commission  
6 can create a tariff to require that.

7 Q. Now, the dispute that we're here for this  
8 morning involves three of Direct's customers in Ohio,  
9 correct?

10 A. Yes.

11 Q. Your understanding is that Direct was  
12 paid by those three customers for retail electric  
13 generation service during the time periods in  
14 dispute, correct?

15 A. Yes.

16 Q. However, you do not know how much Direct  
17 was paid; is that right?

18 A. I don't know how much we actually billed  
19 the customers and were paid.

20 Q. Is it your understanding that Direct  
21 charges less than its cost to provide service?

22 A. Not in general.

23 Q. Is it fair to say that you do not know  
24 whether Direct could have determined whether the load  
25 of these three Ohio customers was missing from its

1 PJM invoices by looking at the peak load contribution  
2 data on PJM's website?

3 A. I do not know that.

4 Q. Now, you became aware of the error and  
5 its impact on Direct that's at issue in this case,  
6 sometime in January of 2016; is that right?

7 A. I'll have to go back and check the exact  
8 date. It was after the utilities had been having  
9 conversations with our Settlements Group that I was  
10 brought in.

11 Q. Is there a -- is there an e-mail, one of  
12 the e-mails attached to your testimony that you could  
13 review to determine when the date was?

14 A. Yeah. Give me one second.

15 Yes, it would have been January 2016.

16 Q. And when you became involved it was  
17 because someone in legal brought you in?

18 A. Yes.

19 Q. And that person was Erica Steele?

20 A. Yes.

21 Q. And then after you became involved, you  
22 talked to Margie Philips and Juan Padron; is that  
23 right?

24 A. Yes.

25 Q. And then you and Ms. Philips advised

1 Direct's Settlements Group to follow the Resettlement  
2 C process; is that right?

3 A. Yes.

4 Q. And that was based on your and  
5 Ms. Philips' experience with the Duke case, correct?

6 A. Yes.

7 Q. And you also advised Direct's President,  
8 John Schultz, at that time, correct?

9 A. We informed him what Resettlement C was  
10 and what the options were, yes.

11 Q. And that was around that -- around this  
12 time that we're talking about in early 2016?

13 A. It was early 2016.

14 Q. And your thought was that the Companies'  
15 request to Direct, asking for resettlement in this  
16 matter, were fishy, correct?

17 A. Yes.

18 Q. And as you understand it, after those  
19 requests were made, then the Companies filed a  
20 federal lawsuit and also were talking about drawing  
21 on Direct's credit, correct?

22 A. There was a series of events, but those  
23 are two of them, yes.

24 Q. Now, it's your belief that whatever the  
25 Companies send over -- just so it's clear, when I'm

1 referring to the "Companies" I'm referring to CEI and  
 2 Ohio Edison -- it's your belief that whatever the  
 3 Companies send over in terms of financial data for  
 4 resettlement that those are the numbers that people  
 5 are just supposed to accept and go with, correct?

6 A. For the meter data numbers, we're  
 7 basically taking it on faith that that's the numbers  
 8 that the utilities have.

9 Q. Now, prior to this dispute with the  
 10 Companies, the only other resettlement that you had  
 11 been involved in was the case with Duke and then  
 12 perhaps some resettlements in Illinois, correct?

13 A. The resettlement process in Illinois,  
 14 yes.

15 Q. And it's your understanding that at some  
 16 point Illinois changed its state law to mandate  
 17 resettlement under PJM, correct?

18 A. They changed the state law to allow the  
 19 utility to mandate resettlement under the RTO. I  
 20 won't just say PJM because they also have MISO, yes.

21 Q. And then prior to the statutory change,  
 22 Direct participated in resettlements in Illinois,  
 23 correct?

24 A. I don't know if they did prior to the  
 25 statutory change. I'm assuming we probably did.

1 I take that back. Actually yes, we did.  
2 There was a lighting -- yes.

3 Q. With regard to any of those resettlements  
4 in Illinois, you do not know whether Direct asked for  
5 the name of other impacted suppliers, correct?

6 A. I don't know.

7 Q. And other than the Duke case, you are not  
8 aware of any other resettlements where Direct was the  
9 Disadvantaged Supplier; is that right?

10 A. Yes.

11 Q. We talked about this dispute being  
12 escalated to Legal, you being involved. Your  
13 understanding is that escalation of this dispute to  
14 Legal and to you and Ms. Philips was because of the  
15 dollar amount and because there's some level of  
16 distrust at Direct concerning the Companies; is that  
17 fair?

18 A. Yes.

19 Q. And you remember that Direct had  
20 questions about FirstEnergy Solutions' discussion of  
21 bankruptcy, correct?

22 A. Yes. I did go back and look. That was  
23 around the time that the ESP was happening and there  
24 was a lot of stuff in the press about FirstEnergy's  
25 financials.



1           Q.    So that would have been summer --  
2           actually, I think the first mention of bankruptcy was  
3           late in 2016.

4           A.    So the ESP case was ongoing at that time.  
5           There were a lot of press reports and things. The  
6           first mention I think of bankruptcy or selling off of  
7           the FirstEnergy Solutions stuff was probably  
8           November, but there had been statements I believe  
9           made just through the course of the case and stuff.

10          Q.    November of 2016, correct?

11          A.    Yes.

12          Q.    And Direct also had questions in your  
13          mind about that the Companies not telling Direct who  
14          the harmed supplier was on the other side of these  
15          three Ohio customers, correct?

16          A.    Yes.

17          Q.    So it was in your belief that it was in  
18          early 2017 when the Companies were being aggressive  
19          about resettlement, correct?

20          A.    Yes.

21          Q.    As far as you understand it, the  
22          Companies were not being aggressive about  
23          resettlement in late 2015 or early 2016, correct?

24          A.    Yes.

25          Q.    Now, about 2-1/2 weeks after Direct

1 learned of this error, there's an e-mail I believe  
2 attached to your testimony where Direct's lawyer  
3 asked who the harmed supplier was; is that right?

4 A. There is, yes.

5 Q. And you're not certain, but you think  
6 Direct also might have asked for more detail about  
7 the \$5.6 million amount?

8 A. Yes.

9 Q. But you don't remember what detail Direct  
10 asked for, correct?

11 A. I don't.

12 Q. Okay. And your belief is that Direct  
13 asked for the name of the harmed supplier because it  
14 was a large amount of money and Direct was suspicious  
15 about how the Companies were asking for  
16 resettlement; is that right?

17 A. Yes.

18 Q. However, you do not know of any other  
19 settlement situation where Direct asked for the name  
20 of the supplier on the other side of the error,  
21 correct?

22 A. I'm not aware of one.

23 Q. And your belief is that Direct is  
24 generally suspicious of the FirstEnergy utilities,  
25 correct?

1           A.    Yes.

2           Q.    And in fact, if the harmed supplier in  
3 this case had been Constellation as an example, you  
4 don't know whether we would be here now, correct?

5           A.    I don't.

6           Q.    Now, you understand with regard to the  
7 Resettlement C process that's discussed in your  
8 testimony, you understand that Direct does not settle  
9 directly with the other affected suppliers, correct?

10          A.    I'm sorry, I'm not following. The  
11 Resettlement C is each supplier agrees and then PJM  
12 reshuffles the money. So you lost me a little bit.

13          Q.    Okay. With regard to the agreement and  
14 PJM reshuffling the money, that doesn't happen by  
15 Direct going directly to those other suppliers and  
16 dealing with them directly, correct?

17          A.    Correct.

18          Q.    And to accomplish resettlement through  
19 PJM, it is not necessary to know the name of the  
20 other impacted suppliers, right?

21          A.    Yes.

22          Q.    Now, the Exhibit 1.3 that's attached to  
23 your testimony, that's your collection of e-mails  
24 related to this dispute, correct?

25          A.    Yes.

1           Q.    And with regard to the e-mails dated in  
2   late 2015 and early 2016, you do not remember when  
3   you first saw those e-mails, correct?

4           A.    Yes.

5           Q.    You were not involved in the drafting of  
6   any of those e-mails in either late 2015 or early  
7   2016, correct?

8           A.    Other -- I have to look.  There's one  
9   e-mail that I sent to Mr. Stein.  So other than that  
10  one, that's correct.

11          Q.    Okay.  And the one e-mail that you sent  
12  to Mr. Stein was in February of 2017, correct?

13          A.    Yes.

14          Q.    Okay.  And so what's in your Exhibit 1.3  
15  is that as this error and the discussion of the error  
16  progressed, there were some e-mails that were  
17  forwarded to you and that's what's attached as your  
18  Exhibit 1.3, correct?

19          A.    Yes, these are the e-mails that I have.

20          Q.    And to that point, your Exhibit 1.3 does  
21  not include all of the e-mails that were exchanged  
22  between the Companies and Direct in late 2015 and  
23  early 2016, correct?

24          A.    Yes.  Those -- Legal puts out a notice to  
25  supply everything in response to the discovery

1 request. So there's what I turned over and there's  
2 what everybody in the company had turned over.

3 Q. And what is attached as your Exhibit 1.3  
4 is what you had?

5 A. Yes.

6 Q. And one of the e-mails forwarded to you,  
7 you believe included the summary spreadsheet that's  
8 attached as your Exhibit 1.4, correct?

9 A. Yes.

10 Q. Now, you also remember seeing another  
11 spreadsheet in addition to what you have attached as  
12 Exhibit 1.4, correct?

13 A. Yes.

14 Q. But you don't remember what that  
15 spreadsheet looks like, correct?

16 A. So I went back and looked at this one  
17 after our deposition and there was a second tab and  
18 that was the other spreadsheet that I saw.

19 Q. Okay. So you do know that the Companies  
20 provided financial data to Direct for the three Ohio  
21 customers, but I guess prior and until the date of  
22 your deposition you had not looked at it, correct?

23 A. That's correct.

24 Q. And you don't know what data was in the  
25 spreadsheets that were sent by the Companies to

1 Direct in late 2015; is that right? Or do you know  
2 now, having reviewed something after your deposition?

3 A. Yeah, so the review after the deposition,  
4 it included some summary data for hourly loads, but I  
5 can't say that I've done an in-depth analysis.

6 Q. So your Exhibit 1.3 does not include the  
7 detailed spreadsheets that were sent to Direct in  
8 late 2015, correct?

9 A. That's correct.

10 Q. And your testimony concerning the lack of  
11 underlying data and methodology is not based on a  
12 review of all of the financial data the Companies  
13 provided to Direct in late 2015, correct?

14 A. Yes.

15 Q. Okay. You're aware that Juan Padron,  
16 with responsibility for settlements, was reviewing  
17 some financial data in late 2015, early 2016,  
18 correct?

19 A. Yes.

20 Q. But you don't remember seeing any of the  
21 data that was being reviewed by Direct at that time?

22 A. That's correct.

23 Q. So fair to say you do not know what  
24 financial data the Companies provided to Direct for  
25 the three Ohio customers?

1           A.     Yes.

2           Q.     Now, you do know that the Companies were  
3 communicating with Juan Padron and sending him  
4 financial information, right?

5           A.     I know they were sending him information,  
6 yes.

7           Q.     Sending him information including  
8 financial information, correct?

9           A.     I mean, if it's the second tab that I saw  
10 after the deposition, then it includes hourly load  
11 data. If they sent him something that said "This is  
12 what we looked at in the PJM Tariff to collect that,"  
13 I don't know.

14          Q.     Now, you don't remember discussing with  
15 Juan Padron the details of the financial information  
16 provided by the Companies, correct?

17          A.     Correct.

18          Q.     And you did not talk to Juan Padron as  
19 part of preparing your testimony for this case,  
20 correct?

21          A.     That's correct.

22          Q.     And you do not know if Direct has looked  
23 at its PLCs, its peak load contribution data, for the  
24 time periods at issue to determine that Direct was or  
25 was not being billed by PJM for the load of these

1 three customers, correct?

2 A. I do not know if we looked at PLC  
3 information. But to be clear, PLCs are only for  
4 capacity, not for your total PJM costs.

5 Q. And the issue here, as you understand it,  
6 involves both energy and capacity, right?

7 A. That's correct.

8 Q. As far as you know, Direct has not  
9 determined that Direct was not billed for the load of  
10 these three Ohio customers during the time period in  
11 this case.

12 A. We have not determined that.

13 Q. And you do not know of any steps that  
14 Direct could take, by reviewing data on PJM's  
15 website, to determine whether Direct was charged for  
16 the load of these three Ohio customers during the  
17 time periods at issue, correct?

18 A. That's correct.

19 Q. And, in fact, you do not know whether the  
20 PJM data available to Direct is disaggregated.

21 A. On the PJM website, I do not know.

22 Q. And you have not asked anyone at Direct  
23 to examine PJM data to determine whether Direct has  
24 been charged for the load of these three Ohio  
25 customers during the time periods at issue, correct?



1                   MR. WHITT: I'll object. It assumes  
2 facts that there is data to be looked at that would  
3 enable some conclusion to be drawn. There hasn't  
4 been a foundation or explanation of what data of PJM  
5 we're talking about.

6                   EXAMINER ADDISON: She can answer the  
7 question.

8                   THE WITNESS: I forgot the question, I'm  
9 sorry.

10                  MR. LANG: If we could have it reread,  
11 please.

12                  EXAMINER ADDISON: Certainly.

13                         (Record read.)

14                  A. So I have not asked anyone to look at the  
15 PJM invoice other than were we invoiced and did we  
16 pay it.

17                  Q. And instead of conducting that  
18 investigation, what you did do was advise Direct that  
19 it did not have to agree to resettlement, fair?

20                  A. That is correct.

21                  Q. Now your Exhibit 1.7 is a PJM Billing  
22 Adjustment Form; is that correct?

23                  A. Yes.

24                  Q. And the first time you've seen this form  
25 is as part of this case; is that right?

1 A. Yes.

2 Q. Okay. And this is the Resettlement Form  
3 used for resettlements that occur more than 60 days  
4 after a billing month, correct?

5 MR. WHITT: Objection.

6 EXAMINER ADDISON: Grounds?

7 MR. WHITT: There's no foundation. The  
8 witness said she hasn't seen this before. She didn't  
9 know what this was until she saw it in this case and  
10 it hasn't been established it's a Direct document.

11 EXAMINER ADDISON: She can answer if she  
12 knows.

13 THE WITNESS: I apologize. Can --

14 MR. LANG: Do you want that last question  
15 reread?

16 THE WITNESS: Yeah. Just to make sure  
17 I --

18 MR. LANG: If we could, your Honor?

19 EXAMINER ADDISON: Of course.

20 Thank you.

21 (Record read.)

22 A. In this instance, yes, that's what it was  
23 sent to us to do is after 60 days. I don't know if  
24 it's used other times.

25 Q. Well, you've seen this form one other

1 time more recently, correct?

2 A. Yes.

3 Q. And that was involving a resettlement in  
4 which JCP&L was involved; is that right?

5 A. That's correct.

6 Q. That was quite recently, April 23rd of  
7 this year?

8 A. Yes.

9 Q. And the Resettlement Form sent to Direct  
10 on April 23rd by JCP&L was for a credit to Direct,  
11 correct?

12 A. I believe so, yes.

13 Q. And you are not aware of Direct ever  
14 refusing to enter into a billing adjustment where  
15 Direct has received a credit, correct?

16 A. That's correct.

17 Q. Now, the earliest e-mail in your  
18 Exhibit 1.3, going back to the e-mails, is a  
19 December 18th, 2015 e-mail. That's on page 4 of that  
20 exhibit. Do you see that?

21 A. Hang on. My e-mails are out of -- the  
22 pages are out of order. Hang on a second.

23 Okay. Page 4.

24 Q. And this is a December 18th, 2015 e-mail?

25 A. Yes.

1 Q. Do you see it? Great.

2 You do not remember when you first saw  
3 this e-mail; is that right?

4 A. I don't.

5 Q. Okay. Now the e-mail explains that for  
6 three customers in Ohio that switched to Direct,  
7 their load obligation remained assigned to a previous  
8 supplier, correct?

9 A. Yes.

10 Q. And the e-mail also provides the time  
11 periods of the error dating back to late 2013 for one  
12 of the three customers, correct?

13 A. Yes.

14 Q. And since this e-mail was being sent in  
15 December of 2015, it's clearly outside of the  
16 Settlement A or Settlement B processes that are  
17 available at PJM, correct?

18 A. Yes.

19 Q. And the e-mail says these errors are  
20 beyond PJM's 60-day window. You understand that to  
21 be a reference to PJM's Settlement B process,  
22 correct?

23 A. Yes.

24 Q. And you understand that errors beyond the  
25 Settlement B time period, the 60 days, are remedied

1 using the form you've attached to your testimony as  
2 Exhibit 1.7, correct?

3 A. I understand that's what FirstEnergy was  
4 using, yes.

5 Q. When you say you "understand that's what  
6 FirstEnergy was using," you understand that this is a  
7 form for resettlements outside of the Settlement B  
8 period, correct?

9 A. Oh. Yes.

10 Q. Now, the December 18th e-mail states that  
11 a second e-mail will follow with energy and capacity  
12 costs associated with the JCP&L account. Do you see  
13 that?

14 A. Yes.

15 Q. Got it in bold there.

16 A. Yes, I see it.

17 Q. And your Exhibit 1.3 does not include  
18 this second e-mail with the JCP&L data, correct?

19 A. That's correct.

20 Q. And you agree it's a mistake on your part  
21 that Exhibit 1.3 does not include this second e-mail?

22 A. I agree, yes.

23 MR. LANG: May we approach, your Honor?

24 EXAMINER ADDISON: You may.

25 MR. LANG: And if we could have this

1 marked as Exhibit 4.

2 EXAMINER ADDISON: Thank you. It will be  
3 so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Ms. Ringenbach, we were talking about the  
6 December 18th e-mail at 9:01 in the morning. Do you  
7 recognize Exhibit 4 as the follow-up e-mail sent at  
8 1:02 p.m. that same day?

9 A. Yes.

10 Q. And is it correct that you do not  
11 remember at the time seeing this follow-up e-mail or  
12 the spreadsheet attached to the e-mail?

13 A. That's correct.

14 Q. Do you know whether, since this time,  
15 you've reviewed the spreadsheet attached to the  
16 e-mail?

17 A. Other than when you showed it to me at  
18 deposition.

19 Q. The -- I think that was a different  
20 spreadsheet.

21 A. Then I'm not sure which spreadsheet I  
22 reviewed.

23 Q. Okay. So we can agree that you're  
24 uncertain whether you reviewed the spreadsheet  
25 attached to this e-mail.

1 A. Yes.

2 Q. Now, your Exhibit 1.3, page 1 on the  
3 first page of that exhibit, it includes a  
4 December 28, 2015 e-mail sent at 9:01 a.m. to Juan  
5 Padron and Direct's OP Team; is that right?

6 A. Yes.

7 Q. And the Companies in this e-mail are  
8 asking Direct to confirm receipt of two files with  
9 supporting cost calculations, correct?

10 A. Yes.

11 Q. And then as shown in your exhibit, Juan  
12 Padron responds at 1:32 in the afternoon that he had  
13 only one file, correct?

14 A. Yes.

15 MR. LANG: If we may approach, your  
16 Honor?

17 EXAMINER ADDISON: You may.

18 MR. LANG: Your Honor, if we could ask to  
19 have -- this is a December 28th e-mail, 2:22 p.m.,  
20 marked as Exhibit 5.

21 EXAMINER ADDISON: It will be so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Ms. Ringenbach, Exhibit 5, do you  
24 recognize this as the e-mail that the Companies sent  
25 back to Juan Padron at 2:22 p.m. that same day,

1 December 28th, attaching the missing file?

2 A. Yes.

3 Q. And there's a Bates number, there's  
4 numbering at the bottom of the page showing that  
5 Direct produced this e-mail to the Companies in  
6 discovery; is that your understanding?

7 A. Yes.

8 Q. However, the first time you saw this  
9 e-mail was during your deposition; is that right?

10 A. Yes.

11 Q. And the e-mail says "Attached is the file  
12 containing the financial calculations for energy  
13 costs as it relates to the three accounts where DEB  
14 owes money...." "DEB" would be Direct Energy  
15 Business in that case; is that right?

16 A. Yes.

17 Q. And the three Ohio -- and the "three  
18 accounts," that would be the three Ohio customer  
19 accounts at issue here, right?

20 A. I believe so, yes.

21 Q. Later that afternoon, the Companies sent  
22 Direct a second file with the capacity costs for the  
23 three Ohio accounts. Do you know that?

24 A. It says a second file will be sent in a  
25 separate e-mail, yes.



1 Q. And do you remember whether the Companies  
2 sent Direct that second file with the capacity costs?

3 A. I don't remember.

4 MR. KEANEY: Your Honor, may I approach?

5 EXAMINER ADDISON: You may.

6 MR. LANG: Your Honor, if we could have  
7 marked as Exhibit 6, a December 28th, 3:26 p.m.  
8 e-mail from the Companies to Direct.

9 EXAMINER ADDISON: It will be so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. Ms. Ringenbach, do you recognize  
12 Exhibit 6 as the second e-mail, attaching the file  
13 with the capacity costs for the three Ohio accounts?

14 A. Yes.

15 MR. LANG: Your Honor, if we could  
16 approach and have marked as Exhibit 7, it's an Excel  
17 file printout, it's somewhat bulky. I would note  
18 it's confidential, it has customer data in it, so we  
19 would ask that it be marked Exhibit 6 Confidential --  
20 or, Exhibit 7 Confidential.

21 EXAMINER ADDISON: It will be so marked.

22 Thank you.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. And, Ms. Ringenbach, you had mentioned I  
25 showed you a spreadsheet in your deposition. I was

1 saving on copying costs at that time and I just  
2 showed you a few pages. What I'm showing you here is  
3 much thicker than the deposition version, correct?

4 A. Yes.

5 Q. And of this Exhibit 7, the first  
6 spreadsheet is the single page that was attached to  
7 your testimony or is attached to your testimony as  
8 Exhibit 1.4, correct?

9 A. Yes.

10 Q. And then I believe you had mentioned you  
11 went back after the deposition, you saw that there  
12 was a second tab or a second spreadsheet in that  
13 Excel file with an hourly energy calculation,  
14 correct?

15 A. Summaries, yes.

16 Q. And this spreadsheet, the second much  
17 larger spreadsheet I've given you, that shows the  
18 financial calculation hour by hour for the energy  
19 costs as it relates to Direct's three Ohio customers,  
20 correct?

21 A. The hour by hour energy?

22 Q. Correct.

23 A. You mean the LMP?

24 MR. WHITT: I'll object for lack of  
25 foundation from this witness about what the document

1 purportedly is.

2 EXAMINER ADDISON: If you could just  
3 rephrase to clarify on her point, I'll allow the  
4 question.

5 MR. LANG: If I could actually have my  
6 question read back, please?

7 EXAMINER ADDISON: Certainly.

8 (Record read.)

9 Q. And just so we're clear about what we're  
10 talking about, the first page of this Exhibit 7  
11 you've seen, correct?

12 A. Yes.

13 Q. And it's the same page as what's attached  
14 to your testimony, correct?

15 A. Yes.

16 Q. And then after your deposition you  
17 learned that that Excel file from which that first  
18 page comes from has additional data in it, correct?

19 A. There is a second tab, yes.

20 Q. And the second tab is the detail for the  
21 energy charges shown on the first tab, correct?

22 A. Yes.

23 Q. And in fact, the remaining pages, pages 2  
24 through whatever on Exhibit 7, are that detail  
25 printed out on many pages of paper, correct?

