

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for an : Case No. 17-32-EL-AIR
 Increase in Electric :
 Distribution Rates. :
 In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Tariff : Case No. 17-33-EL-ATA
 Approval. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-34-EL-AAM
 to Change Accounting :
 Methods. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-872-EL-RDR
 to Modify Rider PSR. :
 In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-873-EL-ATA
 to Amend Rider PSR. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-874-EL-AAM
 to Change Accounting :
 Methods. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Authority :
 to Establish a Standard :
 Service Offer Pursuant to :
 Section 4928.143, Revised : Case No. 17-1263-EL-SSO
 Code, in the Form of an :
 Electric Security Plan, :
 Accounting Modifications, :
 and Tariffs for Generation:
 Services. :

1 In the Matter of the :
Application of Duke Energy:
2 Ohio, Inc., for Authority :
to Amend its Certified : Case No. 17-1264-EL-ATA
3 Supplier Tariff, P.U.C.O. :
No. 20. :

4 In the Matter of the :
Application of Duke Energy:
5 Ohio, Inc., for Authority : Case No. 17-1265-EL-AAM
6 to Defer Vegetation :
Management Costs. :

7 In the Matter of the :
Application of Duke Energy:
8 Ohio, Inc., to Establish :
Minimum Reliability : Case No. 16-1602-EL-ESS
9 Performance Standards :
10 Pursuant to Chapter :
4901:1-10, Ohio :
11 Administrative Code. :

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13 PROCEEDINGS

14 before Mr. Nick Walstra and Ms. Stacie Cathcart,
15 Attorney Examiners, at the Public Utilities
16 Commission of Ohio, 180 East Broad Street, Room 11-A,
17 Columbus, Ohio, called at 10:00 a.m. on Monday,
18 July 9, 2018.

19 - - -

20 VOLUME I

21 - - -

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20 On behalf of Ohio Partners for
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24 On behalf of The Ohio Manufacturers'
25 Association Energy Group.

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15 On behalf of Wal-Mart Stores East, LP,
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Monday Morning Session,
July 9, 2018.

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EXAMINER WALSTRA: The Public Utilities
Commission of Ohio has called for hearing at this
time and place:

Case No. 17-32-EL-AIR, being In the
Matter of the Application of Duke Energy Ohio,
Incorporated, for an Increase in Electric
Distribution Rates;

Case No. 17-33-EL-ATA, being In the
Matter of the Application of Duke Energy Ohio,
Incorporated, for Tariff Approval;

Case No. 17-34-EL-AAM, being In the
Matter of the Application of Duke Energy Ohio,
Incorporated, for Approval to Change Accounting
Methods;

Case No. 17-872-EL-RDR, being In the
Matter of the Application of Duke Energy Ohio,
Incorporated, for Approval to Modify Rider PSR;

Case No. 17-873-EL-ATA, being in the
Matter of the Application of Duke Energy Ohio,
Incorporated, for Approval to Amend Rider PSR;

Case No. 17-874-EL-AAM, being In the
Matter of the Application of Duke Energy Ohio,

1 Incorporated, for Approval to Change Accounting
2 Methods;

3 Case No. 17-1263-EL-SSO, being In the
4 Matter of the Application of Duke Energy Ohio,
5 Incorporated, for Authority to Establish a Standard
6 Service Offer;

7 Case No. 17-1264-EL-ATA, being In the
8 Matter of the Application of Duke Energy Ohio,
9 Incorporated, for Authority to Amend its Certified
10 Supplier Tariff;

11 Case No. 17-1265-EL-AAM, being In the
12 Matter of the Application of Duke Energy Ohio, Inc.,
13 for Authority to Defer Vegetation Management Costs;

14 And Case No. 16-1602-EL-ESS, being In the
15 Matter of the Application of Duke Energy Ohio,
16 Incorporated, to Establish Minimum Reliability
17 Performance Standards.

18 My name is Nick Walstra, with me is
19 Stacie Cathcart, we are the Attorney Examiners
20 Assigned by the Commission to hear this case.

21 We will take appearances from the
22 parties, beginning with Duke.

23 MR. D'ASCENZO: Thank you, your Honor.
24 On behalf of Duke Energy Ohio, my name is Rocco
25 D'Ascenzo. Appearing on behalf of the company in

1 this proceeding also is Elizabeth Watts, Jeanne
2 Kingery; and from the law firm of Ice Miller, Kay
3 Pashos, Mike Mizell, and Christopher Miller.