1           A.    Yes.

2           Q.    And at the -- on the larger spreadsheet,  
3   so starting on page 2 of that exhibit, at the top  
4   right it shows the total energy costs for each of the  
5   three Ohio customers.  Do you see that?

6           A.    The total amounts, yes.

7           Q.    Okay.  And the total amounts for energy,  
8   that matches the energy costs for each customer  
9   that's on your Exhibit 1.4, correct?

10          A.    Yes.

11          Q.    Now, if we go back to your Exhibit 1.3,  
12   your e-mails.  I want to take you to the bottom of  
13   page 3 of your Exhibit 1.3.  There's a December 31st,  
14   2015 e-mail there from the Companies to Direct.  Let  
15   me know when you're there.

16          A.    Yes.

17          Q.    Okay.  And that e-mail was sent on  
18   Thursday, December 31st, in the morning, correct?

19          A.    That's correct.

20          Q.    And the second paragraph refers to a  
21   specific customer that is one of the three Ohio  
22   customers here, correct?  Without naming the name.

23          A.    Yes.

24          Q.    So we can stay in the public record.

25          A.    Thank you.

1 Q. And that customer that's named there is  
2 the customer with the largest charge for energy and  
3 capacity of about \$5.3 million, correct?

4 A. Yes.

5 Q. And this e-mail to Juan Padron says I  
6 realize you only got the financial data associated  
7 with that customer on Monday. Do you see that?

8 A. Yes.

9 Q. And because this is Thursday,  
10 December 31, that's a reference to the two e-mails  
11 we've reviewed that were sent the afternoon of  
12 Monday, December 28th, correct?

13 A. Yes.

14 Q. And as far as you know, after  
15 December 28th, Juan Padron never responded to the  
16 Companies that he was missing any financial data for  
17 the three Ohio customers, correct?

18 MR. WHITT: Objection. Calls for  
19 speculation.

20 EXAMINER ADDISON: Mr. Lang.

21 MR. LANG: I'm asking for her knowledge,  
22 that's why I said "as far as you know."

23 EXAMINER ADDISON: You may answer.

24 A. I don't know.

25 Q. And you're certainly not aware of any

1 communications between Juan Padron and the Companies  
2 after December 28th where he's stating he is missing  
3 financial data, correct? You haven't seen any  
4 communications like that?

5 A. I haven't seen any.

6 Q. Now, if we take you to page 10 of your  
7 Exhibit 1.3. I want to ask you about there's a  
8 January 5 e-mail on that page from Direct's attorney,  
9 Erica Steele, to the Companies. Fair to say that  
10 Direct's attorney in this e-mail is not asking for  
11 more financial data?

12 A. Yes.

13 Q. And in fact, she says Direct's review  
14 would be complete by next week at the earliest,  
15 correct?

16 A. Yes.

17 Q. And at that point with the lawyer  
18 involved, do you know whether Direct had told Juan  
19 Padron to stop talking to the Companies about  
20 resettlement?

21 A. I don't know if they did at that point.  
22 I'm sure at some point the attorney said it will go  
23 through them.

24 Q. Okay. Now, I want to look at another  
25 e-mail. This starts at the very bottom. There's one

1 line at the bottom of page 8 going over to page 9 of  
2 your Exhibit 1.3. There's an e-mail from Ed Stein on  
3 behalf of the Companies to Direct's lawyer. Do you  
4 see that one?

5 A. Yes.

6 Q. And here he's thanking Direct's team for  
7 the attention given to this matter. He asked the  
8 lawyer to let him know if there's any further  
9 information that the utilities can provide. Do you  
10 see that?

11 A. Yes.

12 Q. Other than asking for the name of the  
13 other supplier, Direct's lawyer did not ask the  
14 Companies for any additional information, correct?

15 A. Yes.

16 Q. Now, if I could take you to the top of  
17 page 6 of your Exhibit 1.3. There's another e-mail  
18 from Ed Stein, again to Direct's lawyer again. This  
19 one is dated Friday, January 15th, 2016. Do you see  
20 that?

21 A. Yes.

22 Q. And this is the last communication that  
23 you know of between the Companies and Direct in  
24 2016; is that right?

25 A. In 2016, yes.

1 Q. Okay. And as far as you know, Direct did  
2 not respond to this January 15th e-mail, correct?

3 A. Correct.

4 Q. Now, let's see. So you made a correction  
5 to your testimony, changing -- you didn't change.  
6 You deleted the reference to February 1st that was in  
7 the testimony. Let's look at that.

8 The testimony now is that in early 2017,  
9 Erica Steele, Jeffrey Whitehead, Christina Dillard,  
10 and you talked to Edward Stein by telephone period,  
11 correct?

12 A. Yes.

13 Q. And we've talked about Erica Steele.

14 Jeffrey Whitehead is a -- he's a PJM  
15 settlement person at Direct?

16 A. He used to have the role that Margie is  
17 covering.

18 Q. Okay. And Christina Dillard is who?

19 A. She's inside counsel.

20 Q. And is it your memory that that was a  
21 phone call that took place on February 13th?

22 A. Yes.

23 Q. And it's your memory that on the  
24 February 13th phone call, Mr. Stein told you that the  
25 Supplier Tariff required Direct to cooperate with the



1 Companies to resettlement the computer error; is that  
2 right?

3 A. Yes.

4 Q. And he also stated, in your memory, that  
5 if Direct did not cooperate with the Companies, the  
6 Companies might consider taking money from Direct's  
7 posted credit, correct?

8 A. Yes.

9 Q. And you agree there's a difference  
10 between the Companies drawing on a letter of credit  
11 and the Companies saying we will suspend your credit,  
12 correct?

13 A. Yes.

14 Q. Because drawing on a letter of credit  
15 simply means that the Companies take the money that's  
16 been posted, correct?

17 A. Yes.

18 Q. Now, whether the Companies have the  
19 authority under the Supplier Tariff to require  
20 resettlement, you believe is a legal question for the  
21 Commission to answer in this case, correct?

22 A. Yes.

23 Q. Now, the Supplier Tariff, there's many  
24 provisions in the Supplier Tariff concerning  
25 coordination, correct?

1           A.     There's a section on coordination.

2           Q.     Okay.  So there's a section in the  
3     Supplier Tariff titled "Coordination" dealing with  
4     coordination responsibilities, correct?

5           A.     Yes.

6           Q.     And your view is that coordination  
7     responsibilities associated with resettlement under  
8     the Supplier Tariff is a PJM issue, correct?

9           A.     Yes.

10          Q.     Now, with regard to the misassignment of  
11     Direct's three customers that occurred here, you do  
12     not know whether that affected any suppliers other  
13     than Direct and FES, correct?

14          A.     That's correct.

15          Q.     And for Direct's largest customer we  
16     talked about earlier with the \$5.3 million at issue,  
17     whose load responsibility would have been switched  
18     from FES, should have been switched from FES to  
19     Direct but was not, no suppliers other than FES and  
20     Direct were affected by that specific error, correct?

21          A.     Based on the information the utilities  
22     provided, that's correct.

23          Q.     And there's some discussion in testimony  
24     about a two-year bar that's in PJM's Tariff.  You're  
25     familiar with that two-year bar?

1           A.     Yes.

2           Q.     Okay.  At no time during this dispute  
3 with the Companies has Direct asserted that a  
4 two-year bar in PJM's Tariff prevents resettlement,  
5 correct?

6                   MR. WHITT:  Objection.

7                   EXAMINER ADDISON:  Grounds?

8                   MR. WHITT:  Well, it's asking for a legal  
9 conclusion and the effect of certain either  
10 affirmants in the Complaint or in answer to the  
11 Company's Complaint about what the legal defense is  
12 and assertions in our case are.

13                   EXAMINER ADDISON:  Mr. Lang.

14                   MR. LANG:  Your Honor, she's been  
15 discussing and her testimony discusses at length what  
16 she believes to have been the communications between  
17 direct on the one hand and the Companies on the other  
18 hand.  What I would like to know from her is at any  
19 time, when those communications had been made, has  
20 Direct ever asserted the two-year bar as a reason not  
21 to resettle.  That's my question.

22                   EXAMINER ADDISON:  You may answer.

23                   THE WITNESS:  We did not bring up the two  
24 years in our communications with the Companies.

25                   MR. LANG:  One second, your Honor.

1 EXAMINER ADDISON: We can go off the  
2 record for a minute.

3 (Off the record.)

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

6 MR. LANG: Your Honor, we have one copy  
7 of a document which is a series of forms that look  
8 like Exhibit 1.7 and it's also confidential. In  
9 fact, I think the top page is the unredacted version  
10 of her Exhibit 1.7. I'd like to have this -- I'd  
11 like to have this marked as our Exhibit 8.

12 EXAMINER ADDISON: 8-C?

13 MR. LANG: 8-C Confidential and see if  
14 she recognizes the document.

15 EXAMINER ADDISON: Thank you, Mr. Lang.  
16 It will be so marked. And if you could allow  
17 Mr. Whitt to review the document before giving it to  
18 the witness.

19 MR. LANG: Absolutely.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. LANG: Mark, it should just be the  
22 same as what you used in depositions as the different  
23 bilaterals.

24 EXAMINER ADDISON: Thank you.

25 Q. Ms. Ringenbach, looking at Exhibit 8-C

1 what's been put in front of you, is this document and  
2 the individual pages of this document, is this  
3 something you've seen before?

4 A. No.

5 Q. Okay.

6 A. I mean, I haven't gone all the way  
7 through, but it looks like it's FirstEnergy  
8 Solutions' stuff, so no.

9 Q. That's all I have on that document then.

10 A. Okay. I was wondering, like, if some of  
11 the JCP&L stuff that I saw on the 23rd was in here,  
12 but if it's not, then no.

13 Q. No, I don't think it is.

14 A. Okay.

15 MR. LANG: In that case, I have no  
16 further questions for this witness.

17 EXAMINER ADDISON: Thank you, Mr. Lang.

18 MR. LANG: Thank you, Ms. Ringenbach.

19 EXAMINER ADDISON: Mr. Whitt.

20 MR. WHITT: If I may, your Honor, would  
21 it be appropriate for a small break?

22 EXAMINER ADDISON: You can have a brief  
23 break. Let's go off the record.

24 (Recess taken.)

25 EXAMINER ADDISON: Let's go back on the

1 record.

2 Mr. Whitt.

3 MR. WHITT: Your Honor, we will have some  
4 redirect, if I may?

5 EXAMINER ADDISON: Please proceed.

6 MR. WHITT: Thank you.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Whitt:

10 Q. Ms. Ringenbach, could you turn to  
11 Companies Exhibit 1, which was the direct testimony  
12 you had filed in the Duke case that you were  
13 questioned about. Do you still have that up there?

14 A. Sorry. I have a lot of paper up here.

15 EXAMINER ADDISON: Take your time.

16 A. Yes, I have it.

17 Q. Okay. Can you turn to the very last page  
18 of Exhibit 1 where there appears to be information  
19 about when the document was filed with the  
20 Commission. Do you see that?

21 A. April 14th, 2015, yes.

22 Q. Okay.

23 A. Oh no, I'm sorry. The very last page.  
24 April 14th, yes.

25 Q. Okay. And that would indicate -- are you

1 familiar with the last page of Exhibit 1? Have you  
2 seen that before in documents filed with the  
3 Commission where there's a filing confirmation?

4 A. Yes.

5 Q. And this confirmation, as you indicated,  
6 shows the document was filed in April of 2015,  
7 correct?

8 A. Yes.

9 Q. Now, if you'll go with me to Exhibit 2  
10 and look at the last page of that document. What  
11 does that tell us about when Exhibit 2 was filed?

12 A. May 1st, 2015.

13 Q. And you were asked questions about  
14 Exhibit 4, which is Ms. Teamann's December 18th, 2015  
15 e-mail, correct?

16 A. Yes.

17 Q. Was Direct involved in any resettlement  
18 or settlement issues involving PJM during this period  
19 between May of 2015 and December 2015?

20 A. No. Other than we were talking to PJM to  
21 try to change the process.

22 Q. That's what I was getting at.

23 A. So we had -- we weren't involved in  
24 resettlement issues with utilities outside of Duke in  
25 that period of time, but we were pushing to change

1 the resettlement process at PJM.

2 Q. And what were you attempting to do? By  
3 "you" I mean Direct.

4 A. Direct was trying to change the process  
5 where you require unanimous consent, so that if you  
6 found an issue within 12 months it would just go  
7 ahead and be resettled and you would have an  
8 opportunity to one-off settle. Margie's testimony,  
9 Margie can probably talk more about the details about  
10 what that really was to do.

11 Q. Okay. And by what means did Direct seek  
12 to effectuate this change?

13 MR. LANG: Objection, your Honor. At  
14 this point I believe he's actually maybe even more  
15 than one question beyond the scope. I did not ask  
16 her any questions about a PJM process. All my  
17 questions to her, because she's a state regulatory  
18 witness, were at the state regulatory level.

19 EXAMINER ADDISON: Mr. Whitt.

20 MR. WHITT: Well, the Ohio Rule is that  
21 cross-examination is not limited to the scope of  
22 direct; it is appropriate for any matter relevant in  
23 the proceeding. In this case, these questions  
24 actually are tied directly to testimony explaining  
25 what was going on in this period between May and



1 December as established by the Companies' questions.

2 EXAMINER ADDISON: I'll allow a little  
3 bit of latitude; not much. You may answer.

4 A. So Direct was working through the PJM  
5 stakeholder process to try to make a change to the  
6 Resettlement C process.

7 Q. What was the result of that process?

8 A. It never got changed.

9 Q. And what did Direct decide to do?

10 A. At that point we just accepted the  
11 process requiring unanimous consent in that nobody is  
12 mandated to consent if they didn't want to.

13 Q. Did that process inform your decision  
14 about how you would advise Direct to respond to the  
15 issue that Ms. Teamann had raised in her  
16 December 2015 e-mail?

17 A. Yes.

18 Q. You had talked about a tariff change in  
19 the Duke proceeding. Do you recall those questions?

20 A. Yes.

21 Q. How did that proceeding come about?

22 A. So in the Duke ESP case, I don't remember  
23 the docket number off the top of my head, in that  
24 case Duke had filed a tariff with the Commission  
25 asking for the ability to do mandatory resettlement.

1 The case is 14-841.

2 Q. Okay. So Duke -- I'm sorry, were you  
3 finished?

4 A. So Duke filed a tariff, asking for the  
5 ability to mandate resettlement essentially. The  
6 Commission, in their Order, came out and said we will  
7 not allow a utility to mandate resettlement. Direct  
8 filed for rehearing which is, I don't have the  
9 exhibit number on here, but it's the May 1st, 2015  
10 rehearing.

11 Q. Okay.

12 A. And then in April of this year, April  
13 2018, the Commission granted Direct's request for  
14 rehearing and told Duke to file a new tariff to allow  
15 for resettlement.

16 Q. Okay. We can all look at the  
17 Commission's docket to figure out procedures and  
18 timelines and so forth, but my only question is that  
19 was it the case that Duke was asking the Commission  
20 for permission to change its tariff pursuant to  
21 Commission processes for doing so?

22 A. Yes.

23 Q. Are you aware of any proceeding at this  
24 Commission or anywhere else where the Companies have  
25 requested authority to change the Supplier Tariff

1 that is attached to your testimony?

2 A. I'm not.

3 Q. You had also talked about a change of  
4 state law in Illinois that allows utilities to  
5 require resettlement. Do you recall those questions?

6 A. Yes.

7 Q. And you indicated you are a registered  
8 lobbyist in Ohio, correct?

9 A. I am.

10 Q. Are you aware of any either pending or  
11 enacted legislation that would give an Ohio utility  
12 the authority to mandate wholesale resettlements at  
13 PJM?

14 A. I'm not aware.

15 Q. There was some testimony that indicated  
16 that there was some distrust with the Companies, and  
17 I just want to make sure that you don't personally  
18 have any axe to grind with the Companies or anyone  
19 associated with them, do you?

20 A. No. At a personal level, we all get  
21 along.

22 Q. Okay. So when you were talking about  
23 distrust, what were the circumstances that led you to  
24 use that characterization?

25 A. So there was the ESP case that was going

1 on at that time. There were a lot of rumblings about  
2 potential for reregulation in the market. Just in  
3 general my role there, just normal ear-to-the-ground  
4 conversations that were happening, and there were  
5 questions about what direction was FirstEnergy in  
6 general going.

7 FirstEnergy Solutions, it had been  
8 generally known for years from multiple suppliers  
9 that it was questionable how they were selling at  
10 certain levels. Then we had an ESP case where the  
11 Companies had put forward that they needed money and  
12 whether or not that money would be used for the  
13 utilities versus being used to support other  
14 businesses. So the general distrust came about just  
15 by what was happening in the ESP case and generally  
16 what we were hearing on the ground in the market.

17 Q. But it's business related, not personal  
18 vendettas, things of that nature?

19 A. I have no personal vendettas against  
20 FirstEnergy.

21 Q. You would even buy them drinks.

22 A. I've bought Justin drinks before.

23 (Laughter.)

24 Q. Okay. Well, that was nonresponsive. Let  
25 me ask better questions.

1           Are you aware of any situation where a  
2 utility had reached out to Direct on behalf of  
3 another supplier on settlement issues?

4           A.    Not outside of this case.

5           Q.    The Exhibit 1.3 which is your collection  
6 of e-mails.

7           A.    Yes.

8           Q.    And I think you had testified that not  
9 all of those e-mails were necessarily sent to you  
10 contemporaneously with whatever date is on there; is  
11 that fair?

12          A.    Yes.

13          Q.    Are you able to recognize all of the  
14 e-mails within your exhibit as being the business  
15 records of Direct?

16          A.    The e-mails in my exhibit are the  
17 business records that I hold, yes.

18          Q.    Okay. And there was some discussion  
19 about this confidential Exhibit 7 --

20          A.    Yes.

21          Q.    -- and whether Direct had received it.  
22 Are you disputing whether the Companies sent this to  
23 Direct in late 2015, early 2016?

24          A.    No.

25          Q.    Okay. And the e-mails that you've

1 attached in fact reference the fact that financial  
2 information had been sent and received. You went  
3 through those with Mr. Lang, correct?

4 A. Yes.

5 Q. And you're not aware of any e-mails sent  
6 by the Companies in 2015 where they're mentioning  
7 their Supplier Tariff?

8 A. I'm not aware.

9 Q. Did they send any e-mails in 2016 talking  
10 about their Supplier Tariff?

11 A. No.

12 Q. Okay. Did Mr. Stein, in his  
13 correspondence with the Companies, indicate whether  
14 the issue that Direct had been contacted about also  
15 affected other suppliers?

16 A. Yes.

17 MR. WHITT: Those are all my questions.

18 EXAMINER ADDISON: Thank you, Mr. Whitt.

19 Mr. Lang.

20 - - -

21 RECROSS-EXAMINATION

22 By Mr. Lang:

23 Q. Ms. Ringenbach, your counsel asked you  
24 about what was marked as the Companies Exhibit 1 and  
25 I think Exhibit 2, your testimony in the Duke case --

1           A.    Thank you.

2           Q.    -- and the date of your testimony in the  
3 Duke case. That Duke case went to hearing at some  
4 point, a brief hearing, you're aware, correct?

5           A.    Yes, it did.

6           Q.    And that took place in June of last year,  
7 2017, correct?

8           A.    I will go with that date. I'd have to  
9 doublecheck it, but I think that sounds right.

10          Q.    In fact, June 13th, 2017, if you  
11 remember.

12          A.    I will go with the June 13th date.

13          Q.    And is it your understanding that your  
14 testimony, your prepared testimony, was put in the  
15 record as part of that case in June of 2017?

16          A.    It was put in the record in that case.

17          Q.    Okay. Your counsel asked you about a  
18 utility reaching out on behalf of another supplier  
19 and your not being aware of that happening. In the  
20 Duke case, do you remember Duke sending out an e-mail  
21 to other suppliers on behalf of Direct?

22          A.    Duke, in coordination with PJM, did send  
23 something out, yes.

24          Q.    And just to be clear, you're talking  
25 about coordination with PJM, but it was Duke that

1 sent out the e-mail, not PJM, correct?

2 A. Yes.

3 MR. LANG: That's all I have. Thank you,  
4 your Honor.

5 EXAMINER ADDISON: Thank you, Mr. Lang.

6 I don't believe I have any additional  
7 questions. Ms. Ringenbach, you are excused.

8 THE WITNESS: Thank you.

9 EXAMINER ADDISON: Thank you very much.

10 THE WITNESS: Do you want your documents  
11 back?

12 MR. LANG: They can stay up there.

13 THE WITNESS: I didn't have a pen, so I  
14 didn't mark them. So if somebody else uses them,  
15 you'll have to walk them through what they are, just  
16 so you guys know.

17 EXAMINER ADDISON: Thank you.

18 MR. LANG: Thanks.

19 EXAMINER ADDISON: Mr. Whitt.

20 MR. WHITT: Your Honor, Direct would move  
21 for the admission of Ms. Ringenbach's testimony  
22 Direct Exhibit 1.0 as well as the confidential  
23 version, 2-C, along with the exhibits which are  
24 marked and attached to the testimony as 1.1 and 1.7.

25 EXAMINER ADDISON: Let's go off the



1 record.

2 (Discussion off the record.)

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

5 I apologize for that, Mr. Whitt.

6 MR. WHITT: No problem, your Honor.

7 There's one exhibit, actually two  
8 exhibits, Direct Exhibit 1.0 and Direct Exhibit 2-C.  
9 Attached to those exhibits are additional documents  
10 referenced in the testimony. Those are marked 1.1  
11 through 1.7, but they are part of the 1.0 and 2-C  
12 respectively.

13 EXAMINER ADDISON: Thank you for the  
14 clarification.

15 Any objections to the admission of Direct  
16 Exhibit 1.0 and Direct Exhibit 2-C?

17 MR. LANG: No, your Honor.

18 EXAMINER ADDISON: Thank you. They will  
19 be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 MR. LANG: Companies would move in  
22 Company Exhibit 1 through 7. We marked an 8, but we  
23 would not move that one at this time.

24 EXAMINER ADDISON: Thank you, Mr. Lang.

25 Any objection?

1 MR. WHITT: No objection to 1. No  
2 objection to 2.

3 We do have an objection to 3. I'm not  
4 sure that there were any questions at all on this  
5 document other than was this part of the record in  
6 Duke. If that is in fact the case, we wouldn't  
7 necessarily have an issue with the Commission taking  
8 administrative notice of its own files, but we do  
9 have an objection to the document being admitted in  
10 its entirety in this proceeding. It is testimony  
11 taken in a different proceeding.

12 No objection to 4. No objection to 5.  
13 No objection to 6. No objection to 7.

14 EXAMINER ADDISON: All right.

15 MR. WHITT: And you did not move for 8,  
16 correct?

17 MR. LANG: Correct.

18 EXAMINER ADDISON: Thank you, Mr. Whitt.

19 At this time we will go ahead and admit  
20 Companies Exhibits 1, 2, 4, 5, 6, and 7-C into the  
21 record.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 EXAMINER ADDISON: Mr. Lang, would you  
24 like to respond to Mr. Whitt's objection to Companies  
25 Exhibit No. 3?

1                   MR. LANG: Yes, your Honor. It's a  
2 deposition that we're using for the substance of the  
3 statements made by Ms. Ringenbach concerning  
4 resettlement and, among other things, the informal  
5 nature of the resettlement process. It represents  
6 her knowledge that was made at the time. We prefiled  
7 it with the Commission on, I think, last Wednesday as  
8 required by the Commission's rules. And there are  
9 what we consider to be admissions against interest of  
10 a witness and, therefore, we have and are submitting  
11 it on those grounds so that we can use it in  
12 briefing, and we believe it is a proper exhibit for  
13 purposes of the Commission's consideration in this  
14 case.

15                   EXAMINER ADDISON: Thank you, Mr. Lang.  
16                   Mr. Whitt, last word?

17                   MR. WHITT: Your Honor, even if the  
18 deposition were taken in this case, when depositions  
19 are used even for impeachment purposes, the  
20 deposition doesn't come into the record in its  
21 entirety or even the impeaching portion.

22                   Here, it's a deposition from a different  
23 proceeding, involving a different Company, with a  
24 different Supplier Tariff. I think that Counsel has  
25 indicated the purpose is to use the deposition to

1 point to admissions against interest, whatever those  
2 are, we don't know what they are, we have no  
3 opportunity to rebut them because they haven't been  
4 identified, and that renders the deposition in its  
5 entirety not only irrelevant but unduly prejudicial  
6 for the very purpose that the other side seeks to  
7 have it admitted.

8           Again, if the document is in the record  
9 in the proceeding as represented, then they can cite  
10 it in their brief through administrative notice of  
11 that docket. But to have it in this case, in  
12 addition to not being relevant, unduly prejudicial,  
13 there's a real danger of confusion of the record here  
14 when we talk about Ms. Ringenbach's deposition, which  
15 deposition we're even referring to.

16           EXAMINER ADDISON: Thank you, Mr. Whitt.

17           Although rare, I will note that we have  
18 taken -- we have admitted some depositions, in fact  
19 even depositions for witnesses that have not been  
20 present at the hearing to be cross-examined in recent  
21 proceedings, so I will go ahead and admit Companies  
22 Exhibit No. 3. The Commission will be able to afford  
23 to it the appropriate weight it deserves, and I  
24 believe they are more than able to distinguish  
25 between the two depositions and provide the

1 appropriate weight to both. Thank you.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 MR. LANG: Thank you, your Honor.

4 EXAMINER ADDISON: Mr. Whitt.

5 MR. WHITT: We are ready to proceed with  
6 our next witness. I don't know if we want to talk  
7 about schedule for the remainder of the afternoon.

8 EXAMINER ADDISON: Let's go off the  
9 record for a moment.

10 (Discussion off the record.)

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

13 Mr. Whitt.

14 MR. WHITT: Thank you, your Honor.  
15 Direct would call Ms. Marjorie Philips with one "1."

16 EXAMINER ADDISON: Thank you.

17 Ms. Philips, please raise your right  
18 hand.

19 (Witness sworn.)

20 EXAMINER ADDISON: You may proceed,  
21 Mr. Whitt.

22 MR. WHITT: Thank you, your Honor.

23 And I will represent to the parties and  
24 the Bench, and we will have the witness confirm, that  
25 the cover page and first Question and Answer of what

1 is now Direct Exhibit 3 vary slightly from what we  
2 had filed on April 4th, due to a spelling error of  
3 the witness's name, which I felt ought to be  
4 corrected on paper as opposed to on the bench as we  
5 usually do.

6 MR. LANG: That's the only change made?

7 MR. WHITT: That's the only change made.

8 EXAMINER ADDISON: That's correct,  
9 Ms. Philips?

10 THE WITNESS: Yes.

11 EXAMINER ADDISON: Thank you.

12 - - -

13 MARJORIE ROSENBLUTH PHILIPS

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

16 DIRECT EXAMINATION

17 By Mr. Whitt:

18 Q. Ma'am, do you have a document in front of  
19 you marked Direct Exhibit 3?

20 A. Yes.

21 Q. Is this the direct testimony you have  
22 prepared in this proceeding?

23 A. Yes.

24 Q. Do you have any additional corrections to  
25 make to your testimony?

1           A.    No.

2           Q.    If I were to ask you the same questions  
3 that appear in Direct Exhibit 3 today, would your  
4 answers be the same?

5           A.    Yes.

6                   EXAMINER ADDISON:  Thank you, Mr. Whitt.  
7                   Just so the record is clear, we will be  
8 marking Ms. Philips' direct testimony as Direct  
9 Exhibit 3.  I'm not sure if I went ahead and marked  
10 that.

11                   (EXHIBIT MARKED FOR IDENTIFICATION.)

12                   EXAMINER ADDISON:  At this time we will  
13 take a break for lunch.  Let's return around 1:00.

14                   (At 12:02 p.m. a lunch recess was taken  
15 until 1:00 p.m.)

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Monday Afternoon Session,  
May 7, 2018.

- - -

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

Mr. Lang.

MR. LANG: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Lang:

Q. Good afternoon, Ms. Philips.

A. Good afternoon.

Q. Now, you describe yourself as a  
regulatory specialist, correct?

A. Yes.

Q. And you are not a practicing lawyer.

A. Yes, correct.

Q. And you are not intending to offer a  
legal opinion in your testimony in this case,  
correct?

A. Correct.

Q. And you have not had any responsibilities  
for state-regulated settlements, correct?

A. Correct.

Q. Direct's Settlement Group is responsible



1 for the settlement function, right?

2 A. I think we've discussed before that  
3 there's other people in the -- I'm not sure exactly  
4 which group has responsibility, but it's not my  
5 group.

6 Q. Okay. So whoever those people are that  
7 have responsibility for settlements, they do not  
8 report to you.

9 A. Correct.

10 Q. And you have testified previously in one  
11 other proceeding involving a PJM settlement issue  
12 with Duke Energy, correct?

13 A. Yes.

14 Q. And that's the dispute between Direct and  
15 Duke that's pending at this Commission, right?

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

17 Q. All right. And your understanding is  
18 that in that Duke case the underlying dispute  
19 involved participation in the resettlement  
20 process; is that right?

21 A. The same issue that's here, yes.

22 Q. And you have not provided testimony on  
23 behalf of Direct in any other cases; is that right?

24 A. Correct.

25 Q. Now, the state regulatory process for

1 retail choice in Ohio is not your area of expertise,  
2 right?

3 A. Correct.

4 Q. You are not familiar with the state  
5 statutes that govern retail choice, correct?

6 A. Correct.

7 Q. And your knowledge of the Companies'  
8 Supplier Tariffs is -- let me back up again just to  
9 make sure when I refer to "the Companies," you  
10 understand I'm referring to Ohio Edison and CEI in  
11 this case.

12 A. Okay.

13 Q. Okay. So your knowledge of the  
14 Companies' Supplier Tariffs is based on what you've  
15 learned reading Ms. Ringenbach's testimony and  
16 Mr. Stein's testimony, correct?

17 A. Yes.

18 Q. Now, your testimony refers to invoices  
19 that PJM sends to Direct on a weekly basis, correct?

20 A. Yes.

21 Q. And you do not have a role at Direct in  
22 reviewing the PJM invoices that Direct receives,  
23 correct?

24 A. Correct.

25 Q. And in order to prepare your testimony

1 about PJM's invoices and that process, you had to ask  
2 somebody how that works, right?

3 A. I went back to the tariff, PJM Tariff.  
4 I've known how it works, but I work on hundreds of  
5 matters a year; so unless this is a pressing matter,  
6 I've probably forgotten the specific section. So in  
7 preparation I went back and reviewed the tariff and  
8 also recall very strongly my interactions with PJM  
9 and the problems associated with this process based  
10 on what happened with Duke.

11 Q. So your testimony with regard to  
12 receiving the PJM invoice weekly, you had to ask  
13 somebody how that works, right?

14 A. It was hypothetically speaking based on  
15 the fact that the tariff provides for a weekly  
16 invoice; so I was saying that is the process, that's  
17 what the tariff provides for.

18 Q. Ms. Philips, you had your deposition  
19 taken previously in this proceeding, correct?

20 A. Yes.

21 Q. And that was also done on Monday, April  
22 30th, correct?

23 A. Yes.

24 Q. A week ago.

25 MR. LANG: If we could approach, your

1 Honor, with the transcript?

2 EXAMINER ADDISON: You may.

3 Q. Ms. Philips, do you remember when you had  
4 your deposition taken a week ago that you were sworn  
5 in and agreed to tell the truth?

6 A. Yes.

7 Q. If I could ask you to turn to page 27 of  
8 that deposition transcript and that is the deposition  
9 transcript page, not the page at the very bottom.

10 Are you there?

11 A. Yes.

12 Q. Okay. I'm going to read a question and  
13 answer and then I'll ask if I read that correctly if  
14 you look at line 21 on page 27.

15 "Question: Now, your testimony states  
16 that Direct receives a PJM invoice weekly; is that  
17 correct?

18 "Answer: I had to ask somebody so I'm  
19 depending on somebody else telling me that."

20 Did I read that correctly?

21 A. Yes, you did.

22 Q. Good. And that "someone" you were  
23 depending on was Ms. Ringenbach, correct?

24 A. That sounds right and that's what I said.

25 Q. And in preparing your testimony regarding

1 PJM invoices to Direct and how that works, you did  
2 not talk to anyone who handles settlements or  
3 billing, correct?

4 A. Correct.

5 Q. Now, you are not able to testify  
6 concerning the process that Direct uses to review PJM  
7 invoices for accuracy.

8 A. Correct.

9 Q. And you do not have personal knowledge of  
10 how Direct reviews PJM invoices for accuracy.

11 A. Correct.

12 Q. In fact, you do not know the  
13 circumstances under which Direct may review PJM  
14 invoices for accuracy.

15 A. Correct.

16 Q. And you do not know what process Direct  
17 uses to identify an error in an invoice, correct?

18 A. Correct.

19 Q. And if Direct does discover an error in  
20 an PJM invoice, you do not know whether Direct has  
21 policies and procedures that govern how Direct  
22 addresses the error.

23 A. Correct.

24 Q. Now, your testimony states that the  
25 Companies upload aggregate customer meter data

1 information to PJM on behalf of Certified Suppliers.  
 2 It's on page 4 of your testimony. And by that  
 3 reference to Certified Suppliers, you believe that  
 4 Direct is certified by the Ohio Commission to be a --  
 5 to provide competitive retail electric service in  
 6 Ohio, correct?

7 A. Correct.

8 Q. And again, you're relying on Teresa  
 9 Ringenbach's testimony for that understanding,  
 10 correct?

11 A. Correct.

12 Q. And you do not know that the Companies  
 13 submit data on a daily basis to PJM, correct?

14 A. I don't know if they do. I believe the  
 15 tariff provides that there is some data submission,  
 16 but I don't know for fact.

17 Q. Okay. So fair to say you do not know  
 18 whether there's a lag of some period of time in the  
 19 submission of data to PJM.

20 A. Fair to say.

21 Q. And what you are familiar with is the PJM  
 22 Tariff language relating to billing.

23 A. I'm familiar with the parties'  
 24 obligations under the PJM Tariff and what the PJM  
 25 Tariff provides for and how PJM interprets that

1 tariff provision.

2 Q. Now, "retail load responsibility" is a  
3 term used in the PJM manuals regarding billing,  
4 correct?

5 A. Yes.

6 Q. And retail load responsibility is the  
7 agreed-upon hourly load within the service territory  
8 of an LDC, or here in Ohio we say EDU, for which the  
9 electric generation supplier must provide energy to  
10 customers; is that your understanding?

11 A. Yes.

12 Q. Your understanding is that the charges at  
13 issue in this case were charges for metering of the  
14 retail load responsibility.

15 A. My understanding of this case is that  
16 there was an error in the data submitted to PJM.

17 Q. Ms. Philips, if I can take you back to  
18 your deposition that you gave in this case. Page 17.  
19 I'm going to start on line 13. You can let me know  
20 whether I read this correctly.

21 "Question: The charges at issue in this  
22 case involving Direct Energy are charges for retail  
23 load responsibility; is that right?

24 "Answer: I understand they're for  
25 metering.

1                   "Question: So it was a charge for  
2                   metering; is that your understanding?

3                   "Answer: Yes, metering of that load. I  
4                   don't know what other issue would be at dispute  
5                   here."

6                   Did I read that correctly?

7                   A. Yes.

8                   Q. Now, do you agree that retail load  
9                   responsibility could be incorrectly reported as a  
10                  result of an incorrect assignment of a customer to a  
11                  supplier?

12                  A. I agree. Utilities make tons of mistakes  
13                  in reporting all sorts of things and we have a  
14                  problem because there's no accountability there for  
15                  them. So yes, of course, they make all kinds of  
16                  mistakes and we have to deal with that in our process  
17                  unfortunately.

18                  MR. LANG: Your Honor, I would move to  
19                  strike as argumentative and nonresponsive, and ask  
20                  that the witness just answer the question that I  
21                  asked.

22                  EXAMINER ADDISON: Thank you, Mr. Lang.

23                  Consistent with a prior ruling, I'll  
24                  allow the answer to stand. From this point forward,  
25                  however, please just answer Mr. Lang's question and



1 only Mr. Lang's question. If there's any additional  
2 information you would like to bring out during  
3 redirect, your counsel would certainly do so at that  
4 point.

5 THE WITNESS: Yes, your Honor.

6 Q. (By Mr. Lang) Now, Ms. Philips, if a  
7 customer is incorrectly assigned to a supplier, that  
8 type of error affects only two suppliers: The  
9 supplier to whom that customer is incorrectly  
10 assigned and the other supplier to whom the customer  
11 should have been assigned, correct?

12 A. I'll take your word for it. I have no  
13 personal knowledge.

14 Q. Let me take you to your deposition,  
15 page 60.

16 A. I'm sorry, what page?

17 Q. 60. 6-0. Starting at line 13.

18 The question is: "So assuming a customer  
19 is incorrectly assigned to an LSE, is it your  
20 understanding that that type of error would only  
21 affect two LSEs, two load-serving entities, the LSE  
22 to whom the customer is incorrectly assigned and the  
23 other LSE to whom that customer should have been  
24 assigned?"

25 Then starting at line 19, your answer,

1 "That's fact specific. There can be -- in your  
2 example, that would be true." And then you added  
3 "There's certainly instances when there are multiple  
4 LSE impacted."

5 Did I read that correctly?

6 A. Yes.

7 Q. Now, if there's a metering error in PJM  
8 and, as a result, one supplier has overpaid, that  
9 means that one or more other suppliers have  
10 underpaid, correct?

11 A. Yes. Until the tariff is settled.

12 Q. Now, there is what is called a  
13 "Settlement A" process for purposes of billing at  
14 PJM, correct?

15 A. Yes.

16 Q. And your understanding of that process is  
17 that Settlement A is for meter changes that occur  
18 within the billing cycle itself, or a week later  
19 after they've been submitted, but within a 60-day  
20 period, correct?

21 A. Correct.

22 Q. And it's fair to say that the PJM Tariff  
23 itself does not use the terms Settlement A,  
24 Settlement B, or Settlement C, correct?

25 A. Correct.

1           Q.    Now, you believe that the Settlement A  
2 process is found in Section 3.6.1 of the PJM Tariff,  
3 Attachment K, Appendix, correct?

4           A.    I'm sorry, would you say which section,  
5 again?

6           Q.    Sure. Section 3.6.1 of the PJM Tariff,  
7 Attachment K, Appendix, which conveniently is  
8 attached to your testimony.

9           A.    That's why I'm looking. Yes.

10          Q.    And you read the first sentence in  
11 Section 3.6.1 as correlating to what is described as  
12 the Settlement A process, correct?

13          A.    Yes.

14          Q.    Now, Settlement B is a process under  
15 which the Companies submit billing reconciliations to  
16 PJM within two months after the operating month,  
17 correct?

18          A.    Yes.

19          Q.    And you believe that Settlement B is  
20 described in Section 3.6.2 of Attachment K, Appendix,  
21 correct?

22          A.    Yes.

23               MR. KEANEY: Your Honor, may I approach?

24               EXAMINER ADDISON: You may.

25               MR. LANG: Your Honor, if I could ask to

1 have marked as Companies Exhibit 9, this is an  
2 excerpt from -- give the big one to the witness and  
3 then the excerpts to everyone. She gets the short  
4 one too. Does the witness also have the abbreviated  
5 version?

6 MR. KEANEY: May I see that, your Honor?

7 EXAMINER ADDISON: Sure.

8 MR. LANG: If I could have -- Mr. Keaney  
9 is going to hand out an exhibit, a front and back  
10 page. The front page is PJM Manual 28 and the back  
11 page is page 26 of that manual. I didn't want to  
12 make copies of the whole thing since I just wanted  
13 the witness to see page 26, but I have provided the  
14 entire manual to the witness in case she needs to  
15 review it.

16 EXAMINER ADDISON: Certainly. It will be  
17 marked as Companies Exhibit No. 9.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. So Ms. Philips, the one page exhibit that  
20 we've given you that has the cover of Manual 28 on  
21 the front, page 26 on the back, is that a manual that  
22 you recognize?

23 A. Yes.

24 Q. And at the bottom of page 26, describing  
25 a reconciliation process for Spot Market Energy

1 charges for the retail load responsibility, do you  
2 recognize that?

3 A. I haven't looked at this in a while, but  
4 I can certainly read and recognize it as PJM Tariff  
5 language. I'm sorry. It's Manual language that's  
6 very different than Tariff language. It's Manual.

7 Q. So you recognize that that's a PJM Manual  
8 that provides details concerning how the billing  
9 process, including what's described as Settlement A  
10 and Settlement B, how that works, correct?

11 A. Yes. Although I'm sure you know it's of  
12 no legal consequence because it's a manual.

13 Q. So is it your belief that the EDUs or  
14 EDCs performing billing are -- that the procedures  
15 set out in that manual do not control the billing  
16 process?

17 A. That is correct. The tariff is FERC  
18 filed and the manuals are rules that are guiding, but  
19 there are sometimes conflicts with the manuals and  
20 then the tariff language trumps.

21 Q. And then if there are not conflicts  
22 between a manual and a tariff, then the manual  
23 process would be fine, correct?

24 A. Assuming PJM interprets the manual the  
25 same way you do.

1           Q.    Now, Section 3.6.2 of Attachment K,  
2   Appendix, which is attached to your testimony, if you  
3   could look at that.  That section applies when one  
4   Market Participant discovers a meter error affecting  
5   an interchange of energy with another Market  
6   Participant, correct?

7           A.    Yes.

8           Q.    It provides in that section that the  
9   Market Participant who discovers the error has to  
10  make the error known to the other Market Participant,  
11  correct?

12          A.    Yes.

13          Q.    And in fact, the Market Participant has  
14  to make the error known to the other Market  
15  Participant prior to the completion by the Office of  
16  the Interconnection of the accounting for the  
17  interchange, correct?

18          A.    Yes.  Sorry, I need my glasses.  May I go  
19  get my reading glasses?

20          Q.    Absolutely.

21          A.    Thank you.

22          Q.    I gave that up years ago and just went  
23  back to these.

24          A.    I can actually see what's in front of me  
25  now.  Okay.  I'm sorry, would you ask again?

1 MR. LANG: If we could have that last  
2 question read back, please.

3 (Record read.)

4 A. Yes, that's what it says.

5 Q. And it further provides if that is not  
6 practical, then the error shall be accounted for by a  
7 correction at the end of the billing cycle, correct?

8 A. "Accounting deadlines" is what it says.

9 Q. And you believe this describes either the  
10 Settlement A or Settlement B process, correct?

11 A. It could technically describe C, too,  
12 because it refers to deadlines.

13 Q. If I could take you back to your  
14 deposition.

15 A. Sure. Maybe I'm getting confused.

16 Q. On page 56 of your deposition, line 22,  
17 let me know when you are there.

18 A. I think I'm wrong because if the  
19 interchange has been completed by the Office of the  
20 Interconnection, by definition that's going to be two  
21 months, so it would be A and B.

22 Q. Okay. Then we don't need to go back to  
23 your deposition.

24 A. Sorry.

25 Q. Now, in your testimony you refer to what

1 you describe as a two-year deadline that appears in  
2 Section 3.6.6 of Attachment K, Appendix. Do I have  
3 that right?

4 A. Yes.

5 Q. Okay. And to your knowledge, Direct has  
6 not taken the position that it does not have to  
7 refund the dollars at issue in this case because of  
8 that two-year deadline, correct?

9 A. I think I would state it differently  
10 which is we are not disputing that the so-called  
11 Settlement C process applies because I don't think  
12 we've contested that the data error occurred beyond  
13 that two-year period.

14 Q. Fair enough.

15 Now, you do not have any role at Direct  
16 in implementing the Settlement B process, correct?

17 A. Correct.

18 Q. PJM currently has the capability to  
19 resettle errors beyond the 60-day Settlement B  
20 period, correct?

21 A. I believe they do. I've personally had  
22 other issues not related to this where they said they  
23 could not have resettled some of the LMP data, that  
24 it was too sophisticated. We've asked them in  
25 stakeholder processes to rerun things and sometimes



1 they say that they can't, but I think in the context  
2 you're asking me of settlements, they generally say  
3 they can.

4 MR. LANG: And, your Honor, I would move  
5 to strike after the first sentence which was  
6 responsive to my question, and then she started  
7 talking about unrelated situations which I believe  
8 were not responsive to my question and I would move  
9 to strike.

10 EXAMINER ADDISON: Thank you.

11 May I have the question and answer  
12 reread, please?

13 (Record read.)

14 EXAMINER ADDISON: Mr. Whitt.

15 MR. WHITT: Your Honor, I think the  
16 witness was responsive to the question by explaining  
17 sometimes they can, sometimes they don't, so it's not  
18 really a yes/no question.

19 EXAMINER ADDISON: Thank you.

20 I'm going to go ahead and grant the  
21 motion to strike a portion of the answer. So the  
22 witness testified "I believe they do." We will  
23 strike the portion after that up to "I think in the  
24 context you're asking me" and then the rest of the  
25 answer will remain. You can bring any additional

1 information out on redirect, Mr. Whitt.

2 Q. (By Mr. Lang) Ms. Philips, fair to say  
3 that PJM does not have a process for obtaining  
4 agreement from the Market Participants beyond the  
5 60-day Settlement B period?

6 A. No.

7 Q. Now, other than this case, the only other  
8 instance that you are aware of when Direct has been  
9 involved in resettlement beyond the 60-day period  
10 would be the Duke case, correct?

11 A. Yes.

12 Q. And in the Duke case, Duke, the utility,  
13 was not an affected or impacted party, correct?

14 A. Are you asking financially or  
15 responsibility?

16 Q. Fair question.

17 With regard to the resettlement  
18 requirements and the overcharges and undercharges,  
19 Duke itself was not affected or impacted by an  
20 overcharge or an undercharge, correct?

21 A. It was not financially impacted, correct.

22 Q. And to your knowledge there has not been  
23 a resettlement in the Duke case; is that correct?

24 A. To my knowledge, yes.

25 Q. And your only experience with

1       resettlement after 60 days, an actual resettlement  
2       after 60 days, was a dispute involving PPL and PECO,  
3       correct?

4             A.     Yes.

5             Q.     And in that case there was a resettlement  
6       where Direct got a revised bill from PJM, correct?

7             A.     No. I was referring to that when we were  
8       talking about settlements generally. I wasn't  
9       working for Direct when that occurred. I was just  
10      explaining how other settlements have played out.

11            Q.     Are you aware that in the PPL-PECO  
12      dispute that Direct did get a revised bill as a  
13      result of that resettlement?