4 EXAMINER WALSTRA: Thank you.

5 And then we will start on the right and
6 go around.

7 MR. ALEXANDER: Hi, your Honor. Trevor
8 Alexander with the law firm of Calfee, Halter &
9 Griswold, here representing the City of Cincinnati.
10 Also with me is Bryan Carney, from the law firm of
11 Akin Gump, who may or may not be involved in the
12 case.

13 EXAMINER WALSTRA: Thank you.

14 MR. BEELER: Thank you, your Honor. On
15 behalf of the staff of the Public Utilities
16 Commission of Ohio, Ohio Attorney General Mike
17 DeWine's office, my name is Steven Beeler; also in
18 this case will be Thomas Lindgren and Robert Eubanks;
19 30 East Broad Street, Columbus, Ohio 43215.

20 EXAMINER WALSTRA: Thank you.

21 MR. MICHAEL: Good morning, your Honor.
22 On behalf of Duke's residential utility consumers,
23 the Office of the Ohio Consumers' Counsel, Bill
24 Michael, Chris Healey, Zach Woltz. And we have with
25 us today an intern from our office, Jalila Dado.

1 EXAMINER WALSTRA: Thank you.

2 MR. OLIKER: Good morning, your Honors.
3 On behalf of Interstate Gas Supply, Inc., Joseph
4 Oliker, and Mike Nugent is also here. We are at 6100
5 Emerald Parkway, Dublin, Ohio 43016.

6 MR. WHITT: Good morning. On behalf of
7 the Retail Energy Supply Association and Direct
8 Energy Business, LLC, the law firm of Whitt
9 Sturtevant, Mark Whitt and Becky Glover, 88 East
10 Broad Street, Suite 1590, Columbus, Ohio 43215.

11 MR. KURTZ: Good morning, your Honors.
12 On behalf of the Ohio Energy Group, Mike Kurtz of the
13 law firm Boehm, Kurtz & Lowry.

14 MS. FLEISHER: Good morning, your Honors.
15 Madeline Fleisher on behalf of the Environmental Law
16 & Policy Center, 21 West Broad Street, 8th floor,
17 Columbus, Ohio 43215.

18 MR. MENDOZA: Good morning, your Honors.
19 Tony Mendoza on behalf of the Sierra Club.

20 MS. HARRIS: Good morning. Carrie Harris
21 with the law firm Spilman, Thomas & Battle, here on
22 behalf of Wal-Mart Stores East, LP, and Sam's East,
23 Inc. The firm address is 110 Oakwood Drive, Suite
24 500, Winston-Salem, North Carolina 27103.

25 MR. DOVE: On behalf of the Natural

1 Resources Defense Council, Robert Dove, The Law
2 Office of Robert Dove, P.O. Box 13442, Columbus, Ohio
3 43213.

4 MS. BOJKO: Good morning, your Honors.
5 On behalf of the Ohio Manufacturers' Association
6 Energy Group, Kimberly W. Bojko, Brian W. Dressel,
7 with the law firm Carpenter Lipps & Leland, 280 North
8 High Street, Suite 1300, Columbus, Ohio 43215.

9 MS. WHITFIELD: Good morning, your
10 Honors. On behalf of the Kroger Company, Angela Paul
11 Whitfield from the law firm Carpenter Lipps & Leland,
12 280 North High Street, Suite 1300, Columbus, Ohio
13 43215.

14 MR. DARR: On behalf of the Industrial
15 Energy Users, the law firm of McNees, Wallace &
16 Nurick; appearing will be Frank Darr and Matt
17 Pritchard.

18 MR. SETTINERI: Good morning, your
19 Honors. On behalf of Constellation NewEnergy, Inc.,
20 and Exelon Generation Company, LLC., Michael
21 Settineri and Gretchen Petrucci of the law firm
22 Vorys, Sater, Seymour & Pease, 52 East Gay Street,
23 Columbus, Ohio.

24 As well as on behalf of the University of
25 Cincinnati and Miami University, Michael Settineri,

1 Vorys, Sater, Seymour & Pease, 52 East Gay Street,
2 Columbus, Ohio.

3 MR. LESSER: Steven Lesser, also
4 appearing on behalf of the City of Cincinnati.

5 MS. LEPPLA: Good morning, your Honor.
6 Miranda Leppla on behalf of the Ohio Environmental
7 Council and Environmental Defense Fund, 1145
8 Chesapeake Avenue, Suite I, Columbus, Ohio 43212.

9 MS. MOONEY: On behalf of Ohio Partners
10 for Affordable Energy, I am Colleen Mooney. Post
11 Office Box 12451, Columbus, Ohio.