14            A.     I don't know.

15            Q.     Okay. Now, that resettlement that you  
16      were describing occurred approximately five years  
17      after the error that took place, correct?

18            A.     Yes. It went to FERC and was -- the  
19      error was because PJM made the error. They had put  
20      the wrong utility facilities in the wrong accounts,  
21      so they were billing PP&L or PECO, I forget whom, for  
22      the wrong facilities, was in their account, so they  
23      had to rebill that and charge transmission customers  
24      I think.

25            Q.     Now, your assumption of how resettlement

1 works after 90 days is that if all affected parties  
2 consent, PJM sends out a new bill, correct?

3 A. That's not an assumption. That's based  
4 on conversations with PJM's General Counsel.

5 Q. So that's your understanding of how it  
6 works, correct?

7 A. That's what I've been told.

8 Q. And your understanding is that Market  
9 Participants provide data to PJM, and then PJM does  
10 the calculations and the settlement, correct?

11 A. Yes.

12 Q. Now, there's nothing in PJM's Tariff that  
13 prevents Direct from resettling with the Companies  
14 with regard to this dispute, correct?

15 A. You're correct, there's nothing in the  
16 tariff that obliges any Market Participant to settle  
17 after 60 days. There's no obligation.

18 MR. LANG: Your Honor, I would move to  
19 strike after the "correct."

20 EXAMINER ADDISON: Mr. Whitt.

21 MR. WHITT: I don't care. I'll just ask  
22 her on redirect, so we -- it doesn't matter.

23 EXAMINER ADDISON: Then I'll grant the  
24 motion to strike.

25 MR. LANG: Thank you, your Honor.

1           Q.    Ms. Philips, you are not aware of any  
2    resettlements involving Direct that occurred more  
3    than 60 days after the error prompting resettlement,  
4    correct?

5           A.    Resettlements themselves, not requests,  
6    I'm not aware of any, so.

7           Q.    And other than the Duke case, you are not  
8    aware of any time when Direct has been overcharged as  
9    the result of an error, correct?

10          A.    I'm not aware, correct.

11          Q.    And to the extent Direct, in the past,  
12   has received resettlement credits through the PJM  
13   resettlement process, you're not aware of that  
14   happening.

15          A.    Correct.

16          Q.    And with regard to settlements occurring  
17   after the 60-day period, you are not aware of any  
18   policy or practice at Direct stating how Direct  
19   decides whether or not to consent to that settlement,  
20   correct?

21          A.    Correct.

22               MR. KEANEY: Your Honor, may I approach?

23               EXAMINER ADDISON: You may.

24               MR. LANG: Your Honor, if we could ask to  
25   have this document which says "MSS Settlement C

1 Package Proposal" marked as Companies Exhibit it  
2 should be 10. Sorry. As Exhibit 10.

3 EXAMINER ADDISON: Thank you. It will be  
4 so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Ms. Philips, this Companies Exhibit 10,  
7 "MSS Settlement C Package Proposal" on the front, do  
8 you recognize this document?

9 A. Yes.

10 Q. And in fact, an individual working under  
11 your direction and control, Jeffrey Whitehead,  
12 prepared this document, correct?

13 A. What do you mean by "control"?

14 Q. He --

15 A. Under my direction, yes.

16 Q. He worked for you and reported to you.

17 A. Yes.

18 Q. And you had responsibility at Direct for  
19 this presentation that was given, correct?

20 A. Yes. He reported to me. He was the  
21 subject matter expert, but I'm accountable at the end  
22 of the day.

23 Q. And you remember that this presentation  
24 was given to the PJM Settlements Subcommittee,  
25 correct?

1 A. Yes.

2 MR. KEANEY: Your Honor, may I approach?

3 EXAMINER ADDISON: You may.

4 MR. LANG: Your Honor, we would like to  
5 have marked as Companies Exhibit 11, a document that  
6 says at the top "Problem Statement/Issue Charge."

7 EXAMINER ADDISON: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Ms. Philips, do you recognize this  
10 document?

11 A. Yes.

12 Q. And is it correct that you helped prepare  
13 this document with Jeff Whitehead?

14 A. I didn't remember, but you refreshed my  
15 memory in the deposition that my name was on  
16 the agenda. I didn't go back to check to see whether  
17 I actually did the presentation, but I certainly  
18 would have been familiar with this.

19 Q. Okay. Do you agree that Mr. Whitehead is  
20 more technically adept at understanding settlements  
21 than you are?

22 A. Yes.

23 Q. Now, this document was prepared for the  
24 PJM Market Settlements Subcommittee in the  
25 August 2015 time frame; is that correct?

1           A.    I'll have to rely on your memory for the  
2 timing of this.

3           Q.    Do you have --

4           A.    No.  I do know it was before  
5 December 2015.

6           Q.    Okay.  So sometime in 2015.

7           A.    Correct.

8           Q.    Great.  And this document reflects Direct  
9 Energy's views with regard to the Settlement C  
10 process at the time that it was prepared by you and  
11 Mr. Whitehead, correct?

12          A.    Yes.

13          Q.    If you could look, it's what was marked  
14 as Companies Exhibit 8, but I believe Ms. Ringenbach  
15 said she didn't write the numbers on it.  I would  
16 like to ask you to look at the -- it's a multipage  
17 document with PJM Billing Adjustment Forms.

18                THE WITNESS:  Can you tell me what the  
19 first page looked like?

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

22                (Discussion off the record.)

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

25                MR. LANG:  Thank you, your Honor.



1           Q.    Ms. Philips, you have in front of you  
2    what's been marked as Companies Exhibit No. 8. Have  
3    you seen this document before as a Billing Adjustment  
4    Form before?

5           A.    I know in my deposition you asked me to  
6    look to what looked like a Billing Adjustment. I  
7    don't know if it was this exact one.

8           Q.    Is it fair to say that prior to your  
9    deposition you had not seen a form of this type  
10   before?

11          A.    That is correct.

12          Q.    Okay. And with regard to this document  
13   that you're holding in your hand which has multiple  
14   pages in it, fair to say that you have not seen any  
15   of those pages before?

16          A.    I think so.

17          Q.    Okay. And so it would also be fair to  
18   say that you have no knowledge of billing errors  
19   being resettled at PJM using this Billing Adjustment  
20   Form, correct?

21          A.    Correct.

22          Q.    That would then be all my questions about  
23   that exhibit.

24          A.    Okay.

25          Q.    Now, you had a meeting with Teresa

1 Ringenbach and John Schultz, the President of Direct,  
2 to discuss this, the resettlement issue in this case,  
3 correct?

4 A. Yes.

5 Q. And that meeting took place about a year  
6 ago in early 2017, correct?

7 A. I don't know when it took place. I would  
8 have thought it would have -- I'm just speculating.  
9 I'll stop.

10 Q. Now, in that meeting you told them that  
11 Direct had been the Disadvantaged Party in the  
12 Settlement C process with Duke and that other parties  
13 had not consented to resettlement, correct?

14 A. Yes, as well as our failed attempts in  
15 the stakeholder process to change the process.

16 Q. And you advised Mr. Schultz and  
17 Ms. Ringenbach that under the PJM Tariff, Direct has  
18 no obligations to consent to resettlement in this  
19 case, correct?

20 A. Correct.

21 MR. LANG: No further questions. Thank  
22 you.

23 Thank you, Mr. Lang.

24 Mr. Whitt.

25 MR. WHITT: Yes, I will have some

1 redirect.

2 - - -

3 REDIRECT EXAMINATION

4 By Mr. Whitt:

5 Q. Ma'am, do you still have your deposition  
6 up there?

7 A. Yes.

8 Q. Could you turn, please, to page 27.

9 A. Yes.

10 Q. You were -- you recall Mr. Lang read to  
11 you, on page 27, lines I believe it was 21 through  
12 24; is that right?

13 A. Yes.

14 Q. Now, I'm going to read the next question  
15 and I'd like you to read the next answer.

16 MR. LANG: Your Honor, I would object.

17 EXAMINER ADDISON: Grounds?

18 MR. LANG: Although it's proper use of a  
19 deposition, that has not been prefled in a case, for  
20 impeachment purposes as I have done; it is improper  
21 simply on direct, or redirect as in this case, to  
22 read sections of a deposition into the transcript.  
23 It has not been -- Mr. Whitt did not prefile it to  
24 use it for a substantive purpose and so I would  
25 object to him using it now.

1 EXAMINER ADDISON: Thank you.

2 Mr. Whitt.

3 MR. WHITT: Your Honor, I can't know  
4 whether I'm going to use it for substantive purposes  
5 until I know whether the other side is going to use  
6 it for impeachment purposes. They attempted to  
7 impeach the witness by reading a question and answer  
8 and then avoiding the very next question and answer  
9 which corroborates what the witness said on the  
10 stand. Whether you want to call it substantive  
11 evidence or not, I'm just rehabilitating the witness  
12 who the implication on cross was that she doesn't  
13 tell the truth.

14 EXAMINER ADDISON: Wouldn't it be more  
15 appropriate to just ask the question instead of  
16 referring to the deposition itself? I think you can  
17 rehabilitate on that premise, but --

18 MR. WHITT: I'm only referring to the  
19 deposition because she was referred to the deposition  
20 for impeachment purposes, and on redirect all I'm  
21 asking is read the very next question and answer.

22 EXAMINER ADDISON: I'm going to have to  
23 agree with Mr. Lang. If you'd like to rehabilitate  
24 on this point, you can ask a question, but I don't  
25 think it's appropriate for her to read the next

1 question and answer in her deposition when it was  
2 used for impeachment purposes, so.

3 Q. (By Mr. Whitt) What is your understanding  
4 of the weekly invoices that PJM sends?

5 A. They send them and we pay; or, if you  
6 don't pay, you go into default and then your  
7 privileges to participate in PJM are revoked.

8 Q. And how do you know PJM sends weekly  
9 invoices?

10 A. From their tariff and from talking to  
11 Teresa Ringenbach.

12 Q. Okay. Do you recall being asked that  
13 question at your deposition?

14 A. Yes.

15 Q. Do you recall whether your answer at the  
16 deposition was consistent with what you just  
17 testified to here today?

18 A. I believe so.

19 Q. Okay. You were also asked about page 17  
20 of your deposition. Mr. Lang read to you on page 17,  
21 lines 17 through 23, and --

22 MR. LANG: Just so the record is clear,  
23 Mark. I think it was lines 13 through 20.

24 MR. WHITT: Okay. 13 through 20.

25 Q. Is there a distinction in your view, as

1 you've testified, between a metering error and a load  
2 assignment error?

3 A. No. Because from PJM's perspective, any  
4 data they get is related to the metering. The  
5 fact -- it's related to the data that's submitted in  
6 connection with the metering. The fact that the  
7 metering has been placed at the wrong customer's  
8 place, it's still a wrong meter error that was  
9 submitted to PJM and they then processed the data  
10 associated where that meter was wrong. It's still  
11 metering data and it was placed in the wrong place.  
12 So it's -- I don't draw that distinction.

13 Q. Okay. And you were asked some questions  
14 about whether PJM has the ability to resettle after  
15 60 days. Do you recall that?

16 A. Yes.

17 Q. Does PJM initiate resettlements?

18 A. No.

19 Q. How does the process evolve or how does  
20 it happen?

21 A. Either the utility -- in the Duke case  
22 I'm aware, I don't know how, but I know that somehow  
23 we learned that the utility agreed that they had  
24 misbilled us. So then we went to PJM because the  
25 utility has no obligation to do that; that's a

1 problem in the process. So we went to PJM and asked  
2 them to resettle. They told us we would have to get  
3 the consent of, I don't remember, 44 parties,  
4 something like that, and if we did not get an  
5 affirmative consent, then they would not resettle.

6 Q. So does PJM have a process for  
7 resettlement, but it's up to the parties to invoke  
8 that process and follow the FERC -- or, PJM's rules  
9 for it?

10 A. Yes. In the Duke case, for example, had  
11 all of the impacted LSEs agreed affirmatively in  
12 writing to resettle, PJM would have resettled the  
13 process. That's what the tariff provisions provide  
14 for; affirmative consent and they will resettle.

15 Q. Okay. And in the PPL-PECO resettlement  
16 example that you had talked about, what was the  
17 nature of the -- well, what circumstances gave rise  
18 to the need for resettlement?

19 A. It was very different. Again, it was  
20 that PJM had -- I don't remember which way it went,  
21 but it was charging PP&L customers or PECO, whichever  
22 way, for transmission facilities that should have  
23 been charged to customers of the other utility, and  
24 they went to FERC and FERC ordered the resettlement.

25 Q. Okay. You had also -- you were asked

1 questions about whether Direct has policies and  
2 procedures for addressing resettlement. Do you  
3 recall those questions?

4 A. Yes.

5 Q. And does Direct have some sort of  
6 Supplier Tariff on file that utilities have to follow  
7 for resettlement?

8 A. Not that I'm aware of.

9 Q. Do the utilities have a Supplier Tariff  
10 that governs resettlement?

11 A. Maybe at the retail level, but not at the  
12 wholesale level.

13 Q. Well, my point is, resettlement is -- is  
14 it the case that it's governed by either the utility  
15 tariff or PJM or perhaps both?

16 MR. LANG: Objection, your Honor. At  
17 this point I think there's a substantial amount of  
18 leading on redirect going on, and I would object it's  
19 improper on redirect. Mr. Whitt is trying to lead  
20 the witness into an error -- into an area, in fact  
21 state regulatory processes, that the witness has  
22 already testified that she's unfamiliar with, she's  
23 not an expert on. And so for both of those reasons,  
24 leading and that he's in an area that she does not  
25 have expertise in, I would object.



1 EXAMINER ADDISON: Thank you, Mr. Lang.

2 I'll sustain on the leading portion of  
3 that objection. If you'd like to ask your question  
4 perhaps in a different way, I will allow it, but as  
5 the way it was posed to the witness just now, I think  
6 it's inappropriate.

7 Q. Do you have Exhibits 10 and 11 in front  
8 of you?

9 A. Yes.

10 Q. And I believe you indicated these were  
11 prepared as part of some stakeholder process at  
12 PJM; is that right?

13 A. Yes.

14 Q. Do the stakeholders memorialize their  
15 activities in some way through --

16 A. Yes.

17 Q. How do they do that?

18 A. The minutes of the meeting are posted, as  
19 are the presentations and the agenda.

20 Q. And have you seen those materials before?

21 A. Yes.

22 MR. WHITT: Okay. And let me -- if I may  
23 approach, your Honor?

24 EXAMINER ADDISON: You may.

25 Would you like to mark this?

1 MR. WHITT: Yes, your Honor, as Direct  
2 Exhibit 4.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Do you have a document that's been marked  
5 as Direct Exhibit 4 in front of you?

6 A. Yes.

7 Q. And what is this document?

8 A. This would be the Meeting Minutes from  
9 the meeting prior to November 17th, 2015.

10 Q. And if you look in the third paragraph on  
11 the first page, Mr. Whitehead's name is mentioned?

12 A. Yes.

13 Q. Was the meeting reflected in these  
14 minutes and the education that's referenced here, was  
15 that the information contained in Exhibit 10?

16 A. I believe it would have been.

17 Q. Okay. And if you will go to the second  
18 page of Exhibit 4.

19 A. Yes.

20 Q. There's a list of meeting attendees, do  
21 you see that?

22 A. Yes.

23 Q. Do you know how the attendees are  
24 identified? I mean, do people announce themselves?  
25 How does that work?

1           A.    If you're physically there, usually  
2           attendance is taken in the room.  And until recently,  
3           physically present or on the phone, you would  
4           introduce yourself.

5           Q.    Okay.  If you'll go to the list of  
6           meeting attendees.  One, two, three, four, five, six  
7           names down, somebody from FirstEnergy Solutions Corp.  
8           is indicated as having attended the meeting, correct?

9           A.    Yes.

10          Q.    And two more lines down there's another  
11          individual from FirstEnergy Solutions Corp., correct?

12          A.    Yes.

13          Q.    And who is that individual?

14          A.    Anna Caruthers.

15          Q.    Okay.  And if you go to the fourth page  
16          of the exhibit, it would seem to confirm  
17          Mr. Whitehead's attendance as well; is that right?

18          A.    Yes.

19          Q.    What happened after the information in  
20          Exhibit 10 was -- well, let me ask first:  Was there  
21          more than one meeting where the information in  
22          Exhibit 10 was discussed?

23          A.    Yes.

24          Q.    Over what period of time approximately?

25          A.    Probably three or four months.  There was

1 not a lot of enthusiasm to change the way we were  
2 proposing.

3 Q. Okay.

4 MR. WHITT: May we approach, your Honor?

5 EXAMINER ADDISON: You may.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Was there ever any sort of vote?

8 A. Yes.

9 Q. You've been handed a document marked as  
10 Direct Exhibit 5. Can you identify this document?

11 A. Yes.

12 Q. What is it?

13 A. Again, Draft Meeting Minutes to the  
14 meeting before February 18th, 2016. Probably would  
15 have been in January.

16 Q. Okay. Under the Working Issues section  
17 of the document in the second paragraph, it talks  
18 about some kind of a poll. Can you tell us what that  
19 was about?

20 A. Yes. PJM lets stakeholders present  
21 issues. They will identify what they presume are the  
22 problems, issues, even suggest perhaps solutions.  
23 But before they spend a lot of time, things must move  
24 from this subcommittee, it then moves through another  
25 working group and all the way up to the final group

1 at PJM that basically votes on all of these; the  
2 Members Committee. So before they start moving it,  
3 they solicit stakeholder input as to whether there is  
4 interest in moving forward with a solution to the  
5 identified problem. In this case, there was not  
6 enough interest.

7 Q. Okay. If you'll go to the second page of  
8 Exhibit 5.

9 A. Yes.

10 Q. Do you see individuals listed as meeting  
11 attendees on behalf of FirstEnergy Solutions Corp.?

12 A. Yes. Including some of the affiliates  
13 like Penelec, I see at least six.

14 Q. Let's focus on just FirstEnergy Solutions  
15 Corp. Can you read those names out as you come  
16 across them?

17 A. Sure. Martin Bolan, Anna Caruthers.  
18 Nick -- I may butcher this -- Cicero.

19 Q. What about on the third page?

20 A. Yes, I'm looking at that now. Cindy  
21 Teamann and Chad, I don't know if that's a  
22 misspelling, Wilhite.

23 Q. And Cindy Teamann is indicated as  
24 attending on behalf of FirstEnergy Solutions Corp.;  
25 is that right?

1 A. Yes.

2 Q. Now, back to the first page of Exhibit 5  
3 it talks about "The Subcommittee decided to conduct a  
4 second poll which will focus on high-level theme  
5 questions...." Was there some sort of a poll taken  
6 that preceded the February meeting?

7 A. Yes.

8 MR. WHITT: May we approach, your Honor?

9 EXAMINER ADDISON: You may. We haven't  
10 marked anything yet. If you could differentiate  
11 which exhibit you're marking as what so we could be  
12 clear.

13 MR. WHITT: That's what I was going to  
14 do.

15 EXAMINER ADDISON: Thank you.

16 MR. WHITT: Exhibit 6, for  
17 identification, will refer to the materials dated  
18 February 18th, 2016. And for identification, No. 7  
19 will be the materials dated March 17, 2016.

20 EXAMINER ADDISON: They will be so  
21 marked.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 Q. What are these materials, ma'am?

24 A. So in the PJM process, people put out  
25 different proposed solutions, and these polling

1 results are used to gauge whether stakeholders could  
2 support one of the packaged solutions proposed.

3 Q. Okay. And starting with Exhibit 6, and  
4 I'm not going to ask you to read every one of the  
5 slides, we're all capable of doing that, but what  
6 generally does Exhibit 6 show?

7 A. It shows there wasn't a lot of support  
8 for changing the process in place.

9 Q. What are these various packages that are  
10 listed on the slides?

11 A. So they would go towards whether the two  
12 years should be in existence or whether you have to  
13 have LSE consent. Just suggesting alternative ways,  
14 if there is a utility metering error, how to  
15 reconcile that.

16 Q. And you just used the term "metering  
17 error" again. Would that also apply to  
18 misassignments?

19 A. Yes.

20 Q. Similarly, tell us what Exhibit 7 is  
21 trying to convey.

22 A. So C sort of indicated a rejection of the  
23 package proposals -- I'm sorry, the February 18th --

24 Q. Yes.

25 A. -- was sort of a rejection of package

1 proposals. But as I recall, we were trying to get  
2 some sort of progress, so we tried to pick out themes  
3 so that maybe you couldn't support a package but  
4 there was a piece of a package that you could  
5 support, and that's what those second polling results  
6 were, more thematic than a boxed complete proposal.

7 Q. Okay. Could you turn to page 5, please,  
8 of Exhibit 7.

9 A. Yes.

10 Q. The heading at the top right says "What  
11 other reasons should be allowed for a Settlement C  
12 rerun?" And there's a number of bullet points. What  
13 was the group getting at with the first bullet point?

14 A. I'm sure it was our issue with Duke  
15 Energy.

16 Q. Okay. And does it refer specifically to  
17 misassigned accounts?

18 A. Yes.

19 MR. WHITT: May we approach, your Honor?

20 EXAMINER ADDISON: You may.

21 MR. WHITT: I'd like to have marked for  
22 identification, Direct Exhibit 8, which are Market  
23 Settlements Subcommittee Meeting Minutes from  
24 April 21st, 2016.

25 EXAMINER ADDISON: It will be so marked.



1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. What is this document, ma'am? Are you  
3 familiar with this?

4 A. Yes. These are the Meeting Minutes for  
5 the meeting prior to April 21st, 2016.

6 Q. Okay. And what is indicated in the first  
7 paragraph under Working Issues?

8 A. That 98 stakeholders or 98 entities that  
9 are eligible to vote were in favor of terminating the  
10 work of this committee; 53 were in favor of  
11 continuing it; and 23 did not vote at all.

12 Q. Okay. And is it fair to conclude, based  
13 on the last sentence in the first paragraph, that as  
14 of April 21, 2016, whatever Direct had proposed had  
15 basically been rejected?

16 A. Yes.

17 Q. Turn with me to the third page of  
18 Exhibit 8. If you could go through, please, if you  
19 find anyone who had attended this meeting on behalf  
20 of FirstEnergy Solutions Corp., could you just read  
21 their name?

22 A. Martin Bolan, Anna Caruthers, Nick  
23 Cicero, David Marton, Cindy Teamann, and Chad  
24 Wilhite.

25 Q. So Direct made a proposal to the PJM

1 Market Settlements Subcommittee and the proposal got  
2 shot down. What did Direct do as a result, if  
3 anything?

4 A. We could have filed a complaint at FERC,  
5 but we were persuaded that the stakeholders had shot  
6 it down on a -- from their perspective -- reasoned  
7 basis that it was a trade-off between having finality  
8 with the billing statement versus, quote, correcting  
9 all of the metering errors; and we felt we did not  
10 have support so we did not go to FERC and file a  
11 complaint.

12 Q. And did Direct decide to abide by the  
13 consensus of the stakeholder group in terms of how it  
14 would approach resettlement?

15 A. Yes. I think when the FirstEnergy issue  
16 first emerged, we had just come out of a defeat in  
17 trying to collect on the Duke matter and we had just  
18 been defeated in the stakeholder process and  
19 concluded that we had no obligation to even respond  
20 to a request for resettlement.

21 MR. WHITT: Thank you.

22 I have no further questions.

23 EXAMINER ADDISON: Thank you, Mr. Whitt.

24 Mr. Lang.

25 MR. LANG: Thank you, your Honor.

- - -

RECROSS-EXAMINATION

By Mr. Lang:

Q. Ms. Philips, for any of the meeting minutes that Mr. Whitt put in front of you, the list of attendees where he asked you about attendees on behalf of FirstEnergy Solutions Corp., is it your understanding that FirstEnergy Solutions Corp. is the FirstEnergy entity that is the member, as stated in here, transmission owner, of PJM?

A. So in these subcommittees all of the entities are of equal value. So for example in this meeting, Direct would have three votes. FirstEnergy would have, as you saw, there was some JCP&L, Penelec, FirstEnergy Solutions. I did not see the utility here. But at this committee level each one is identified separately and has an individual vote. It's not until you go up the stakeholder process at the members committee that there would be a single corporate vote and you can't vote all the affiliates.

Q. Perhaps my question was not clear.

The FirstEnergy entity in Ohio that is the member of PJM is FirstEnergy Solutions Corp., not the Ohio utilities, correct?

A. I don't know the answer to that.

1 Q. Okay. Well, if members of -- employees  
2 of the Ohio utilities would be attending one of these  
3 meetings, those employees at the Ohio utilities would  
4 be identified under the member name which is  
5 FirstEnergy Solutions Corp.; isn't that correct?

6 A. I'm sorry, would you say that -- when you  
7 said "utilities" I was thinking of the Ohio PUC. I'm  
8 sorry, would you say that again?

9 Q. Sorry.

10 The employees of the Ohio utilities,  
11 whether it's Ohio Edison, CEI, Toledo Edison, to the  
12 extent they're attending these PJM meetings, they are  
13 identified as under FirstEnergy Solutions Corp.,  
14 because FirstEnergy Solutions Corp. is the identified  
15 member of PJM; is that correct?

16 MR. WHITT: Objection, assumes facts.

17 MR. LANG: I'm asking her. I'm asking  
18 her if she knows that.

19 MR. WHITT: You're stating it as fact.

20 A. I wouldn't know it, but given that JCP&L  
21 and Met-Ed and Penelec are separate, I would assume  
22 that they could identify themselves separately the  
23 way their other affiliates do, but I don't know for  
24 sure.

25 Q. So are you making an assumption that for

1 example when it lists Cindy Teamann as a  
2 representative of FirstEnergy Solutions Corp., are  
3 you making an assumption that she actually is an  
4 employee of FirstEnergy Solutions Corp.?

5 A. I'm making an assumption that that's how  
6 she identified herself, but that's an assumption.  
7 That's the process that I'm familiar with at PJM.  
8 You sign in, so you would sign in the company that  
9 you were there representing.

10 MR. LANG: If I may have one minute,  
11 please?

12 EXAMINER ADDISON: You may.

13 MR. LANG: No further questions, your  
14 Honor.

15 EXAMINER ADDISON: Thank you.

16 Ms. Philips, I just have one quick  
17 clarifying question.

18 On what was marked as Direct Exhibit  
19 No. 5, it indicates it's Meeting Minutes from  
20 February 18th, 2016.

21 THE WITNESS: Bear with me, please.

22 EXAMINER ADDISON: Take your time.

23 THE WITNESS: Okay. Got it.

24 EXAMINER ADDISON: Okay. Perfect. At  
25 the top there it indicates that these are Draft

1 Meeting Minutes.

2 THE WITNESS: Yes.

3 EXAMINER ADDISON: Does that mean these  
4 are not a final copy of the Meeting Minutes from that  
5 meeting or does it mean something else to your  
6 understanding?

7 THE WITNESS: It means they are not  
8 final, but we probably could confirm if they were  
9 voted on and then -- it could have been a posting, a  
10 failure to post, because usually they post -- let me  
11 see, one second. This is February 18th.

12 I'm looking for -- so no. So there  
13 should have been -- I'm looking for -- 6 is here.  
14 And what was 7.

15 Typically the meeting -- the next month's  
16 meeting would say they were confirmed, and we don't  
17 have that agenda from that March 17th meeting printed  
18 out here, but they would say that they were approved.

19 EXAMINER ADDISON: Okay. Thank you very  
20 much, Ms. Philips.

21 THE WITNESS: Thank you.

22 EXAMINER ADDISON: That's the only  
23 question I had, so you are excused.

24 THE WITNESS: Thank you.

25 EXAMINER ADDISON: Mr. Whitt.

1 MR. WHITT: Your Honor, Direct would move  
2 for the admission of Direct Exhibits 3, 4, 5, 6, 7,  
3 and 8.

4 EXAMINER ADDISON: Any objection,  
5 Mr. Lang?

6 MR. LANG: No, your Honor.

7 EXAMINER ADDISON: They will be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER ADDISON: Mr. Lang.

10 MR. LANG: Thank you, your Honor. The  
11 Companies call Ed Stein.

12 EXAMINER ADDISON: Mr. Lang, you still  
13 have exhibits.

14 MR. LANG: I'm jumping ahead of myself.  
15 I'm so sorry.

16 EXAMINER ADDISON: You're fine.

17 MR. LANG: Mark is even putting it in  
18 front of me here. The Companies move for admission  
19 of Companies Exhibits 9, 10, and 11.

20 EXAMINER ADDISON: Any objection,  
21 Mr. Whitt?

22 MR. WHITT: No objection to 10 or 11.

23 No objection necessarily to 9, if we can  
24 agree that -- because I don't know for what purpose  
25 it may be used in briefing, and I think in fairness

1 typically something like this, if a portion comes in,  
2 all of it ought to come in. I'm willing to waive any  
3 objection to No. 9 provided perhaps the other side  
4 would agree to a stipulation that for briefing  
5 purposes the entire PJM Manual 28 would be fair game.

6 EXAMINER ADDISON: Mr. Lang.

7 MR. LANG: And, your Honor, I didn't hear  
8 an objection; I heard a proposal. I think the  
9 exhibit that was used with Ms. Philips is the exhibit  
10 that we intended to use. We only needed the one  
11 paragraph of that document. We did not ask questions  
12 about the rest of that document. So I believe that  
13 your Honor would be acting properly in simply  
14 admitting Companies Exhibit 9 as marked and as  
15 reviewed by the witness.

16 EXAMINER ADDISON: Mr. Whitt.

17 MR. WHITT: In that case, I would object  
18 for lack of completeness. There are a number of  
19 defined terms, for example, or what appear to be  
20 defined terms. We don't know what those mean without  
21 the rest of the document. We don't know really the  
22 context for what's on the page. Again, I'm trying to  
23 be reasonable. If we can cite the rest of the  
24 document if we need to, and I don't know that we  
25 will, then I'm okay with 9 coming in. But if it's



1 just going to be this page, then I really have to  
2 object to that.

3 EXAMINER ADDISON: Thank you, Mr. Whitt.

4 While we have different rulings as to  
5 both allowing excerpts and the entire document into  
6 the record in Commission proceedings, I will go ahead  
7 and admit Companies Exhibit No. 9. However, I will  
8 take -- the Bench will take administrative notice of  
9 the entire PJM Manual 28: Operating Agreement  
10 Accounting, effective date of April 1st, 2018. The  
11 parties may cite to that in their brief as they wish.

12 Additionally, I will admit Companies  
13 Exhibit Nos. 10 and 11 into the record as well.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 MR. LANG: Thank you, your Honor.

16 MR. WHITT: Would it be an appropriate  
17 point for a five-minute break?

18 EXAMINER ADDISON: Certainly. Let's take  
19 a quick break and we'll bring on Mr. Stein at that  
20 point. Let's go off the record.

21 (Recess taken.)

22 EXAMINER ADDISON: We will go ahead and  
23 go back on the record.

24 Mr. Lang.

25 MR. LANG: Thank you, your Honor. The

1 Companies call Edward B. Stein. And, your Honor, if  
2 we could have his direct testimony marked as --

3 EXAMINER ADDISON: I'm sorry, Mr. Lang,  
4 if I could swear him in real quick.

5 (Witness sworn.)

6 EXAMINER ADDISON: Please be seated.

7 Please proceed, Mr. Lang.

8 MR. LANG: Thank you, your Honor. If we  
9 can approach with his testimony?

10 EXAMINER ADDISON: You may.

11 MR. LANG: And if we could ask to have  
12 Mr. Stein's testimony marked as Companies Exhibit 12.

13 EXAMINER ADDISON: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 - - -

16 EDWARD B. STEIN

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

19 DIRECT EXAMINATION

20 By Mr. Lang:

21 Q. Mr. Stein, do you have in front of you  
22 your direct testimony dated April 24th, 2018?

23 A. I do.

24 Q. And did you prepare this testimony or was  
25 it prepared under your direction and control?

1           A.    It was prepared under my direction and  
2 control.

3           Q.    Do you have any corrections to make to  
4 your testimony?

5           A.    I do not.

6           Q.    If I asked you the questions set forth in  
7 your testimony in Exhibit 12, would you give the same  
8 answers?

9           A.    Yes, I would.

10           MR. LANG: Your Honor, the witness is  
11 available.

12           EXAMINER ADDISON: Thank you, Mr. Lang.  
13 Mr. Whitt.

14           MR. WHITT: Thank you, your Honor.  
15 First, I have a few motions to strike. And if I  
16 could hand out for identification, for purposes of  
17 the motion, we'll mark Direct Exhibit 9 which are the  
18 Companies' Responses to the First Set of  
19 Interrogatories and Requests for Production.

20           EXAMINER ADDISON: It will be so marked.

21           (EXHIBIT MARKED FOR IDENTIFICATION.)

22           MR. WHITT: And the other document is a  
23 transcript of a hearing held on our Motion to Compel  
24 on July 20th, 2017. Since that's part of the record  
25 we won't separately mark it, but we'll give copies

1 for the parties' convenience.

2 EXAMINER ADDISON: Thank you.

3 MR. WHITT: So for our first motion, I  
4 won't be referring to the materials we just handed  
5 out, but I wanted to get those out of the way.

6 Our first motion refers to testimony on  
7 page 6, footnote 5.

8 The testimony generally on page 6  
9 discusses the Companies' resettlement process which  
10 is certainly fine. But then in footnote 5, the  
11 testimony basically says that every other utility in  
12 the PJM footprint does resettlement the same way that  
13 the Companies do. And that is problematic, No. 1,  
14 because there's no foundation in the testimony for  
15 the practices of utilities other than those  
16 affiliated with the Companies and their affiliates.  
17 No. 2, the testimony is irrelevant.

18 The same witness, at page 3, lines 6  
19 through 11, indicates that the parties' relations  
20 here are governed by the Companies' Supplier Tariff  
21 and the Coordination Agreements, which is -- we don't  
22 dispute that, but that's what governs the  
23 relationship, not what any EDU someplace else is  
24 doing.

25 The testimony is unfairly prejudicial

1 because if it remains in the record it creates an  
2 inference of the existence of an industry standard  
3 which hasn't been established, and the Companies  
4 adherence to that standard.

5 So for those reasons we would ask that  
6 the testimony in footnote 5, page 6, be stricken

7 EXAMINER ADDISON: Thank you, Mr. Whitt.

8 Mr. Lang.

9 MR. WHITT: Yes, your Honor.

10 In this section of the testimony,  
11 Mr. Stein is describing the use of bilateral  
12 transactions or bilateral agreements, one of which is  
13 in fact attached to Ms. Ringenbach's testimony as  
14 Exhibit 1.7. And it is relevant. And I would agree  
15 to some extent with Mr. Whitt's point that the  
16 Supplier Tariff is at issue here.

17 However, as we've discussed throughout  
18 the day, the process by which Supplier Tariff issues  
19 are resolved, that process is run through PJM  
20 processes which is the bilateral agreement and that  
21 is Mr. Stein's testimony that that's the process that  
22 state settlements use. And the footnote simply  
23 states that not only do the Companies use that -- use  
24 bilateral agreements, but other EDUs in PJM use  
25 bilateral agreements.

1           So to the extent that Mr. Whitt is  
2       concerned that that establishes some type of industry  
3       standard and he would be opposed to a demonstration  
4       of that, I don't believe that's a proper objection if  
5       that actually is the fact that that is the standard  
6       within PJM as to how EDUs use bilateral transactions.  
7       He can certainly cross-examine on that point. But it  
8       is Mr. Stein's knowledge that that is how bilateral  
9       transactions are used. Therefore, we do not believe  
10      that the fact that bilateral transactions are used at  
11      PJM, both by the Companies and by other EDUs, is  
12      something that should be stricken from Mr. Stein's  
13      testimony.

14                 EXAMINER ADDISON: Thank you, Mr. Lang.

15                 At this point I will deny the motion to  
16      strike. I agree that it would be more appropriate to  
17      bring out Mr. Stein's knowledge and understanding of  
18      the referenced bilateral transactions through  
19      cross-examination.

20                 MR. WHITT: Very well.

21                 Our next motion pertains to several  
22      portions of testimony that describe the Companies'  
23      interactions with other affected suppliers. This is  
24      where I need to give some background and then address  
25      specific sections of the testimony.

1           As the Bench and parties will recall,  
2       early on in this case we served discovery asking for  
3       information about other suppliers which had been  
4       mentioned in both the Companies' answer to the  
5       Complaint and a Complaint they had filed in federal  
6       court.

7           Interrogatories No. 6 and 7, the answers,  
8       those have been handed out. We asked not only for  
9       the identity of the previous suppliers, but we wanted  
10      to know who cooperated and who didn't cooperate.  
11      That information wasn't provided and we moved to  
12      compel answers.

13          At the hearing on that motion, and the  
14      transcript is in front of everybody, pages 1 through  
15      25 basically is where these Interrogatories were  
16      discussed and that's where the Companies insisted  
17      that their interactions with these other suppliers  
18      were irrelevant, it was off-base, we were on a  
19      fishing expedition, so on and so forth. And the  
20      ruling ultimately was that the Companies did not have  
21      to provide information about the other suppliers.

22          Fast forward to now, to the testimony,  
23      where the Companies have decided that these  
24      interactions with other suppliers are not only  
25      relevant but it's a fact now central to their case

1 theme which is that everybody in the world cooperated  
2 except Direct, so Direct must be the outlier here.

3 So the basis for the motion to strike is  
4 relevance based on the law of the case established in  
5 this proceeding at the hearing on the motion to  
6 compel and it's also a matter of just basic fairness.

7 We sought to find out, even if we  
8 couldn't know the names of the other suppliers, at  
9 least who cooperated, who didn't, figure some of this  
10 out. We weren't allowed to explore that area and now  
11 it's being raised by the other side in their  
12 testimony which is just simply not fair. So that is  
13 the basis for the motion.

14 And I can go to specific sections of the  
15 testimony. Starting with page 10, lines 6 and 7.  
16 There's some testimony -- the testimony says "The  
17 difference is that most of those suppliers cooperated  
18 and the situation was remedied." Again, we asked  
19 flatout who were these folks, who cooperated, who  
20 didn't cooperate. We were not allowed to get any  
21 discovery on that.

22 EXAMINER ADDISON: Are there any other  
23 references that you -- that you're referring to in  
24 your motion to strike?

25 MR. WHITT: Yes, ma'am.



1                   On page 11, essentially the whole page.  
2       As we go through these, there are, I think, some  
3       pieces that could remain intact on page 11, but by  
4       and large it's the whole page.

5                   Page 13, lines 9 through 15.

6                   Page 18, lines 1 through 14.

7                   Page 19, line 1 through page 20, line 2.

8                   EXAMINER ADDISON: What was the last  
9       reference, Mr. Whitt?

10                  MR. WHITT: Page 19, line 1 through  
11       page 20, line 2.

12                  EXAMINER ADDISON: Thank you.

13                  Do you need a moment to look at those  
14       references, Mr. Lang?

15                  MR. LANG: I don't think so, your Honor.  
16       I think I can respond.

17                  Mr. Whitt is referring to discovery  
18       served in the complaint case that Direct brought in  
19       Case No. 17-791, and he's absolutely correct that the  
20       Companies objected to discovery in his complaint case  
21       dealing with the supposed demand that the Companies  
22       made on Direct supposedly at some time in early 2017  
23       and that that related to a violation of the Supplier  
24       Tariff.

25                  We did object that the names of the other

1 suppliers that were involved in this process and that  
2 were affected by the error were not relevant to the  
3 complaint that Direct brought.

4           However, since that time, the Companies  
5 filed their own complaint, Case No. 17-1967, and in  
6 that complaint the issue is whether Direct has acted  
7 properly and according -- and, you know, under the  
8 Supplier Tariff in not returning the \$5.6 million  
9 that's at issue in this case.

10           Once that complaint was filed, and once  
11 your Honor directed that the harmed -- the identity  
12 of the harmed supplier for Direct be identified, the  
13 Companies then produced in discovery and have  
14 produced in discovery to Direct the identity of all  
15 the other suppliers and in fact the -- yeah, I think  
16 that's right -- and the billing adjustment document  
17 which we have marked as Companies Exhibit 8 is a  
18 document that was produced in discovery to Direct  
19 under a confidentiality agreement because it contains  
20 both customer information and the identities of the  
21 other suppliers and that exact document is a document  
22 that Mr. Whitt then used and cross-examined Mr. Stein  
23 on in his deposition.

24           So there was never discovery served on  
25 the Companies in Case 17-1967. However, given that

1 once the Companies had filed their own complaint, and  
2 then I think Mr. Whitt actually filed then a  
3 counterclaim to our complaint, it seemed obvious that  
4 issues were more open and the identity of the -- the  
5 question of the identity of the suppliers had become  
6 a relevant issue once our complaint was filed, and so  
7 the Companies then went ahead and provided that  
8 information.

9           So, you know, to the extent that  
10 Mr. Whitt has referenced sections in Mr. Stein's  
11 testimony that deal with -- that simply reference  
12 other suppliers, those -- I don't believe there's --  
13 well, I am certain that Mr. Stein has not gone -- has  
14 not provided the information that was actually  
15 requested in the original discovery which was the  
16 names. And again, in fact, for purposes of his  
17 testimony, the names of the other suppliers are not  
18 relevant.

19           The fact that there were settlements with  
20 other suppliers certainly is relevant, and the  
21 Companies in discovery have produced I believe all of  
22 the settlements that have been entered into with the  
23 other suppliers. Mr. Whitt has all that information  
24 and Mr. Whitt had the opportunity to examine and take  
25 depositions of Company witnesses based on that

1 information.

2 Therefore, I think it's a bit of a, you  
3 know, it's a bit of a game at this point to come in  
4 and say we moved for this way back when, on July 20th  
5 of 2017, and pretend that nothing has happened since  
6 then, because a lot has happened since then.

7 So the information that Mr. Whitt is  
8 objecting to the Companies not producing has been  
9 produced. There have been new claims, there have  
10 been new issues, there's been more discovery, and  
11 there was certainly no prejudice to Direct in this  
12 case for the objections that were made to discovery  
13 based on Direct's original complaint because it's all  
14 been produced since then.

15 EXAMINER ADDISON: Thank you.

16 Mr. Whitt.

17 MR. WHITT: If I may, your Honor?

18 EXAMINER ADDISON: You may.

19 MR. WHITT: Let me start at kind of the  
20 end. It's true that the Companies eventually gave us  
21 these bilateral agreements that show some other  
22 suppliers. That was given to us on the same day that  
23 our testimony was due. It may have been the day  
24 after. So we had nothing from them to prepare our  
25 testimony.

Second, the cases were consolidated not at our request but at the Companies', and the basis for consolidation was these were basically the same issues, and we would agree with that.

Third, our Interrogatories at issue ask not just for the identity of the suppliers but Interrogatory No. 7 asked that for each supplier identified in response to No. 6, identify, A, the suppliers that cooperated; B, suppliers that did not cooperate; C, all the documents you have with those folks. We were precluded from getting any more information about that.

And after the Companies filed their own complaint, we did, in fact, serve discovery. And I'm happy to pass it out, but I'll just read Interrogatory No. 14 served in the Companies' complaint case where we asked "Identify each Advantaged Supplier referenced in Paragraph 18 of the Complaint." And the response was "The Companies object to this request because it seeks confidential documents and information that is irrelevant and/or not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection: Four suppliers consist of the Advantaged Suppliers." That's all we were told.

1           And we had those answers, I want to say  
2 we got those answers a couple months ago, but the  
3 actual documents that tell us any details weren't  
4 given until the 11th hour after testimony was due.

5           So really, your Honor, the Companies have  
6 made their bed, insisting from the getgo that none of  
7 the information about these other suppliers is  
8 relevant to anything. We followed the process to  
9 compel responses, we lost, we respected that ruling,  
10 but the Companies also have to respect the answers  
11 that they gave and the tactic they took in this case  
12 until they decided it was somehow in their interest  
13 to talk about these other suppliers which they've  
14 chosen to do at the 11th hour in a highly-prejudicial  
15 manner. Thank you.

16           EXAMINER ADDISON: Thank you.

17           Did you ever file a Motion to Compel in  
18 Case No. 17-1967?

19           MR. WHITT: We did not, because we had  
20 been to the Bench before on the very same issue and  
21 so that puts us in the position of, frankly, being  
22 subject to some sort of sanction or something else  
23 for raising an issue again that we took to the  
24 Commission. And even if we could have filed another  
25 Motion to Compel, we certainly aren't obligated to.

1 The Companies' discovery obligation doesn't depend on  
2 whether we file a Motion to Compel.

3 We didn't file a Motion to Compel. Their  
4 answers are their answers. And based on their  
5 answers they can't say "You don't get this, it's not  
6 relevant." They can say that and take that position,  
7 but they have to live with the consequences and they  
8 don't want to, and that's what is unfair about this.

9 EXAMINER ADDISON: But you ultimately did  
10 get all that information, correct?

11 MR. WHITT: After -- no, no, we didn't.

12 EXAMINER ADDISON: The supplier names?

13 MR. WHITT: We got supplier names in  
14 these bilateral agreements, but we don't know if  
15 those folks cooperated or not. We see their name on  
16 the document and their signature, but we don't know  
17 any of the back story about how those agreements came  
18 to be other than at some point they were entered and  
19 we don't know why.

20 EXAMINER ADDISON: Okay. At this point  
21 I'm going to deny the motion to strike in its  
22 entirety and that's all I'm going to say. Thank you.

23 MR. WHITT: That concludes our motions.

24 EXAMINER ADDISON: Thank you, Mr. Whitt.

25 You may proceed with your

1 cross-examination.

2 MR. WHITT: Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Whitt:

6 Q. Mr. Stein, you're the person in charge of  
7 regulated settlements for all of the FirstEnergy  
8 regulated utilities, correct?

9 A. Yes, including the transmission owners.

10 Q. Okay. And Ms. Teamann reported to you  
11 back in 2015 and still reports to you today, correct?

12 A. That is correct.

13 Q. And Anna Caruthers reports to you,  
14 correct?

15 A. That is correct.

16 Q. As does Jim Sensenig, correct?

17 A. Correct.

18 Q. And the four of you handle PJM  
19 settlements for load delivered in all of the states  
20 for all of the FirstEnergy regulated utilities and  
21 transmission owners, correct?

22 A. We do all the load submittals as well as  
23 handle the financial transactions, checking the PJM  
24 bills, et cetera, for the operating companies and the  
25 transmission owners.



1           Q.    Your group does not have responsibility  
2   for interacting with PJM on behalf of FirstEnergy  
3   Solutions, correct?

4           A.    That is correct.

5           Q.    Now, in terms of how your group generally  
6   approaches PJM settlements, when an issue comes up  
7   that causes you to have to perform a resettlement,  
8   you have to gather all of the facts about the  
9   situation, correct?