12 MS. HEWELL: Good morning, your Honor.
13 On behalf of People Working Cooperatively, Nicki
14 Hewell, the law firm of Bricker & Eckler, 100 South
15 Third Street, Columbus, Ohio.

16 MR. PARRAM: Good morning, your Honor.
17 On behalf of the Ohio Hospital Association, Devin
18 Parram, the law firm of Bricker & Eckler, 100 South
19 Third Street, Columbus, Ohio 43215.

20 EXAMINER WALSTRA: Is that everyone?

21 Okay. Before we begin, I think we do
22 have three outstanding motions for pro hac vice.
23 Duke, do you want to briefly speak to those?

24 MR. D'ASCENZO: Certainly, your Honor.
25 The company has three attorneys that we have

1 requested pro hac vice admission for this proceeding.
2 The attorneys have fulfilled all of the necessary
3 requirements under Ohio's rules for appearing here
4 today. They are Kay Pashos, Mike Mizell, and Camal
5 Robinson. I don't believe Mr. Robinson is here
6 present today, but Ms. Pashos and Mr. Mizell are.

7 EXAMINER WALSTRA: Okay. No objections
8 were filed or memo contra in the record, so those
9 three motions will be granted.

10 MR. D'ASCENZO: Thank you, your Honor.

11 EXAMINER WALSTRA: I believe a
12 stipulation has been filed in this case?

13 MR. D'ASCENZO: That is correct, your
14 Honor.

15 EXAMINER WALSTRA: You may proceed.

16 MR. D'ASCENZO: Thank you.

17 As some preliminary matters, your Honor,
18 we would like to mark as Joint Exhibit No. 1, the
19 stipulation for these consolidated cases. May we
20 approach?

21 EXAMINER WALSTRA: So marked. You may
22 approach.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. WATTS: Your Honor, how would you
25 like to -- in each case we have copies for the Bench

1 and court reporter. We didn't bring copies for
2 everybody in the room because we are assuming
3 everybody has their own copies.

4 EXAMINER WALSTRA: I think for something
5 like this, that's understandable, so.

6 MS. WATTS: Your Honor, we have some
7 additional exhibits. If you deem it appropriate, we
8 can mark it now or we can do it whenever you prefer.

9 EXAMINER WALSTRA: Let's go ahead and
10 mark them now.

11 MS. WATTS: The first exhibit would be
12 Duke Energy Ohio's application in the rate
13 proceeding, Case No. 17-32. That would be Duke
14 Energy Ohio Exhibit 1.

15 EXAMINER WALSTRA: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MS. WATTS: The second Duke Energy Ohio
18 exhibit would be the application in the electric
19 security plan case, Case No. 17-1263.

20 EXAMINER WALSTRA: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MS. BOJKO: Your Honor, could Counsel use
23 the microphone. It is kind of hard to hear in this
24 room.

25 MS. WATTS: Is that better?

1 MS. BOJKO: Thank you.

2 MS. WATTS: Okay. The third Duke Energy
3 Ohio exhibit would be the application in the Rider
4 PSR case in Case No. 17-872.

5 EXAMINER WALSTRA: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. WATTS: The fourth Duke Energy Ohio
8 exhibit would be the application for reliability
9 standards and that's in Case No. 16-1602.

10 EXAMINER WALSTRA: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. WATTS: The next, Duke Energy Ohio
13 Exhibit 5 would be the direct testimony of Amy
14 Spiller filed in the combined cases on June 6, 2018.

15 EXAMINER WALSTRA: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MS. WATTS: The next would be the
18 testimony of James Henning that was filed in the rate
19 case on March 16, 2017.

20 EXAMINER WALSTRA: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MS. WATTS: The next would be the
23 testimony of Mr. Henning in the electric security
24 plan case on June 1, 2017.

25 EXAMINER WALSTRA: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MS. WATTS: The next would be the
3 supplemental public testimony of -- yeah, so I think
4 that's it for now.

5 EXAMINER WALSTRA: Okay. Call your first
6 witness.

7 MR. D'ASCENZO: Thank you, your Honor.
8 For our first witness we'd call Amy Spiller.

9 THE WITNESS: Good morning, your Honor.

10 MR. DOVE: How would you like to handle
11 motions to strike at what time?

12 EXAMINER WALSTRA: At the beginning of
13 cross. And then I guess for cross-examination
14 purposes, we'll go left to right, and if you
15 anticipate having cross, just make sure you're at the
16 table to do cross. Otherwise, we will go left to
17 right.

18 (Witness sworn.)

19 EXAMINER WALSTRA: Thank you. Please
20 take a seat.

21 MR. D'ASCENZO: Your Honor, may we
22 approach with copies of testimony, please?

23 EXAMINER WALSTRA: You may.

24 MR. D'ASCENZO: Thank you.

25 MR. MICHAEL: Your Honor, if I could ask

1 real quickly. You had suggested at the beginning of
2 cross we would do motions to strike? Would that be
3 each individual cross-examination or do you want to
4 do all motions to strike before any cross-examination
5 begins?

6 EXAMINER WALSTRA: We will do all motions
7 to strike.

8 MR. MICHAEL: Okay.

9 - - -

10 AMY B. SPILLER

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

13 DIRECT EXAMINATION

14 By Mr. D'Ascenzo:

15 Q. Good morning, Ms. Spiller.

16 A. Good morning, Mr. D'Ascenzo.

17 Q. Do you have in front of you what has
18 previously been marked as Duke Energy Ohio Exhibit
19 No. 5?

20 A. I do.

21 Q. And could you please identify that.

22 A. Sure. It's the direct testimony that I
23 filed in support of the stipulation docketed with the
24 Commission on June 6 of this year.

25 Q. Thank you.

1 Do you also have before you what has been
2 marked as Duke Energy Ohio Exhibits 6 and 7?

3 A. I do.

4 Q. And could you please identify those,
5 please.

6 A. Certainly. Duke Energy Ohio Exhibit 6 is
7 the direct testimony of James P. Henning, filed in
8 Case No. 17-32, et al., docketed with the Commission
9 on March 16 of 2017. Duke Energy Ohio Exhibit 7 is
10 the direct testimony of James P. Henning, filed in
11 Case No. 17-1263, et al., docketed with the
12 Commission on June 1 of 2017.

13 Q. Thank you.

14 And as a preliminary matter, Ms. Spiller,
15 would you please state your full name and position
16 with the company for the record.

17 A. Certainly. Amy Spiller, presently
18 President of Duke Energy Ohio and Kentucky.

19 Q. And I believe Ms. Spiller, you already
20 state you filed Exhibit 5, your direct testimony. Do
21 you have any changes or corrections to that testimony
22 today?

23 A. I do not this morning.

24 Q. And as part of your testimony today, are
25 you adopting the direct testimony previously filed by

1 James P. Henning in Case No. 17-32-EL-AIR, et al.,
2 and Case No. 17-872, et al.?

3 A. I'm sorry, can you repeat that Case
4 number?

5 Q. Yeah, sorry. It's Case No.
6 17-1263-EL-SSO.

7 A. Yes, I have adopted those.

8 MR. D'ASCENZO: No further questions,
9 your Honor.

10 EXAMINER WALSTRA: Thank you.

11 Start with Mr. Dove.

12 MR. DOVE: Your Honor, NRDC would like to
13 make a motion to strike on the testimony that she's
14 adopted of Henning in the application to increase
15 rates. On page 13, lines 20 through 23, it discusses
16 the proposal to introduce a straight-fixed, variable,
17 rate design. And per the stipulation, that proposal
18 has been withdrawn and no changes have been made. So
19 pursuant to your previous decision, it would seem
20 appropriate to strike that testimony.

21 MR. MICHAEL: OCC joins that motion, your
22 Honor.

23 EXAMINER WALSTRA: Any objection?

24 MR. D'ASCENZO: Yes, your Honor. If I
25 may, the purpose of this hearing is to determine the

1 reasonableness of the stipulation that has been filed
2 in this proceeding. One of the components of the
3 Commission's analysis to determine the reasonableness
4 is whether or not the stipulation itself is the
5 product of serious bargaining.

6 A key to the Commission's determination
7 is an understanding of what was proposed as part of
8 the company's original applications. There -- this
9 is a contested stipulation, your Honor. And there is
10 precedent that indicates and would say that the
11 Commission needs to be able to support its decision
12 in evaluating a settlement that is contested. And in
13 order to do that, the Commission must be able to view
14 the entire record that has been placed before it
15 which would include the company's applications and
16 the testimony that explains what was included in the
17 applications.

18 Mr. Henning's testimony in the rate case
19 was -- he was the then-president of the company and
20 provided an overview of what was in the company's
21 rate case application. The Commission should have
22 the benefit of a complete record.

23 The Commission is fully capable of
24 affording appropriate weight to testimony,
25 particularly in light of the stipulation. With

1 respect to your Honor's ruling from several weeks
2 ago, what was said was that -- that the original
3 applications and information that is compatible with
4 the stipulation would be deemed relevant.