10           THE WITNESS:  I apologize.  I got lost in  
11   the middle.  Can I have that read back, please?

12                   (Record read.)

13           A.    That is correct.

14           Q.    And you try to understand the situation,  
15   correct?

16           A.    That is correct.

17           Q.    You try to understand who the impacted  
18   parties are, correct?

19           A.    First, before we get there, we have to  
20   begin with the origination of the issue.  We conduct  
21   an investigation, then we get to impacted parties.

22           Q.    Fair enough.

23                   And you and your group tried to do all of  
24   that in the issue that brings us here today, correct?

25           A.    I'm not following what you mean by

1 "tried."

2 Q. The way we discussed how you approach  
3 resettlements generally, that's the approach that you  
4 followed here, I'm assuming. Fair enough?

5 A. It culminates with a request for  
6 resettlement. That's why I'm struggling with  
7 "tried." We see an issue, we initiate an  
8 investigation, we request for correction. It's not a  
9 "tried" on our part. It's an execution on our part.

10 Q. Okay. So the manner of execution in the  
11 case that brings us here today was done in a manner  
12 consistent with how your group would typically handle  
13 a resettlement, correct?

14 A. That is correct.

15 Q. Now, the Supplier Tariff that we've  
16 talked about was written and proposed by the  
17 FirstEnergy utilities, correct?

18 A. It's a document that's the result of a  
19 Commission proceeding.

20 Q. And in that proceeding, the FirstEnergy  
21 utilities would have presented a tariff for approval,  
22 correct?

23 A. I've only been involved with updates to  
24 the tariff, so I have sponsored testimony about  
25 updating the tariff.

1           Q.    You don't have reason to believe, do you,  
2           that someone other than the Companies filed a  
3           proceeding and asked the Commission to impose their  
4           version of a Supplier Tariff on the Companies; fair  
5           to say?

6           A.    I don't know how exactly the tariffs  
7           originally came into being, but they were part of the  
8           original frameworks of retail choice. So I don't  
9           know what framework was developed to compel either  
10          all stakeholders who would be party to the Supplier  
11          Tariff or just the utilities to come up with the  
12          original one.

13          Q.    Okay. Back in 2000 or so?

14          A.    Give or take that time frame.

15          Q.    Okay. And over that 18-year period, you  
16          understand, don't you, that the utilities have the  
17          opportunity, if they wish, to seek changes to the  
18          Supplier Tariff?

19          A.    I don't know that changes are relegated  
20          to only the utilities requesting changes to the  
21          Supplier Tariff. I think any parties who are going  
22          to be bound by the agreement have opportunity to  
23          discuss and propose changes to the tariff.

24          Q.    Okay. And nobody has done that for the  
25          Supplier Tariff since when, do you know?

1           A.    I do know in preparation for ESP IV, the  
2 utility had held meetings with interested  
3 stakeholders on modifications, if they desired any,  
4 to the Supplier Tariff.

5           Q.    Okay. And the Commission and the parties  
6 could actually look at the Supplier Tariff and the  
7 various sheets would have case numbers and references  
8 and so forth for when certain provisions came into  
9 effect, correct?

10          A.    I believe they only reference -- the  
11 dates, et cetera, only reference the most-current  
12 changes that were put into effect. There's been  
13 changes through the course of time to the tariff.

14          Q.    Understood. But we could go through the  
15 tariff to see when various provisions were most  
16 recently changed, correct?

17          A.    Are you -- I apologize, are you speaking  
18 within specific paragraphs of the tariff that they  
19 reference changes?

20          Q.    Let's go to the version you've attached  
21 to your testimony. Do you see at the bottom of the  
22 first page there are some case numbers referenced  
23 there as well as an effective date of June 1, 2016?  
24 Do you see that?

25          A.    I do.

1 Q. Okay. And then I'm literally just going  
2 through it random. Let's look at 1st Revised Page 21  
3 of 49.

4 A. I'm sorry, could you repeat where you  
5 were?

6 Q. Yeah. 1st Revised Page 21 of 49. And  
7 that's in the top right-hand corner.

8 A. I'm there.

9 Q. If you go to the bottom of that page,  
10 again we see in the footer there's a reference to  
11 some dates and case numbers and so forth pursuant to  
12 which the tariff was filed, correct?

13 A. Correct.

14 Q. And Section XV, Paragraph F has a  
15 reference to "Meter Data Coordinator," correct?

16 A. Meter Data Coordinator, correct.

17 Q. And this is a provision of the Supplier  
18 Tariff that obligates the utilities to report load  
19 information to PJM, correct?

20 A. That obligation actually begins in  
21 Section III.E. that then references this section as  
22 to how that will be accomplished.

23 Q. Section III, let me go back there. And  
24 so we're clear, Section III addresses Coordination  
25 Obligations, correct?

1           A.     Correct.

2           Q.     And I believe you had just referenced  
3 Paragraph E within that section; is that right?

4           A.     Correct.   E., Energy and Capacity  
5 Procurement.

6           Q.     And the Companies aren't suggesting that  
7 Direct has done anything contrary to Section III.E.,  
8 are they?

9                   THE WITNESS:  I apologize, may I have the  
10 question read back, please?

11                   (Record read.)

12           A.     It is the responsibility under this  
13 section as to why the Companies have asked for a  
14 resettlement.  There was an error found, we corrected  
15 it for two months going back in the 60-day recon, we  
16 corrected it going forward, we're trying to correct  
17 it going back, as is required of us as the Meter Data  
18 Manager.

19           Q.     Direct made all necessary arrangements  
20 for the supply and delivery of capacity and energy to  
21 serve its customers, didn't it?

22           A.     I don't know.  It isn't until we upload  
23 the information as part of these sections that we've  
24 actually given you the obligation for those  
25 customers.

1           Q.    Okay.  But I think you've agreed in your  
2   testimony that this error that brings us here today  
3   is not something that affected end-use customers,  
4   correct?

5           A.    That is correct.  The Supplier Tariffs  
6   keep in coordination both retail billing and  
7   wholesale load obligations at PJM.  The retail  
8   obligation side was the piece that processed  
9   properly.  The wholesale obligation side did not  
10  process properly.

11          Q.    Okay.  And on the retail side, nobody's  
12  lights went off, right?

13          A.    Technically I don't know during that time  
14  frame.  I mean, as part of retail choice, no, the  
15  lights didn't go off.

16          Q.    And the customers, have you seen anything  
17  to suggest that the so-called affected customers,  
18  even to this day, know what had transpired at the  
19  wholesale level?

20          A.    I don't know what the customers may or  
21  may not know as far as this issue is concerned.

22          Q.    And the Duty of Cooperation that's  
23  contained in Section III.C., you would agree,  
24  wouldn't you, that the Duty of Cooperation applies  
25  both to the utilities and suppliers, correct?

1           A.    Yes.  The Supplier Tariff in its entirety  
2   is a document describing the coordination that we  
3   both are responsible for.

4           Q.    Okay.  And Section III.C. specifically  
5   says "The Company and Certified Supplier will  
6   cooperate..., " correct?

7           A.    It does say that.

8           Q.    Okay.

9           MR. WHITT:  May we approach, your Honor?

10          EXAMINER ADDISON:  You may.

11          MR. WHITT:  Your Honor, I would like to  
12   have marked as Direct Energy 10, titled "Procedure  
13   Manual for FirstEnergy Ohio Operating Companies."

14          EXAMINER ADDISON:  It will be so marked.

15          MR. WHITT:  Thank you.

16          (EXHIBIT MARKED FOR IDENTIFICATION.)

17          Q.    Sir, can you tell us what Direct  
18   Exhibit 10 is, please?

19          A.    So, much in the way the PJM Tariff and  
20   Supporting Manuals work, the Companies have a  
21   Supplier Tariff that describes kind of our legal  
22   obligations to each other; how we're going to  
23   generally operate.  The Procedure Manual actually  
24   details all the mathematics and the calculations that  
25   go into performing the functions on the Supplier



1 Tariff.

2 Q. And Exhibit 10 spells out how the  
3 Companies will measure the load obligation that they  
4 then report to PJM, correct?

5 THE WITNESS: I'm sorry. Could I have  
6 that question read again? I apologize.

7 (Record read.)

8 A. Yes.

9 Q. Okay. If you'll go with me, please, to  
10 page 10 of Exhibit 10. There's a paragraph titled  
11 "'Third-Tier' Reconciliation." Do you see that?

12 A. I do.

13 Q. And it says, in part, "In addition to the  
14 adjustments mentioned above, PJM's monthly bills to  
15 the Company and Supplier or Scheduling Coordinator  
16 shall be subject to adjustment for any errors in  
17 arithmetic, computation, meter readings or other  
18 errors as agreed upon by the Company and the Supplier  
19 or Scheduling Coordinator." Did I read that  
20 correctly?

21 A. Yes. That sentence is to determine  
22 whether there is actually an error or not.

23 Q. And it talks about PJM's monthly bills  
24 being subject to adjustment as agreed upon by the  
25 Company and the Supplier. That's kind of the gist of

1 the first sentence, isn't it?

2 A. That's not really the gist of the first  
3 sentence. Settlements are a complicated thing.  
4 They're not easy when you are calculating these kind  
5 of numbers on 6 million customers every single day.  
6 We have had suppliers in the past who have perceived  
7 an error in their numbers, they come to us, they say  
8 "I see something wrong with my PJM settlements." We  
9 work with them to determine if there is even a  
10 settlement issue in the first place before we begin  
11 to initiate a Third-Tier Reconciliation as we've  
12 termed it in this document.

13 Q. And the Third-Tier Reconciliation  
14 paragraph goes on to reference the PJM OATT or Open  
15 Access Transmission Tariff, correct?

16 A. That is correct.

17 Q. And the Companies' Manual indicates that  
18 disputes shall be resolved through the PJM Dispute  
19 Resolution process, correct?

20 A. Referencing my previous answer, sometimes  
21 these Third-Tier Reconciliations, the parties may not  
22 be clear how a PJM line item is calculated. So when  
23 there's a dispute regarding the PJM line item itself,  
24 we will and have engaged PJM to step in the middle  
25 between parties to say either this is an included

1 line item -- one frequently that comes up is  
2 capacity -- or not; or, that we've got the math wrong  
3 or a supplier has the math wrong and then we use them  
4 as an intermediary to determine the numbers are  
5 correct, not that a settlement is required.

6 Q. Fair enough.

7 So there's a process where if there is a  
8 dispute about something covered under the OATT,  
9 parties can have PJM help them work it out through  
10 the PJM Dispute Resolution process, correct?

11 A. As far as how the calculations are  
12 determined, yes.

13 Q. Now, the issue that brings us here today,  
14 this misassignment of load, involved energy and  
15 capacity that was incorrectly assigned to suppliers  
16 not just in Ohio but also in Pennsylvania and New  
17 Jersey, correct?

18 A. That is correct.

19 Q. And the financial impact of the  
20 misassigned load was approximately 25 million,  
21 correct?

22 A. For all concerned parties, correct.

23 Q. And a dollar amount of this magnitude and  
24 how the misassignment originated was a first for your  
25 group, correct?

1           A.    The error itself was a first.  We've seen  
2 higher dollar amounts like that twice before.

3           Q.    In this situation, FirstEnergy Solutions  
4 was a Disadvantaged Supplier, meaning their load  
5 obligation stayed with FirstEnergy Solutions after  
6 that customer changed suppliers, correct?

7           A.    They were one of the Disadvantaged  
8 Suppliers.

9           Q.    You don't remember if there have been  
10 situations like this where FES was the Advantaged  
11 Supplier, correct?

12                   THE WITNESS:  I apologize.  May I have  
13 that question read back?

14                   (Record read.)

15           A.    I don't remember.

16           Q.    For the incident that brings us here  
17 today, the misassignment of load didn't have anything  
18 to do with whether Direct followed their correct  
19 enrollment procedures with its customers, correct?

20           A.    Correct.

21           Q.    You don't have any reason to believe that  
22 Direct knew about the misassignment until it was  
23 informed of the situation by the utilities, correct?

24                   THE WITNESS:  I apologize.  May I have  
25 that question again?

1 (Record read.)

2 A. That is correct.

3 Q. In fact, the Companies in this case were  
4 unaware of the issue themselves until it was brought  
5 to their attention by another supplier, correct?

6 A. That is correct.

7 Q. You don't remember who specifically  
8 within your group was first made aware of the  
9 misassignment issue, correct?

10 A. The specific individual, no.

11 Q. And, sir, Ms. Ringenbach's direct  
12 testimony should be up on the stand somewhere. I'm  
13 going to ask you some questions about the e-mails  
14 which are Exhibit 1.3 within her testimony.

15 A. And this -- is this Exhibit 2-C?

16 Q. 2-C.

17 A. Okay. I have it.

18 Q. And I can help you out, if you like, with  
19 a sticky or something to put on it.

20 A. It's on there.

21 Q. Okay. If you flip through it back to  
22 where the collection of e-mails are.

23 Within Ms. Ringenbach's Exhibit 1.3, at  
24 the very bottom of the first page over into the  
25 second page is Ms. Teamann's initial December 18th,

1 2015 e-mail, correct?

2 A. I apologize. I'm in 1.3. Which page?

3 Q. The bottom of page 1 over into page 2.

4 A. Okay. I'm there.

5 Q. Okay. That was her initial e-mail to  
6 Direct, correct?

7 A. This is the form letter we were using for  
8 all the suppliers.

9 Q. Including Direct, right?

10 A. Including Direct, yes.

11 Q. And you reviewed this e-mail before  
12 Ms. Teamann sent it, correct?

13 A. Yes.

14 Q. You don't remember if you gathered any  
15 information from Ms. Teamann in her preparation of  
16 the e-mail, correct?

17 A. I apologize. I'm not following your  
18 question.

19 Q. Do you not understand the question or  
20 didn't hear me?

21 A. Was I gathering or was Cindy. Who's --

22 Q. Well, you don't remember if you  
23 personally gathered anything for Ms. Teamann to help  
24 her prepare this e-mail, correct?

25 A. No, I was not involved in the direct work

1 to prepare the e-mail.

2 Q. You understood that this e-mail was  
3 basically a notice to Direct, or any other supplier  
4 who got a similar e-mail, that would generate further  
5 conversation, correct?

6 A. It was an e-mail put forth to put  
7 suppliers on notice that we had to do a Third-Tier  
8 Reconciliation or a resettlement and that we were  
9 seeking feedback on whether you received the e-mail  
10 and were going to perform under the provisions of how  
11 to execute a miscellaneous bilateral.

12 Q. Okay. But you weren't expecting checks  
13 to start coming in or signed bilaterals to roll in  
14 just based on this e-mail. You were getting the  
15 conversations started with this, correct?

16 A. The next step after this e-mail was to  
17 exchange detailed information and make sure parties  
18 are understanding of what the totality of the issue  
19 is.

20 Q. Okay. And if we look in the longest  
21 paragraph of Ms. Teamann's e-mail, which begins "As  
22 background, FirstEnergy Settlements was notified."  
23 Do you see that?

24 A. I am there.

25 Q. And she goes on to discuss how an Ohio

1 LSE had noticed that its largest account's load was  
2 missing, correct?

3 A. I apologize. I'm still -- which sentence  
4 were you --

5 Q. The one that references the issue being  
6 brought to the attention of FirstEnergy Settlements  
7 by some other Ohio LSE. And my question really is  
8 that you don't know how the LSE that is referenced  
9 here found out that they were missing load in their  
10 settlements from PJM, correct?

11 A. Correct, I do not know what the other LSE  
12 uses for checking their load obligations submitted to  
13 PJM.

14 Q. You don't remember if you talked to  
15 anyone at FirstEnergy Solutions before Ms. Teamann  
16 sent the December 18th, 2015 e-mail to Direct; is  
17 that right?

18 A. This is with regard to my personal  
19 conversations?

20 Q. Yes.

21 A. Yeah, I don't recall around the whole  
22 time frame when I was or was not talking to FES. I  
23 just don't recall.

24 Q. But you do recall that FES got an e-mail  
25 just like Direct's, correct?



1 A. Yes.

2 Q. You don't remember, though, if you had  
3 talked to anybody at FES before FES had received its  
4 e-mail about the load assignment issue, correct?

5 THE WITNESS: I apologize. I got lost in  
6 the last half. Can I have that question, please?

7 (Record read.)

8 A. I don't recall when I was or not engaged  
9 with all the suppliers.

10 Q. Okay. In fact, you don't remember if  
11 you've ever talked to anybody at FES about the load  
12 assignment issue at any time, correct?

13 A. Myself personally, correct.

14 Q. Now, regarding the computer error that's  
15 discussed in Ms. Teamann's December 18th, 2015  
16 e-mail, you don't know who in the IT Group  
17 investigated the computer issue, correct?

18 A. That is correct.

19 Q. You don't know any of the individuals in  
20 the IT Group involved in the investigation, correct?

21 A. That is correct.

22 Q. You don't know how long the investigation  
23 lasted, correct?

24 A. The investigation itself, correct.

25 Q. You don't know if the IT Group prepared

1 any reports or other documentation of what it  
2 investigated, correct?

3 A. That is correct.

4 Q. If a report or documentation was  
5 prepared, you haven't seen it, correct?

6 A. Correct.

7 Q. This computer error related to some sort  
8 of flag in the Customer Care System, correct?

9 A. That is correct.

10 Q. And the Customer Care System is used for  
11 all of the FE regulated utilities, not just in Ohio  
12 but in other states as well, correct?

13 A. The Customer Care System is used across  
14 all FirstEnergy utilities.

15 Q. And the flag that's referenced in  
16 Ms. Teamann's e-mail existed on all 6 million  
17 accounts in the Customer Care System, correct?

18 A. Yes, it was on all 6 million.

19 Q. You don't know the purpose of the flag,  
20 correct?

21 A. Correct.

22 Q. For example, you don't know if the flag  
23 was used to somehow identify whether FirstEnergy  
24 Solutions was a supplier on any account, correct?

25 THE WITNESS: I'm sorry. Can you repeat

1 the question?

2 (Record read.)

3 A. The flag served no purpose that we were  
4 aware of which would include identifying any specific  
5 supplier information.

6 Q. And you don't know if the flag was  
7 supposed to be in the system or not, correct?

8 A. The flag was not supposed to be part of  
9 any current processes associated with customer  
10 accounting.

11 Q. But in terms of this flag being put in  
12 the system, you don't know whether it was supposed to  
13 be there or not when it was put in.

14 A. Regarding the flag, we don't know if it  
15 was programmed since the inception of the CCS system  
16 and just never noticed, or ultimately how it got  
17 there.

18 Q. But you do know that whatever purpose  
19 this flag served and whatever it flagged, someone  
20 would have to do something to activate the flag,  
21 correct?

22 A. The flag required a Customer Care Rep to  
23 set it.

24 Q. And Ms. Teamann's e-mail also references  
25 financial calculations in the next-to-the-last

1 paragraph. Do you see that?

2 A. The paragraph "Please find attached...."?

3 Q. Yes.

4 A. Yes.

5 Q. You don't remember the person on your  
6 team who prepared the financial calculation, correct?

7 A. I don't recall who on the team it was.

8 Q. And you don't remember if you reviewed  
9 that calculation before the e-mail was sent, correct?

10 A. Correct.

11 Q. If you turn with me to page 8, still  
12 within Direct Exhibit 1.3.

13 A. I'm on page 8.

14 Q. Okay. Actually, let's go one more page  
15 to page 9. Get us a little earlier in the time  
16 frame. You were involved in a series of e-mail  
17 exchanges with Erica Steele of Direct in the time  
18 frame, early January, as noted in the e-mail  
19 exchange, correct?

20 A. Do you have -- should I be looking at the  
21 e-mails or the -- where should I be?

22 Q. If you need to. I just wanted to start  
23 generally. As reflected on page 9, it appears that  
24 you began a dialogue with Ms. Steele by e-mail in  
25 early January; is that correct? January 5th. We'll

1 look at the last e-mail.

2 A. I apologize, Mr. Whitt.

3 Q. I'm still looking in our stack of  
4 e-mails.

5 A. Which page?

6 Q. Page 9 of 12.

7 A. Okay. I was up in the testimony. I'm  
8 sorry. Okay.

9 Q. So if we start at the bottom of page 9  
10 and work our way up, between -- well, I guess these  
11 are all on January 5th, there's some back and forth  
12 with you and Ms. Steele, correct?

13 A. Correct.

14 Q. And as you indicate in the e-mail at the  
15 top of the page, sent at 4:06 p.m. on January 5th,  
16 you knew that Direct was putting a lot of work into  
17 the matter at least at this point in time, correct?

18 A. Correct.

19 Q. And you were appreciative of that,  
20 correct?

21 A. We were. We know the amount of work that  
22 goes into one of these.

23 Q. And on January 11th, as reflected at the  
24 top of page 8 of 12, Ms. Steele indicated that Direct  
25 wanted to ask for the name of the other supplier and

1 she says, "We would like the opportunity to work  
2 through this directly with them." That's what she  
3 had advised at that time, correct?

4 A. While that is correct, this was an  
5 abnormal request from the typical process we use.

6 Q. Okay. But the request was nonetheless  
7 made, correct?

8 A. Correct.

9 Q. And rather than inform her that the  
10 request was abnormal, if we look on page 7, starting  
11 at the bottom, you indicated that you would be  
12 willing to approach the other supplier if Direct  
13 would consent to disclose its identity, correct?

14 A. I believe we were, as it states at the  
15 very end of the sentence. We were just ensuring  
16 confidentiality on both parties' part.

17 Q. Sure.

18 And if we go to the top of page 7, you're  
19 passing along to Ms. Steele, letting her know that  
20 this other supplier's request was to understand the  
21 nature of the discussion Direct would like to have,  
22 correct?

23 A. I apologize. Which e-mail? Is it the  
24 one at the bottom of page --

25 Q. It begins at the bottom of page 6, but

1 the substance of it is at the top of page 7.

2 A. I apologize. What was your question?

3 Q. Well, basically you were -- you and your  
4 staff were acting as a go-between between Direct and  
5 this other supplier, correct?

6 A. That's the natural course of business  
7 regarding all the suppliers. We're the intermediary  
8 between everybody.

9 Q. And in this instance, the other supplier  
10 was FES, FirstEnergy Solutions, correct?

11 A. That is correct.

12 Q. If you go to page 6, I'm looking at the  
13 top of the page, your e-mail to Ms. Steele on  
14 January 15th, 2016.

15 A. I'm there.

16 Q. And you were letting her know that the  
17 other party came back to us and would like to  
18 continue to work through the EDC, so on and so forth,  
19 correct?

20 A. Correct.

21 Q. You don't remember if you were the person  
22 who had talked to FES at this point in time, correct?

23 A. I don't remember if it was me or a staff  
24 member.

25 Q. And you don't remember or know who from

1 FES had been talked to, correct?

2 A. Correct.

3 Q. And the e-mails that we've been looking  
4 at for the last few minutes, none of those mention  
5 the Companies' Supplier Tariff, correct?

6 A. While they do not mention the Supplier  
7 Tariff, we are operating under the Supplier Tariff  
8 and its Manuals at the discovery of an error to  
9 correct the error. So it's expected parties  
10 understand that we're reaching out under the Supplier  
11 Tariff.

12 Q. Okay. But my question simply is, in what  
13 you or your staff wrote to Direct in late 2015, early  
14 2016, you did not mention the Supplier Tariff,  
15 correct?