5 Your Honor, I would propose and state
6 that Mr. Henning's full testimony is relevant to the
7 company's application, as well as the result of the
8 stipulation through the serious bargaining that
9 occurred and, therefore, it should be admitted in its
10 entirety.

11 MR. MICHAEL: Your Honor, if I may --

12 EXAMINER WALSTRA: Go ahead.

13 MR. MICHAEL: -- interject something?

14 Duke correctly described what your
15 Honor's ruling was regarding only that which is
16 compatible with the stipulation is relevant. As
17 Mr. Dove so ably pointed out, discussion regarding a
18 straight-fixed, variable, that is not part of the
19 stipulation, is not compatible with the stipulation.

20 Further, based on the company's
21 reasoning, one could take the position that
22 everything in all the cases could come in, and your
23 Honor was pretty clear and I think a number of
24 parties involved in this case were pretty clear that
25 is not going to happen.

1 And then lastly, I would just suggest,
2 your Honor, that the company did move for or at least
3 mark the applications in the different cases. So to
4 the extent that the company feels it necessary to
5 compare what they proposed in the applications versus
6 what was in the stipulation, those applications are
7 going to be part of the record. We are talking about
8 something very different here and that is testimony
9 underlying some of the things that were proposed in
10 the applications. So I don't think that the
11 company's response to Mr. Dove's motion to strike
12 carries any weight and, once again, OCC would join in
13 that motion to strike.

14 MR. OLIKER: Your Honor, if I may be
15 heard very briefly. If you were to look at page 8 of
16 Ms. Spiller's testimony to support the stipulation,
17 she actually addresses this in the correct manner,
18 which is if you look at bullet point 2, "The
19 Company's proposals to increase the monthly
20 residential customer charge and implement a
21 straight-fixed, variable, rate design...." And then
22 it goes on to say it's been resolved with no
23 increase.

24 So the point is already addressed in the
25 stipulation in a way that corresponds with your

1 ruling, and I think it's more accurate to address in
2 that context rather than put in the entire
3 application and all of the testimony that was in
4 support of the application that may no longer be
5 relevant. Thank you.

6 EXAMINER WALSTRA: I understand where the
7 parties are coming from. At this point I'm going to
8 deny the motion, but that doesn't necessarily speak
9 to rulings going forward regarding extrapolations off
10 of what this says. Anything else?

11 MR. DOVE: Not at this time, your Honor.

12 EXAMINER WALSTRA: Any other motions to
13 strike?

14 MR. MICHAEL: We have some, your Honor,
15 OCC.

16 EXAMINER WALSTRA: Go ahead.

17 MR. MICHAEL: I'm going to start with
18 Duke Energy Ohio Exhibit 6 which we were just talking
19 about. And your Honor, move to strike page 12,
20 beginning on line 16, through page 13, ending at
21 line 2. And in that part of Mr. Henning's testimony,
22 adopted by Ms. Spiller, there is a discussion about
23 including plant classified as general, common, and
24 intangible plant that is distribution-related. That
25 is no longer part of the stipulation and therefore is

1 incompatible with the stipulation and therefore we
2 would move to strike that portion of the testimony.

3 EXAMINER WALSTRA: For the same reasons
4 I'm going to deny this as it's basically a summary of
5 what was in the application, so at this point it's
6 denied.

7 MR. MICHAEL: Okay. Our next motion,
8 your Honor, would be on page 13, lines 8 through 19.
9 And that part of Mr. Henning's testimony, adopted by
10 Ms. Spiller, discusses the customer informational
11 campaign that was part of the application. That is
12 no longer part of what Duke is trying to accomplish
13 in this case which is to say it's not part of the
14 stipulation. It's incompatible with the stipulation
15 and should, therefore, be stricken.

16 EXAMINER WALSTRA: That's also denied.

17 MR. MICHAEL: Thank you, your Honor.

18 The next motion to strike would be on
19 page 15, lines 11 through 17. There, there is
20 further discussion about the proposed public
21 education campaign which is not part of this
22 stipulation and is incompatible with the stipulation
23 and, therefore, should be stricken.

24 EXAMINER WALSTRA: For the same reasons
25 that this is generally a summary, it's denied.

1 MR. MICHAEL: Our next motion, your
2 Honor, would be on page 20, lines 1 through 20. This
3 is describing testimony from witnesses, many of whom
4 are not going to be testifying in the case. They
5 testified as subject matters that were part of the
6 application in the rate case that are no longer part
7 of the stipulation, and because they are witnesses
8 that either A, will not be testifying, or B, are
9 addressing matters that were resolved in the
10 stipulation and are therefore incompatible with the
11 stipulation, lines 1 through 20 on page 20 should be
12 stricken.

13 EXAMINER WALSTRA: Denied for the same
14 reasons.

15 MR. MICHAEL: Our next motion, your
16 Honor, would be on page 21, lines 20 through 22.
17 Mr. Spanos is not, at least on the list provided to
18 us, going to testify in this case and, therefore,
19 that provision of the testimony should be stricken.

20 EXAMINER WALSTRA: It will also be
21 denied.

22 MR. MICHAEL: Thank you, your Honor.
23 I am going to move, if I can, your Honor,
24 to Duke Energy Ohio Exhibit 7 adopted by Ms. Spiller.

25 EXAMINER WALSTRA: Okay.

1 MR. MICHAEL: And, your Honor, OCC's
2 first motion to strike would be on page 6, lines 14
3 and 15. The proposed settlement has a different term
4 for the ESP, therefore this testimony is incompatible
5 with what is in the stipulation and, therefore,
6 should be stricken.

7 EXAMINER WALSTRA: For the same reasons,
8 denied.

9 MR. MICHAEL: Thank you, your Honor.

10 On page 8, line 3, and specifically the
11 provision regarding "and governmental directives."
12 That testimony should be stricken. The rider that
13 Duke proposed to recover costs associated with
14 governmental directives was dropped and is not part
15 of this settlement and therefore is incompatible with
16 the settlement. That testimony should be stricken.

17 EXAMINER WALSTRA: Also denied.

18 MR. MICHAEL: On page 9, your Honor,
19 lines 1 through 11, there's reference made to
20 Mr. Wathen's discussion about expanding Rider DCI to
21 include distribution-related general, tangible, and
22 common plant. That proposal has been dropped and,
23 therefore, it is incompatible with the settlement and
24 that testimony should be stricken.

25 EXAMINER WALSTRA: Again, this is still a

1 summary of their application, so I am going to deny
2 it.

3 MR. MICHAEL: Thank you, your Honor. I
4 would now move to strike on page 10, beginning with
5 Roman Numeral III through page 26, line 8. And in
6 this part of Mr. Henning's testimony, adopted by
7 Ms. Spiller, they are addressing -- the company is
8 addressing state policy and how the ESP, as proposed,
9 advances state policy. The ESP, as proposed, is no
10 longer germane to these proceedings. There was a
11 settlement reached that has different terms than that
12 which was originally proposed in the application.
13 And therefore, all testimony regarding how the
14 originally proposed ESP advances state policy should
15 be stricken.

16 EXAMINER WALSTRA: For the same reasons,
17 denied.

18 MR. MICHAEL: Thank you, your Honor.
19 On page 17, line 20, through page 18,
20 line 11. In this part of Mr. Henning's testimony,
21 adopted by Ms. Spiller, there is discussion about the
22 incentive ratemaking mechanism which, again, was
23 withdrawn. It's not part of this settlement and,
24 therefore, it's incompatible with the settlement and
25 should be stricken.

1 EXAMINER WALSTRA: Denied.

2 MR. MICHAEL: And I just have two more,
3 your Honor, regarding Ms. Spiller's testimony, and I
4 very much appreciate the Bench's patience as I go
5 through these motions to strike.

6 On page 9, and I am on Exhibit 5 now.

7 MS. WATTS: Thank you.

8 MR. MICHAEL: Page 9, lines 16 and 17.
9 From the word "and" to the end of the sentence, your
10 Honor. In that part of Ms. Spiller's testimony she
11 makes the assertion that the uniqueness of the ICPA
12 cannot rationally be denied. That seems to be a
13 rather gratuitous statement and I don't believe that
14 anyone is in a position to be the arbiter of what is
15 or what is not rational.

16 There are a number of parties in this
17 case that are going to be providing the Commission
18 with testimony from highly-qualified experts that
19 have earned their spurs, so to speak, in their
20 respective professions and I don't think that they
21 would subscribe to a notion that the uniqueness of
22 the ICPA cannot rationally be denied. It adds
23 nothing to the case, it will not help the Commission
24 make any decision in the case and, therefore, that
25 provision of Ms. Spiller's testimony should be

1 stricken.

2 EXAMINER WALSTRA: Mr. D'Ascenzo?

3 MR. D'ASCENZO: Thank you, your Honor.

4 Ms. Spiller is testifying to her own
5 beliefs and in her opinion on the -- and as she
6 explains in this testimony, the basis of her opinion
7 is in relation to prior decisions of the Commission.