16 A. In these e-mails we did not specifically  
17 mention the Supplier Tariff.

18 Q. You do recall mentioning the Supplier  
19 Tariff sometime in 2017 though, correct?

20 A. Yes.

21 Q. If you'll refer with me, please, to  
22 page 9 of your testimony. Page 9, line 18. There's  
23 a dollar amount referenced of, I'm going to call it  
24 5.6 million-and-change, rather than read the whole  
25 thing, we can all read it, but do you see the figure



1 I'm looking at?

2 A. I see the figure.

3 Q. You did not personally calculate that  
4 figure, correct?

5 A. While I didn't personally calculate it,  
6 it was calculated no different than a Settlement B  
7 calculation.

8 Q. Well, you don't remember who did do this  
9 calculation that you use in your testimony, correct?

10 A. While I don't specifically remember which  
11 member of my staff calculated this number, I have  
12 personally calculated these numbers and know how they  
13 are calculated. And the process then is no different  
14 than it is today.

15 Q. But you didn't go back and verify that  
16 whoever calculated the number that's in your  
17 testimony did so correctly?

18 A. I have staff that performed that  
19 validation.

20 Q. Right. But you didn't, correct?

21 A. It was done under my direction.

22 Q. No, sir, the question is you personally  
23 did not check the figure to verify that it was done  
24 correctly.

25 MR. LANG: Objection, your Honor. Asked

1 and answered.

2 EXAMINER ADDISON: You can answer. I'll  
3 allow both answers to stand.

4 A. I did not personally validate the number.

5 Q. And if the Commission wanted to talk to  
6 the person who did calculate this number, you  
7 wouldn't know specifically who to direct them to,  
8 correct?

9 A. Sitting here today, no.

10 Q. Now, Figure 1 in your testimony on  
11 page 10. Just so we're clear, your figure is an  
12 illustrative representation. It doesn't show what  
13 exactly happened in this case from a financial  
14 perspective, correct?

15 A. If you're asking me if the values  
16 themselves are -- are put up as an illustration, the  
17 retail revenue is an illustrative value. The  
18 wholesale expenses are based on the 5.6 million  
19 number and sum to that number and the parties  
20 impacted show the outcomes as they stand.

21 Q. Okay. I see a footnote here. For  
22 example, if we look in the Customer 1 box toward the  
23 left under Power Supplier, the first line is  
24 Wholesale Expense. And then there's a figure there  
25 and a Footnote 1 and there's actually several values

1 here that reference Footnote 1, correct?

2 A. Correct.

3 Q. And Footnote 1 just says "Based on amount  
4 determined by utility," correct?

5 A. That is correct.

6 Q. Now, you have participated in some of the  
7 stakeholder committee, PJM stakeholder committee  
8 meetings we discussed with Ms. Philips, correct?

9 A. Are you specifically referencing ones  
10 Ms. Philips attends? She attends a lot of  
11 stakeholder meetings.

12 Q. No. I'm still 30,000-foot here.

13 A. Okay.

14 Q. Just generally you're aware that PJM has  
15 stakeholder groups and committees and subcommittees  
16 and the like, correct?

17 A. Yes.

18 Q. And you participate in some of these  
19 stakeholder committees or subcommittee meetings,  
20 correct?

21 A. As a subject matter expert, correct.

22 Q. Okay. And you were at a stakeholder  
23 meeting where the topic of a proposal by Direct to  
24 revise the Resettlement C process had come up,  
25 correct?

1           A.    I don't remember if I was in attendance  
2           at those meetings.  It's very likely I could have  
3           been, I just don't remember.

4           Q.    Okay.

5                   MR. WHITT:  May we approach, your Honor?

6                   EXAMINER ADDISON:  You may.

7                   MR. WHITT:  We'd like to mark for  
8           identification Direct Exhibit 11, Market Settlements  
9           Subcommittee Conference Call, March 17th, 2015.

10                   (EXHIBIT MARKED FOR IDENTIFICATION.)

11           Q.    Sir, if you will turn to the third page  
12           of Exhibit 11.  And are you the Edward Stein that is  
13           identified about two-thirds of the way down the page  
14           on page 3?

15           A.    Yes.

16           Q.    And does this Exhibit 11 refresh your  
17           recollection about participating in a Market  
18           Settlements Subcommittee Conference Call in March of  
19           2015?

20           A.    It's difficult to say because I don't  
21           remember what protocol PJM would have been using to  
22           determine attendance at that time.  It's changed a  
23           couple times over the past couple years.

24           Q.    You don't have any reason to think, do  
25           you, that your name is listed as an attendee by

1 mistake, do you?

2 A. I doubt it's a mistake.

3 Q. Okay. And you are listed in the document  
4 as a representative of Pennsylvania Electric Company,  
5 correct?

6 A. Yes.

7 Q. And that is a regulated utility in the  
8 State of Pennsylvania, correct?

9 A. That's one of our GPU companies, yes.

10 Q. If you go to the second page of  
11 Exhibit 11, under WebEx/Teleconference Attendees, the  
12 first person listed is Cindy Teamann, correct?

13 A. Correct.

14 Q. And Allegheny Power is also a regulated  
15 utility, correct?

16 A. I don't quite remember Allegheny's  
17 corporate structure as it relates to membership.

18 Q. Allegheny is an electric utility, isn't  
19 it, a regulated utility?

20 A. No.

21 Q. No?

22 A. Allegheny Power is a membership name at  
23 PJM. The electric utilities in the Allegheny zone  
24 are West Penn Power -- oh gosh, my memory is failing  
25 me, how embarrassing -- Mon Power, Potomac Edison.

1 Q. And given that -- you're employed by  
2 FirstEnergy Service Company, correct?

3 A. As well as Cindy, yes.

4 Q. And your folks, I'm assuming, would  
5 participate in the PJM stakeholder process on behalf  
6 of various entities, correct?

7 THE WITNESS: I apologize. Can I have  
8 that question read again?

9 (Record read.)

10 MR. LANG: Your Honor, I would object to  
11 the form of the question. The colloquialism of  
12 "folks" as to being a bit unclear.

13 MR. WHITT: The Settlements Group.

14 EXAMINER ADDISON: Thank you for that.  
15 Can you answer the question now?

16 A. So FirstEnergy's membership structure at  
17 PJM is complicated. It's not easy to discern  
18 entities as they specifically relate to say Ohio  
19 Edison or something like that. When you register for  
20 things, there are certain defaults in our accounts it  
21 would automatically register you as. When we go into  
22 a stakeholder meeting, we clearly announce ourselves,  
23 or if we're speaking as an SME, we make sure people  
24 understand that we're there on behalf of our  
25 regulated operating companies, no matter what this

1 says.

2 Q. Okay. So with respect to the March 17th,  
3 2015 meeting, you would have let it be known that you  
4 were there for Pennsylvania Electric Company at least  
5 for this particular meeting.

6 A. Or generically the utilities.

7 Q. Okay. And you heard the testimony today  
8 about the proposal that Direct had made to the Market  
9 Settlements Subcommittee regarding Resettlement C,  
10 correct?

11 A. I heard the testimony, yes.

12 Q. But you don't remember if the Companies  
13 or other FirstEnergy entities were asked whether they  
14 would be interested in sponsoring Direct's proposal,  
15 correct?

16 A. I, nor my team, wouldn't know. We have  
17 policy folks who attend those meetings who actually  
18 conduct that kind of work.

19 Q. I understand.

20 A. We don't conduct that work.

21 Q. I'm just talking about in terms of your  
22 involvement. I know you have lots of things to do  
23 and may have subordinates do things and report back  
24 to you, but in terms of what you personally remember,  
25 you don't remember, for example, if any FirstEnergy

1 entities voted on Direct's proposal, correct?

2 A. When you're referring to "entities," who  
3 are you --

4 Q. Regulated or unregulated, whether it's  
5 FES or Ohio Edison or CEI.

6 A. So all the voting matters are handled by  
7 our policy folks.

8 Q. Okay. Page 19, line 16 of your  
9 testimony.

10 A. Okay. Page 19.

11 Q. Yes. Beginning at line 16 through the  
12 remainder of the page you discuss two other  
13 settlements involving Direct, correct?

14 A. Correct.

15 Q. And you had someone in your group look up  
16 other instances where Direct was involved in a  
17 resettlement, correct?

18 A. Correct.

19 Q. You did not personally do a search for  
20 prior resettlements involving Direct, correct?

21 A. I did not personally do that work.

22 Q. So you would not know if there were  
23 additional settlements that resulted in a charge to  
24 Direct, instead of a credit, correct?

25 A. I don't recall how far back I asked the



1 team to go to look.

2 Q. Okay. But --

3 A. I don't think it's for all time.

4 Q. But the point being, somebody else looked  
5 at it, you didn't do it personally, correct?

6 A. I did not perform the query.

7 MR. WHITT: May we approach, your Honor?

8 EXAMINER ADDISON: You may.

9 MR. WHITT: I'd like, your Honor, to have  
10 marked for identification Direct Exhibits 12 and 13.  
11 I would indicate both have been designated  
12 confidential by the Companies. Although they aren't  
13 redacted, my questions will not attempt to elicit  
14 confidential information. I'll just give the witness  
15 a friendly reminder as well. I think we all know  
16 what is or isn't confidential.

17 EXAMINER ADDISON: Could you  
18 differentiate the two exhibits as to which one is  
19 going to be marked 12-C and 13-C?

20 MR. WHITT: Yeah, yeah.

21 EXAMINER ADDISON: Thank you.

22 MR. WHITT: 12-C is the -- has a billing  
23 month of January-17 if you look at the little box in  
24 the center, and 13-C has a billing month of  
25 October-16.

1 EXAMINER ADDISON: They will be so  
2 marked.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 MR. WHITT: Thank you.

5 Q. Sir, if you'll refer with me first to  
6 Exhibit 12-C. This is your signature at the bottom  
7 right-hand corner, correct?

8 A. That is correct.

9 Q. And the purpose of this document was to  
10 exchange money between Ohio Edison and FES, correct?

11 A. That is the purpose of these documents.

12 Q. And the exchange of money was to correct  
13 the misassignment of load involving the former  
14 customers of FES that would have been included in  
15 Box 2 where it says "Reason for Adjustment." Rather  
16 than customer names, there are account numbers,  
17 correct?

18 THE WITNESS: I apologize. I got lost  
19 where we were going with that. Can I have that one  
20 back, please?

21 Q. I'll tell you what, let's -- do you still  
22 have Ms. Ringenbach's testimony there?

23 A. I have it here.

24 Q. If you go to the very, very last page of  
25 it; 1.7.

1 A. Okay.

2 Q. If you compare Exhibit 12-C and  
3 Ms. Ringenbach's Exhibit 1.7 and confirm for us, or  
4 deny as the case may be, whether Exhibit 12-C is  
5 an unredacted version of Exhibit 1.7.

6 A. Yes, that is true.

7 Q. Okay. Now, the amount that is listed in  
8 Box 4, that figure is something that FES and Ohio  
9 Edison agreed to, correct?

10 A. As per the terms of the Settlement  
11 Agreement.

12 Q. Okay. And Ohio Edison was the entity  
13 responsible for correctly assigning the load between  
14 FES and Direct, correct?

15 THE WITNESS: I apologize. May I have  
16 the question again?

17 (Record read.)

18 A. While our operating companies act as the  
19 Meter Data Manager, the responsibility to ensure the  
20 entirety of the retail market place is the  
21 responsibility of all participants.

22 Q. That wasn't really my question. Let me  
23 ask it a little differently.

24 Ohio Edison did not correctly assign  
25 FES's load obligation, correct?

1 A. Correct.

2 Q. And the bilateral that we're looking at  
3 in Exhibit 12-C was intended to compensate FES,  
4 correct?

5 A. The misassignment actually impacted both  
6 parties, FES and Direct. This is to cure one side of  
7 that equation.

8 Q. Okay. And the side of the equation we're  
9 looking at in Exhibit 12-C involved a transfer of  
10 money from Ohio Edison Company to FirstEnergy  
11 Solutions Corp., correct?

12 A. Yes. The bilaterals merely exchange  
13 funds between the parties.

14 Q. If you'll look at Exhibit 13-C.

15 A. Okay. I'm there.

16 Q. Let me first make sure we have a  
17 foundation. Do you recognize Ms. Teamann's signature  
18 on the bottom right-hand side of this document?

19 A. I do recognize her signature.

20 (CONFIDENTIAL PORTION EXCERPTED.)

21

22

23

24 (PUBLIC SESSION - OPEN RECORD.)

25 MR. WHITT: Can you strike that?

1 EXAMINER ADDISON: Do we need to move  
2 that to the --

3 MR. LANG: Yeah, is there a way to not  
4 include it in the transcript?

5 EXAMINER ADDISON: Let's move the  
6 question and -- well, I guess it was just a question.  
7 Let's move that to the confidential session. That  
8 may be the only thing in the confidential session.

9 MR. WHITT: I apologize to everybody for  
10 that.

11 EXAMINER ADDISON: Thank you.

12 Q. (By Mr. Whitt) The bilateral we're  
13 looking at here that's marked as Exhibit 13-C  
14 involves Ohio Edison Company and some retail  
15 supplier, correct?

16 A. Yes.

17 Q. Okay. And if you look in the box titled  
18 "Reason for Adjustment," the first sentence under the  
19 reason for adjustment listed in the document  
20 references PJM OATT Section 3.6, correct?

21 A. As well as our tariffs.

22 Q. And the transaction reflected in  
23 Exhibit 13-C was a transaction that occurred as part  
24 of what I will call the overall load assignment issue  
25 that had involved not only Direct, but other

1 entities, correct?

2 A. This was negotiated language between us  
3 and the affected supplier, and what I'm not recalling  
4 is what parts of this language the affected supplier  
5 would have wanted placed in this document.

6 Q. Okay. But Ms. Teamann wouldn't sign  
7 something she believed to be inaccurate or  
8 inapplicable, would she?

9 A. Again, I don't know what parts of this  
10 are ours; obviously the requirements under our  
11 tariffs are.

12 MR. WHITT: May we approach, your Honor?

13 EXAMINER ADDISON: You may.

14 MR. WHITT: I would like to have marked  
15 for identification Direct Exhibit 14-C. It is a  
16 Settlement Agreement between the -- between CEI and  
17 FES. As well as Exhibit 15-C, a Settlement Agreement  
18 between Ohio Edison and FES.

19 EXAMINER ADDISON: They will be so  
20 marked.

21 (EXHIBITS MARKED FOR IDENTIFICATION.)

22 Q. Sir, you're familiar with Exhibits 14-C  
23 and 15-C, correct?

24 A. I am familiar with them, yes.

25 Q. And these are the agreements, the

1 Settlement Agreements that I think you mentioned when  
2 we were talking about Direct Exhibit 12-C, correct?

3 A. Correct.

4 Q. And you were part of the group on the  
5 utility side, that would be Ohio Edison and CEI, that  
6 came up with the dollar amounts that are shown in  
7 Exhibits 14-C and 15-C, correct?

8 A. That is correct.

9 Q. You don't know who the individuals were  
10 from FES that were involved in negotiations or  
11 discussions that led to these settlements, correct?

12 A. We had calculated the aggregate amount of  
13 all these settlements.

14 Q. Okay. And if we look at -- we'll focus  
15 on 14-C in Paragraph 1. Under the Settlement  
16 Agreement, any monies that CEI would recover from a  
17 new supplier would be paid over to FES, correct?

18 A. I don't understand your question.

19 Q. I'm not going to -- again, since we're  
20 dealing with a confidential document, I'm not sure  
21 what I want to read is necessarily confidential, but  
22 maybe if we read silently together the last sentence  
23 of Paragraph 1.

24 EXAMINER ADDISON: I would also instruct  
25 you, sorry, if we get close to divulging any

1 confidential information, I would prefer to go into  
2 confidential session if you would feel more  
3 comfortable answering those questions in a  
4 confidential session.

5 MR. LANG: Thank you, your Honor, we were  
6 having the same thought. And if there's, you know,  
7 to the extent, you know, to the extent the  
8 confidential information in this document, you know,  
9 we can talk about that in a confidential part of this  
10 examination, we'll just designate it first, but you  
11 need to -- you need to let us know and I think we  
12 may -- would we say that this question is going into  
13 confidential?

14 MS. OSTROWSKI: (Nods affirmatively.)

15 MR. LANG: I'd say, your Honor, I think  
16 the lawyers would be more comfortable if this Q and A  
17 is in the confidential portion of the transcript.

18 EXAMINER ADDISON: I think I, myself,  
19 would be more comfortable, so let's reserve the  
20 question.

21 MR. WHITT: And I don't want to get  
22 sideways on the confidentiality, but I would note the  
23 federal court case, although it's been dismissed, it  
24 was disclosed in that case publically that there had  
25 been an assignment. It did not reference, you know,



1 the Companies. So I'm just trying to -- I don't  
2 know, I'm trying to thread the needle here,  
3 unsuccessfully it appears.

4 EXAMINER ADDISON: Well, how about  
5 this --

6 MR. WHITT: Let me back it up.

7 EXAMINER ADDISON: -- why don't we, I  
8 feel like everyone may benefit from a break. We've  
9 been going for about 2 hours now. Why don't Counsel  
10 get together during the break, you can determine what  
11 level of questioning will be permitted in the public  
12 session and we'll reserve everything else for  
13 confidential, but at this time we'll take a brief  
14 break.

15 MR. WHITT: Okay. And just so everybody  
16 knows, I'm very close to done.

17 EXAMINER ADDISON: That was going to be  
18 my next question off the record, but you beat me to  
19 it. Let's go off the record.

20 (Recess taken.)

21 EXAMINER ADDISON: Let's go ahead and go  
22 back on the record.

23 Mr. Whitt.

24 MR. WHITT: Thank you, your Honor.

25 Q. (By Mr. Whitt) Before the break we were

1 discussing Exhibits 14-C and 15-C and you were able  
2 to identify these as Settlement Agreements between  
3 CEI and FES with respect to 14-C, and Ohio Edison and  
4 FES with respect to 15-C, correct?

5 A. Correct.

6 Q. And I just want to confirm that these  
7 are -- if one wants to read the agreements, the  
8 language certainly was intended to convey the  
9 parties' intentions I assume; would that be fair?

10 MR. LANG: I'm simply objected to part of  
11 that as to what Mr. Whitt is assuming, but I think he  
12 can answer the question as to what his understanding  
13 is as to what the agreements were intended to be.

14 EXAMINER ADDISON: My thoughts exactly.  
15 So I'll provide you a little bit of latitude if you  
16 want to answer the question. Thank you.

17 Q. Let me help you out here. We don't need  
18 a decoder ring to understand 14-C and 15-C. The  
19 language speaks for itself essentially; would you  
20 agree?

21 A. The language speaks for itself.

22 Q. And Direct will argue that it means one  
23 thing, and the Companies will say it means something  
24 else, and the Commission will figure it out, fair?

25 EXAMINER ADDISON: You can -- I think

1 he's indicated as much. The two documents speak for  
2 themselves, so.

3 Q. Okay. And I want to make sure you're not  
4 aware, are you, of any what I'll call "side  
5 agreements" for lack of a better term that would  
6 materially change the agreements that are reflected  
7 in Exhibits 14-C and 15-C?

8 A. Regarding this matter, there are no  
9 further agreements.

10 Q. Okay. Thank you for that. You can put  
11 those down.

12 I wanted to ask you about on page 8 of  
13 your testimony. On page 7 you were talking about  
14 compensation for the harmed supplier and what the  
15 Companies' role was in that, and you conclude the  
16 question by stating "Importantly, any costs incurred  
17 by the Companies associated with such resettlements  
18 are not recovered through retail rates." Why did you  
19 feel that that statement is important?

20 A. This statement is important because the  
21 coordination expected under the Supplier Tariff is  
22 expected to be between all of the suppliers operating  
23 in our operating company's service territories, and  
24 that any inefficiencies to resettle the market for  
25 any purpose isn't being borne by customers today.

1 Meaning the Companies have nothing in their current  
2 base rate structure to say if one supplier doesn't  
3 perform in a resettlement either way, either as a  
4 credit or a charge, that we are not moving that money  
5 between the -- out to customers.

6 Q. Okay. The misassigned load that we've  
7 been discussing today had a financial impact at least  
8 to Direct and FES, correct?

9 A. Equal and opposite each other, correct.

10 Q. And the Companies, meaning the utilities,  
11 there was no financial impact to them of the  
12 misassigned load.

13 A. That's not quite true because there were  
14 equal and opposite sides of a resettlement occurring  
15 that the Companies were in the middle of. When one  
16 part or another is not performing, the Companies in  
17 this case end up looking like they have to book a  
18 liability for end-of-year accounting reporting; and  
19 then further down the road, the Companies ended up  
20 having to move cash.

21 So what we have are parties on each side  
22 coming to us saying, one is saying "Cure me. You owe  
23 me money." And another one is saying -- and I'm  
24 speaking generically -- "I have money in the  
25 marketplace and I'm not going to give you that back."

1 So then the Companies get caught in the middle of,  
2 and to be conservative with accounting they end up  
3 having to book a liability that they may owe a  
4 supplier that has been harmed dollars.

5 Q. But the equal and opposite transactions  
6 you described were as between Direct and FES,  
7 correct?

8 A. No. The way the Supplier Tariff is  
9 constructed, all market coordination operates through  
10 the Companies. All data is submitted to PJM. All  
11 corrections are submitted to PJM. There's never an  
12 instance where FirstEnergy, Direct, or any of the  
13 80-some other suppliers operating in our service  
14 territory where they submit information to PJM to  
15 conduct a resettlement.

16 Q. The FirstEnergy utilities don't have a  
17 load obligation, correct?

18 A. It may be words, but no, that's not quite  
19 correct. We have a provider-of-last-resort load  
20 obligation. We serve through SSO auctions.

21 Q. Okay. But that's not what we're dealing  
22 with for purposes of this case, correct? The issue  
23 was that the load obligation was not transferred from  
24 FES to Direct, resulting, as the Companies allege, in  
25 Direct being advantaged in the same proportion to

1 which FES was disadvantaged, correct?

2 MR. LANG: Objection, your Honor.

3 Compound.

4 EXAMINER ADDISON: Do you understand the  
5 question?

6 THE WITNESS: Uh-uh. I should not have  
7 shook my head. "No." Sorry.

8 EXAMINER ADDISON: Thank you for that.

9 Q. The Companies allege that Direct was  
10 advantaged, correct?

11 A. Yes.

12 Q. The Companies allege that the amount that  
13 Direct has been advantaged is the same amount FES has  
14 been disadvantaged, correct?

15 A. Based on the calculation of the PJM  
16 expenses, that's the amount that's equal and  
17 opposite.

18 Q. So the advantaged and disadvantaged  
19 vantage are measured by the financial impacts to FES  
20 on one hand and Direct on the other, correct?

21 A. In this particular case, it was a  
22 one-to-one relationship.

23 Q. And I just want to confirm that  
24 relationship again is FES and Direct, correct?

25 A. It's managed through a process with the

1 operating companies always being the intermediary as  
2 the Meter Data Manager under the Supplier Tariff.

3 Q. Well, doesn't your Supplier Tariff say  
4 that the Companies will not be involved in any  
5 billing issues between any supplier and PJM?

6 THE WITNESS: I apologize. I didn't  
7 catch the last part of the question. Can you read  
8 the whole thing back, please?

9 (Record read.)