8 If Counsel would like to cross-examine
9 Ms. Spiller on the basis of her belief and why she
10 has this opinion, that's fine, and he's entitled to
11 do so, but to strike the testimony doesn't seem
12 proper. The Commission can absolutely afford the
13 appropriate weight to Ms. Spiller's opinion as it
14 evaluates the reasonableness of the settlement,
15 particularly in light of the cross-examination.

16 EXAMINER WALSTRA: Thank you. Yeah, I am
17 going to deny the motion. I think that's something
18 that can be explored in cross-examination.

19 MR. MICHAEL: Thank you, your Honor.

20 Then my final motion to strike -- and,
21 again, I reiterate my appreciation for the Bench's
22 indulgence on going through these motions to
23 strike -- would be in Ms. Spiller's testimony,
24 Exhibit 5, page 13, line 11, through page 25, line
25 13. Your Honor, in that portion of Ms. Spiller's

1 testimony she is testifying regarding the extent to
2 which the ESP furthers state policy; however, it is a
3 little bit more complicated than that as Ms. Spiller,
4 to her credit, acknowledges explicitly in the
5 testimony.

6 She begins by saying she is "aware that
7 the Ohio Supreme Court describes these policies as
8 guidelines for the Commission to weigh in evaluating
9 an electric distribution utility's standard service
10 offer." She goes on to say "As Ohio law provides,
11 advancement of state policy as codified in Chapter
12 4928 is relevant with regard to an evaluation of the
13 Company's ESP." However, she asks the Commission to
14 go beyond the statutory bound and beyond what the law
15 provides and says, "Consequently, it is reasonable to
16 extend the application of state policy to the
17 Stipulation as a whole."

18 So, on the one hand, Ms. Spiller
19 correctly recognizes that issues of furthering state
20 policy are related to the ESP case. However, she
21 asks the Commission to go beyond the legal bounds
22 and, when evaluating matters of state policy,
23 consider portions of the settlement related to the
24 rate case, portions of the settlement related to the
25 reliability case, and as she herself acknowledges,

1 that is inappropriate.

2 And that was one -- one of the big issues
3 in the consolidation of all these cases is keeping
4 these sorts of subject matters separate because there
5 is different standards involved, there is different
6 legal matters involved, there is different facts
7 involved.

8 And I think notwithstanding everybody's
9 good-faith effort to subscribe to that notion of
10 keeping the matters separate, unfortunately in
11 Ms. Spiller's testimony she did not do that. And
12 there is no way, in looking at her testimony, to
13 separate out public policy benefits of the ESP,
14 versus the settlement as it relates to rate case,
15 versus the settlement as it relates to the
16 reliability case.

17 And, therefore, because as, again,
18 Ms. Spiller acknowledges that goes beyond the bounds
19 of the governing law, the testimony from page 13,
20 line 11, through 25, line 13, should be stricken.

21 MR. D'ASCENZO: Thank you, your Honor.

22 First, I would state that Mr. Michael is
23 mischaracterizing Ms. Spiller's testimony. Again, he
24 is free to cross-examine her on her beliefs, what
25 she's stating here is her opinion, and he is free to

1 cross-examine her on the basis of her opinion. She's
2 stating that in her belief it's reasonable.
3 Certainly other parties may disagree with that and
4 they are free to question her on that opinion. It's
5 ultimately up to the Commission to determine what it
6 can and can't do. Ms. Spiller is simply offering her
7 belief on what's possible.

8 MR. MICHAEL: Your Honor, I obviously
9 would take issue with the company's characterization
10 of how I described Ms. Spiller's testimony. I read
11 it pretty near verbatim from the testimony. And I
12 just want to point out for the Bench that this is a
13 legal issue. This isn't a issue of weighing evidence
14 or we can give it the weight it's due or no weight.
15 This is a legal issue, as Ms. Spiller herself
16 recognizes. And I say this as respectfully as I can,
17 the Commission does have discretion, but that the
18 Commission can't decide, on its own, all legal
19 matters.

20 There is statutory issues involved, there
21 is precedent involved, and so I just -- I think when
22 the Bench considers ruling on this particular motion,
23 matters related to, "Well, we will give it the weight
24 it deserves" or "not give it the weight it deserves,"
25 that's really not the point. The point is, as a

1 legal matter, what testimony can come in. And this
2 testimony, as a legal matter, cannot come in because
3 the company is inviting the Commission to go beyond
4 the bounds of what Ms. Spiller herself acknowledges
5 the bounds are.

6 MR. D'ASCENZO: If I may, your Honor.
7 Those are all appropriate arguments for Mr. Michael
8 to raise in his brief if he so wishes.

9 Again, he's able to -- he can absolutely
10 cross-examine Ms. Spiller on these statements and
11 what the basis of her belief is. Ms. Spiller is an
12 attorney. She's the President of the company and
13 here she is providing her belief as President of the
14 company.

15 EXAMINER WALSTRA: The motion is denied.
16 It's something you can explore on cross-examination
17 in your own case and on brief.

18 MR. MICHAEL: Thank you, your Honor. I
19 have no further motions to strike.

20 EXAMINER WALSTRA: Thank you.
21 Any other motions to strike?

22 We'll start with Mr. Dove.

23 MR. DOVE: I don't have any
24 cross-examination at this time, your Honor.

25 EXAMINER WALSTRA: Mr. Mendoza.

1 MR. MENDOZA: Just a few questions.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Mendoza:

5 Q. Good morning, Ms. Spiller.

6 A. Good morning, Mr. Mendoza.

7 Q. Just a few questions about the history of
8 OVEC.

9 A. Sure.

10 Q. The contract to provide OVEC-generated
11 power to the Department of Energy was terminated in
12 2003; is that right?

13 A. I believe that there was an agreement
14 between OVEC and the DOE that was modified probably
15 in that time frame. OVEC still is an entity that
16 provides power to the Department of Energy and the
17 facilities in Piketon.

18 Q. Well, at the time -- around the time of
19 the 2003 modification, all federal obligations,
20 including debt, were accounted for; isn't that right?

21 A. Sir, I am not sure I understand your
22 question. Obligations concerning whose debt?

23 Q. So when the Department of Energy contract
24 ended in 2003, there was some outstanding OVEC debt
25 at that time, and the Federal Government paid its

1 share of that debt at that time; isn't that right?

2 A. I am not aware of that.

3 Q. Okay. And you have testified at the
4 legislature to the history of OVEC; isn't that right?

5 A. I have.

6 Q. Okay. In 2004, the OVEC owners entered
7 into a renewed Inter-Company Power Agreement; isn't
8 that right?

9 A. OVEC and the co-sponsors entered into an
10 amended Inter-Company Power Agreement.

11 Q. And the Department of Energy was not a
12 party to that agreement; isn't that right?

13 A. The Department of Energy has never been a
14 party to the ICPA.

15 Q. And I think you said this, but Duke's
16 predecessor agreed to that contract extension, right?

17 A. Duke Energy Ohio's predecessor, a
18 co-sponsor, agreed to the amendment.

19 Q. And Duke's predecessor -- Duke's
20 predecessor did not seek this Commission's approval
21 for that extension, right?

22 A. It's a FERC-jurisdictional contract, so
23 that's correct.

24 Q. Just to be clear, so there was no
25 preapproval at this Commission, right?

1 A. Nor was --

2 MR. D'ASCENZO: Objection. Asked and
3 answered.

4 EXAMINER WALSTRA: Overruled.

5 Q. You can answer.

6 A. Sure.

7 No preapproval from the Ohio Commission
8 was required.

9 Q. Okay. I'm sorry. And no -- putting
10 aside whether it was required, and I realize you have
11 come close to answering this question a couple of
12 times, but Duke never sought this Commission's
13 approval for that contract extension.

14 MR. D'ASCENZO: Objection. Asked and
15 answered.

16 EXAMINER WALSTRA: Overruled.

17 A. That's correct, they did not.

18 Q. Thank you.

19 And then again, effective in 2011, the
20 OVEC owners and sponsoring companies entered into a
21 new renewed Inter-Company Power Agreement, right?

22 A. OVEC and the co-sponsors entered into an
23 amended Inter-Company Power Agreement.

24 Q. And the Department of Energy was not a
25 party to that agreement either, right?

1 A. Correct.

2 Q. And Duke never sought this Commission's
3 approval for the decision to enter into that new
4 contract, right?

5 A. It was not required. It was not sought.
6 Approval was had at the FERC.

7 Q. Okay. And all of the debt currently
8 outstanding on OVEC's financial documents was issued
9 after 2003, right?

10 A. I don't know that, sir.

11 Q. And do you know when OVEC made the
12 decision to install flue gas desulfurization at the
13 OVEC plants?

14 A. I don't have that committed to memory.

15 Q. It was after the -- it was after 2003
16 though, right?

17 A. I don't know, sir.

18 Q. Since 2003, has Duke ever returned OVEC
19 dividends to its Ohio distribution customers?

20 A. I don't know that OVEC is presently
21 paying dividends. So there would be nothing to
22 return.

23 Q. Putting aside present conditions, just
24 since 2003, did Duke ever pay -