10 A. In cases of Settlement A, B or  
11 resettlement, the Companies have not stepped in place  
12 of PJM levying a bill from PJM to a supplier. In all  
13 cases they're using data the Companies have submitted  
14 to PJM to carry that out.

15 Q. Did we not just look at these PJM  
16 bilaterals where the Companies were, in effect,  
17 reversing something that had happened at PJM?

18 A. Again, the Companies are merely  
19 submitting information to PJM, and PJM's billing  
20 based on that information. The concept of reversing,  
21 not reversing, that's not how we think about these  
22 things. Our goal, as with the Supplier Tariff, as is  
23 expected under the Supplier Tariff, is we are  
24 coordinating to ensure all the proper loads with the  
25 proper entity serving the customer.

1           Q.    Can you help us understand if the  
2   Companies' position is that Direct is obligated to  
3   entertain these bilateral transactions, then why are  
4   the Companies even asking them to do these  
5   transactions?  Why aren't they just done and then  
6   Direct is notified "Here's what we did, here's the  
7   tariff provision, file a complaint if you don't like  
8   it"?

9           A.    I'm not quite following.  Are you asking  
10   to exchange dollars directly?

11          Q.    Yes.  Or through PJM.

12                THE WITNESS:  I apologize.  May I have  
13   that question again, please?

14                (Record read.)

15          A.    So the use of the bilaterals, the  
16   miscellaneous bilateral transaction at PJM has just  
17   been an easy way to do exactly that; simply exchange  
18   money between Direct and the operating companies.  
19   That's literally all that those pieces of paper are.

20                MR. WHITT:  Regrettably, I have another  
21   exhibit.  Your Honor, I'd like to have marked for  
22   identification the Companies' objections and  
23   responses to discovery in Case No. 17-1967.  There  
24   may be information in here that's confidential.  I  
25   don't know that we need all of the pages here.



1 MR. LANG: My associate is telling me no.

2 MR. WHITT: Customer names? If you're  
3 okay, perhaps after the questioning maybe we can  
4 remove some pages out of there?

5 MR. LANG: Okay.

6 MR. WHITT: Because I don't need all of  
7 them.

8 Q. Sir, do you have --

9 EXAMINER ADDISON: I'm sorry. It will be  
10 so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. WHITT: Thank you.

13 Q. -- Exhibit 16 in front of you?

14 A. Yes.

15 Q. Let me refer you to page 13 and it's  
16 Interrogatory 13 and the response. And you're  
17 indicated as the person responsible for at least the  
18 response portion of this answer, correct?

19 A. Correct.

20 Q. And in response to our question to  
21 identify each Disadvantaged Supplier referenced in  
22 Paragraph 18 of the Complaint, you identified  
23 FirstEnergy Solutions Corp. and two other suppliers,  
24 giving us a total of three Disadvantaged Suppliers,  
25 correct?

1           A.     Correct.

2           Q.     And on the next page, Interrogatory 14,  
3     in response to our question about Advantaged  
4     Suppliers referenced in Paragraph 18 of the  
5     Companies' Complaint, you say there were four  
6     Advantaged Suppliers, correct?

7           A.     It says four, correct.

8           Q.     Okay. And if we add the three  
9     Disadvantaged Suppliers plus the four Advantaged  
10    Suppliers, that gives us a total of seven suppliers,  
11    correct?

12          A.     Correct.

13          Q.     I think we established early on that you  
14    are employed by the FirstEnergy Service Company,  
15    correct?

16          A.     Correct.

17          Q.     And although you're employed by the  
18    service company, you spend all of your time  
19    performing work on behalf of the regulated utilities  
20    in Ohio and the other states, correct?

21                 THE WITNESS: That should have been an  
22    easy question, but I missed half of it. Sorry. May  
23    I have that question, please?

24                 (Record read.)

25          A.     We perform work on behalf of all the

1 regulated entities.

2 Q. Fair enough.

3 The service company's cost to employ you  
4 and pay benefits is allocated to the regulated  
5 entities to whom your group provides services,  
6 correct?

7 A. Yes. We did a time study a few years  
8 back to determine how much of our time is  
9 proportioned out to each regulated entity.

10 Q. And that apportionment or allocation  
11 alleviates the need for you to track your time on a  
12 daily basis and direct charge it to whichever entity  
13 you are working for that day, correct?

14 A. Correct. We do not direct charge our  
15 time daily.

16 Q. And you have not kept track of the time  
17 that you've spent working on this case, correct?

18 A. Again, our time is based on the time  
19 study that was done. Within the time study there  
20 were other regulatory proceedings and things, so it's  
21 based on allocations of them.

22 Q. But your time study, I'm assuming, didn't  
23 anticipate you would have this dispute with Direct;  
24 fair assumption?

25 A. Well, it's not a prospective time study.

1 It's based on history and we have disputes with  
2 suppliers and resettlements during that time frame.

3 Q. But when we looked at the e-mails where  
4 either you or Ms. Teamann were in conversations with  
5 Direct on behalf of the other supplier which we now  
6 know to be FES, you weren't separately tracking your  
7 time and charging it to FES for contacting Direct on  
8 their behalf, correct?

9 MR. LANG: Objection to form.

10 EXAMINER ADDISON: Are you able to answer  
11 the question?

12 THE WITNESS: Yes.

13 EXAMINER ADDISON: Please.

14 A. Again, all of our time is based on the  
15 work done to be the Meter Data Manager of all of our  
16 utilities for all their settlements activities. I  
17 think you're saying on behalf of FES, but we have to  
18 conduct settlements on behalf of all suppliers  
19 operating in the service territory which would  
20 include FES. So it's not that we single one or  
21 another out and then charge time to that supplier to  
22 do work. We're doing settlements work, A, B,  
23 resettlements, whatever is going on. The historical  
24 time study takes that into account and allocates our  
25 time.

1 Q. Okay. And I'm talking about what  
2 actually happened when you are communicating with  
3 Direct on behalf of FES as indicated in the  
4 Companies' correspondence. The Companies aren't  
5 separately tracking that time and charging it to FES.  
6 Your time and expense is allocated per the time  
7 study, correct?

8 MR. LANG: Objection.

9 EXAMINER ADDISON: Do you care to  
10 rephrase, Mr. Whitt?

11 Q. Well, maybe we can just confirm. You  
12 don't have time sheets where you're recording what  
13 you're doing and for who on a daily basis, correct?

14 A. As I stated before, correct.

15 Q. Are you aware of any other so-called  
16 Advantaged Supplier that the Companies have sued  
17 other than Direct?

18 A. We're at various stages with the other  
19 suppliers.

20 Q. Okay. But have you sued anyone else yet?

21 A. Not yet.

22 Q. Okay. So Direct is not the only holdout  
23 for lack of a better term.

24 MR. LANG: Your Honor, if I may, I'm  
25 seeing witness distress. It might help if I advise

1 the witness that legal communications and legal  
2 advice concerning other suppliers are something that  
3 he should maintain as privileged. But to the extent  
4 that he has information outside of those legal  
5 communications and, you know, the facts as he  
6 understands them with regard to other suppliers, that  
7 is something that he can provide without -- probably  
8 provide without naming the other suppliers that may  
9 be in his head. Hopefully that helps.

10 EXAMINER ADDISON: Thank you for that.

11 THE WITNESS: I apologize. I'm going to  
12 need the question read back, please.

13 (Record read.)

14 A. When the Complaint got filed, it changed  
15 our interactions with the -- with the other two  
16 suppliers.

17 Q. How many of the Advantaged Suppliers  
18 voluntarily cooperated to relinquish their windfalls?

19 A. I know we referenced this in my  
20 testimony. I'm just blanking on the exact number.

21 Q. Let me help you out.

22 A. Okay.

23 Q. On page 11, line 11, you say, "most of  
24 the Advantaged Suppliers."

25 A. Yes. And then I believe in testimony I

1 thought we had referenced ten.

2 Q. Okay. Let's go to 13, line 11. You say,  
3 "Ten Advantaged Suppliers cooperated," correct?

4 A. Correct. Thank you.

5 Q. Now I have to ask how that jives with the  
6 discovery responses which indicated there were three  
7 Advantaged Suppliers.

8 A. Can you refresh me on which page in  
9 the -- I just want to make sure.

10 Q. It was Interrogatories 13 and 14, I  
11 believe.

12 MR. LANG: Are you asking about the page  
13 in your testimony?

14 THE WITNESS: I apologize. The page  
15 numbers of the Interrogatories?

16 MR. WHITT: 13 and 14, I believe.

17 MR. LANG: Mark, you're asking him to  
18 compare that to page 13 of his testimony, lines 11  
19 and 12?

20 MR. WHITT: If he'd like to. They seem  
21 like different answers and I'm trying to understand.

22 A. I don't recall the context we were  
23 answering the Interrogatory in.

24 Q. Would it help you if we refer to the  
25 Companies' Complaint?

1 MR. WHITT: May we approach, your Honor?

2 EXAMINER ADDISON: You may.

3 MR. WHITT: I don't know that we need to  
4 mark the document. It's a copy of the Complaint  
5 filed in Case 17-1967. If we refer to page 18 of the  
6 Complaint, I'll give you a moment to read that.

7 MR. LANG: You said page 18. You meant  
8 Paragraph 18, I believe.

9 MR. WHITT: Yeah.

10 Q. Paragraph 18, page 4.

11 A. What I don't know without investigating  
12 is whether the Direct response is in response to the  
13 number of suppliers who had participated by the end  
14 of late 2015, versus all of them who were  
15 participating through the totality of that, and I'd  
16 have to reconcile that.

17 Q. Were there additional Advantaged or  
18 Disadvantaged Suppliers identified after  
19 December 2015?

20 A. No, I think I'm reading the discovery  
21 question wrong.

22 So I think my testimony is talking about  
23 who all had resolved. And just looking at this  
24 today, the discovery response may not have answered  
25 the question accurately.



1           Q.    When you communicated with Direct in  
2   February of 2017 about the misassignment issue, by  
3   that time the Companies and FES had already entered  
4   the Settlement Agreements we discussed earlier,  
5   correct?

6           A.    By that time we had entered into  
7   Settlement Agreements with FES and another supplier.

8           Q.    Have the Companies compensated any  
9   Disadvantaged Supplier, other than FES, where the  
10  advantaged counterparty had not yet agreed to  
11  resettlement?

12          A.    As complicated as this market is, it gets  
13  more complicated. We have had retail customers who  
14  set themselves up to essentially shop to themselves;  
15  they set themselves up as their own supplier. We  
16  have had instances where if that customer has been  
17  disadvantaged by say a meter error, we have settled  
18  with the customer ahead of collecting from Advantaged  
19  Suppliers.

20          Q.    Outside of that context, and specifically  
21  with regard to the \$25 million misassignment issue,  
22  has that happened for anyone other than FES?

23          A.    I don't remember. Just thinking back  
24  through all the years, I don't remember if we've done  
25  something like that. But the market is very

1 different now than it was a few years ago.

2 MR. WHITT: I would move to strike  
3 everything starting with "but" which was  
4 nonresponsive to the question.

5 EXAMINER ADDISON: Thank you. I don't  
6 believe Mr. Stein has used his bite at the apple yet.

7 MR. WHITT: I would have started  
8 objecting earlier if I knew we were going to do that  
9 now.

10 (Laughter all around.)

11 EXAMINER ADDISON: Well, it's too late  
12 for that now, isn't it? So I will let the answer  
13 stand.

14 MR. WHITT: I don't have any further  
15 questions.

16 EXAMINER ADDISON: Thank you, Mr. Whitt.

17 MR. WHITT: I was way longer than I said.  
18 I apologize.

19 EXAMINER ADDISON: We won't hold it  
20 against you.

21 Mr. Stein, just really quickly. You had  
22 referenced earlier that there may be a possibility of  
23 recording a regulatory liability on the books of the  
24 Companies. Do you recall that?

25 THE WITNESS: I recall recording a

1 liability, not regulatory.

2 EXAMINER ADDISON: Okay. At what point  
3 would you record -- at what point would that become  
4 necessary to record a liability?

5 THE WITNESS: It would have been seen on  
6 the financials immediately.

7 EXAMINER ADDISON: Under what  
8 circumstances?

9 THE WITNESS: Oh, I apologize.

10 EXAMINER ADDISON: No, you're fine.

11 THE WITNESS: I will preface this with  
12 I'm not an accountant, but accountants come after us  
13 all the time because of the amount of money we deal  
14 with. What has been portrayed to us in doing this  
15 over the years is when we get in these situations,  
16 and if there's a perception or an idea that the  
17 parties who have been harmed are going to push on  
18 their rights to be cured, and if we have indication  
19 from the other participants that we are going to  
20 receive compensation, meaning an agreement in  
21 principle or likewise, not necessarily cash has moved  
22 at that second, we will not book anything because  
23 there's an expectation that the market will cure  
24 itself.

25 However, if the Companies find themselves

1 with one party saying pay me, you know, cure me, and  
2 we're not getting cooperation from the other side,  
3 the Companies are then forced to recognize that I am  
4 going to have to compensate a supplier without the  
5 corresponding other side, we will book a liability as  
6 a payable out to that supplier on the books of the  
7 operating companies.

8 EXAMINER ADDISON: Okay. So that  
9 would -- if you could turn to page 7 of your  
10 testimony. When you reference on line 14 "the harmed  
11 CRES provider may demand that the Companies  
12 compensate it," that would be such a situation?

13 THE WITNESS: You are correct.

14 EXAMINER ADDISON: Okay. And to your  
15 knowledge, that liability would be recorded pursuant  
16 to the Financial Accounting Standards?

17 THE WITNESS: Correct.

18 EXAMINER ADDISON: Okay. Thank you.

19 Mr. Lang.

20 MR. LANG: Thank you, your Honor.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Lang:

24 Q. You were asked at the beginning of  
25 Mr. Whitt's examination who Cindy Teamann and Anna

1 Caruthers report to. You responded it was to you.  
 2 You were also asked in your examination about the PJM  
 3 committee minutes that include listings of  
 4 individuals and companies with which they're  
 5 associated.

6 Can you explain, when individuals are  
 7 representing the Ohio utilities at those meetings,  
 8 how they would be listed or how they would be  
 9 associated with a company in those PJM minutes?

10 A. Sure. So each of the TOs all went into  
 11 PJM at different times.

12 Q. "TO" is?

13 A. Oh, I'm sorry. I get caught up in the  
 14 acronyms. Transmission owners and their respective  
 15 electric distribution company over the years. Ohio  
 16 in particular, which includes Penn Power, so Ohio  
 17 Edison, Penn Power, Toledo Edison and Cleveland  
 18 Electric Illuminating, their membership structure is  
 19 odd in PJM. The primary member at PJM is FirstEnergy  
 20 Solutions which interestingly enough gets listed as a  
 21 transmission owner. FES is not a transmission owner,  
 22 however that's how it shows up at PJM.

23 So when you go to select a member  
 24 committee or participate in something, it defaults to  
 25 that, unless you take an action to move it to

1 something else, which we would have to move it to  
 2 like a GPU company or an Allegheny company or  
 3 something like that for the folks that came from  
 4 Allegheny. If you don't take that action, it will  
 5 show FirstEnergy Solutions as the, quote, person  
 6 you're there representing. But we, as I stated  
 7 before, we don't, because of the odd instances of  
 8 that, we ensure we announce when we're speaking as an  
 9 SME we're speaking as the operating companies when  
 10 we're talking in a meeting.

11 Q. Would members of your team, including  
 12 Cindy Teamann and Anna Caruthers at any time in 2015,  
 13 in appearing in PJM or attending PJM meetings, would  
 14 they have been there on behalf of FirstEnergy  
 15 Solutions?

16 A. No. FirstEnergy Solutions actually has  
 17 their own staff that will attend those meetings if  
 18 they attend those meetings.

19 Q. Now, you were asked I believe in relation  
 20 to -- find my exhibit. Here it is.

21 You were asked in regard to Direct  
 22 Exhibit 10, the Determination of Supplier Total  
 23 Hourly Energy Obligation on page 10 of that document,  
 24 language saying "Disputes shall be resolved through  
 25 the PJM Dispute Resolution process." And you

1 explained that that relates to disputes over the  
2 calculation, the amount, you know, disputes that the  
3 numbers are wrong.

4 Has Direct, with regard to the dispute  
5 here, ever claimed that the numbers were wrong and  
6 requested resolution through the PJM Dispute  
7 Resolution process?

8 A. No.

9 Q. Now, in a discussion that you had with  
10 Mr. Whitt concerning the flag, you had indicated that  
11 the flag is on all 6 million accounts. However, we  
12 know it did not affect 6 million customers. So can  
13 you explain what you mean when you say it was on  
14 6 million accounts?

15 A. What that means was that the flag was  
16 present and able to be activated if somebody had done  
17 something on all 6 million accounts. It was not  
18 activated on all the rest of the accounts except for  
19 those that we're talking about through this case.

20 Q. And you were also asked by Mr. Whitt  
21 about who did the calculation of the \$5.6 million-  
22 and-change figure. If we wanted to find out -- if  
23 you wanted to find out who did that calculation, how  
24 would you do that?

25 A. I would simply go around to my staff and

1 ask them, those being Cindy Teamann, Anna Caruthers,  
2 "Do you guys remember who calculated the spreadsheet  
3 for this?" And we could easily determine that.

4 Q. You were asked by Mr. Whitt whether you  
5 know who for FES was working on the Settlement  
6 Agreements that were marked as confidential exhibits,  
7 and you responded that "we" calculated the amount.  
8 What did you mean by "we"?

9 A. To be clear, "we" in that reference was  
10 the Regulated Settlements Group.

11 Q. And you were also asked by Mr. Whitt,  
12 specifically if I could take you to page 13 of your  
13 testimony, lines 11 and 12, questions about affected  
14 Advantaged Suppliers, the total amount of Advantaged  
15 Suppliers and with regard to your testimony referring  
16 to "Ten Advantaged Suppliers cooperated and worked  
17 with the Companies and their affiliate FE EDUs to  
18 reach a...resolution...."

19 Does looking at your testimony with  
20 regard to the statement about the Companies and their  
21 affiliate FE EDUs, help you in any way remember why  
22 there's a difference between what's in your testimony  
23 and what was in the discovery response?

24 A. Yes, it does. This would include, the  
25 testimony includes Pennsylvania and New Jersey.



1 Q. And why do you say it includes that?

2 A. Because it says "affiliate FE EDUs" which  
3 we were using in the testimony as not only the Ohio  
4 operating companies but also all the other utilities  
5 impacted.

6 Q. So the response for Companies is Ohio  
7 Edison and CEI, and then the affiliate FE EDUs would  
8 be the non-Ohio EDUs; is that right?

9 A. Correct.

10 Q. And you were also, toward the end of  
11 Mr. Whitt's examination, asked about settlements with  
12 Disadvantaged Suppliers and whether there was a --  
13 the relationship between the Disadvantaged Suppliers  
14 and the corresponding Advantaged Supplier for those,  
15 and you referred to a -- you referred to a settlement  
16 with a supplier that's not FES in addition to the  
17 settlements with FES that were marked as exhibits.  
18 Do you remember that?

19 A. I do.

20 Q. The settlement that was done with that  
21 other supplier, was there, as in this case, a  
22 corresponding Advantaged Supplier on the other side?

23 A. Yes.

24 Q. And did that -- was the settlement -- so  
25 given that there was a corresponding Advantaged

1 Supplier on the other side, why was that settlement  
2 done with the Disadvantaged Supplier?

3 A. It was done in the same spirit and no  
4 different as the agreements entered into with FES.  
5 We had a harmed supplier, we had distribution  
6 companies in the middle as a Meter Data Manager, we  
7 had a supplier on the other side not acting, the  
8 Disadvantaged Supplier was demanding to be cured of  
9 market expenses that weren't theirs.

10 MR. LANG: No further questions, your  
11 Honor.

12 EXAMINER ADDISON: Thank you, Mr. Lang.  
13 Mr. Whitt.

14 MR. WHITT: I don't have any recross.

15 EXAMINER ADDISON: Thank you.

16 I have no additional questions,  
17 Mr. Stein. You are excused.

18 THE WITNESS: Thank you.

19 EXAMINER ADDISON: Thank you very much.

20 MR. WHITT: I would like to move for the  
21 admission of --

22 EXAMINER ADDISON: I believe Mr. Lang is  
23 first.

24 MR. LANG: I get to go first.

25 (Laughter all around.)

1 EXAMINER ADDISON: I appreciate your  
2 enthusiasm.

3 (Laughter all around.)

4 MR. LANG: Your Honor, the Companies  
5 would move Companies Exhibit 12, the testimony of  
6 Edward Stein.

7 EXAMINER ADDISON: Thank you.

8 Any objection?

9 MR. WHITT: None other than those  
10 previously noted.

11 EXAMINER ADDISON: Thank you. Your  
12 objections will be noted. Companies Exhibit 12 will  
13 be admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER ADDISON: Mr. Whitt.

16 MR. WHITT: And Direct would move for the  
17 admission of Direct Exhibit 10 -- sorry -- 9. 9, 10,  
18 11, 12-C, 13-C, 14-C, 15-C, and 16 with -- just so we  
19 don't have to deal with confidentiality -- the  
20 omission of the responses to Interrogatories 3, 4,  
21 and 5.

22 EXAMINER ADDISON: Thank you. So long as  
23 the court reporter gets the accurate document to be  
24 marked, I am fine with that.

25 Mr. Lang.

1 MR. LANG: Your Honor, clearly with the  
2 understanding that the "C" exhibits will be  
3 maintained as confidential, we have no objection to  
4 that list.

5 EXAMINER ADDISON: Thank you.

6 And just to be clear, both parties should  
7 get together at the end of the hearing in order to  
8 make sure Direct Exhibit 16 does not contain any  
9 confidential information because it has not been  
10 marked as confidential. Thank you.

11 With that being said, I will go ahead and  
12 admit Direct Exhibits No. 9, 10, 11, 12-C, 13-C,  
13 14-C, 15-C, and 16 with the appropriate redactions  
14 made.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER ADDISON: Let's go off the  
17 record for a moment.

18 (Discussion off the record.)

19 EXAMINER ADDISON: Let's go ahead and go  
20 back on the record.

21 After a brief discussion with the parties  
22 off the record, we have determined a briefing  
23 schedule. Initial briefs will be due June 14th and  
24 reply briefs will be due June 28th.

25 Is there anything else we need to discuss

1 before adjourning for today?

2 MR. LANG: No, your Honor.

3 EXAMINER ADDISON: Thank you, all. I  
4 appreciate it. We are adjourned.

5 (Thereupon, the proceedings concluded at  
6 5:44 p.m.)

7 - - -

8 CERTIFICATE

9 I do hereby certify that the foregoing is a  
10 true and correct transcript of the proceedings taken  
11 by me in this matter on Monday, May 7, 2018, and  
12 carefully compared with my original stenographic  
13 notes.

14  
15 Carolyn M. Burke

16 Carolyn M. Burke, Registered  
17 Professional Reporter, and  
Notary Public in and for the  
State of Ohio.

18  
19 My commission expires July 17, 2018.

20 - - -



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**Commission of Ohio Docketing Information System on**

**5/21/2018 9:55:17 AM**

**in**

**Case No(s). 17-0791-EL-CSS, 17-1967-EL-CSS**

Summary: Transcript Direct Energy Business, LLC vs. Ohio Edison Company and The Cleveland Electric Illuminating Company and Ohio Edison Company and The Cleveland Electric Illuminating Company vs. Direct Energy Business, LLC, hearing held on May 7, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn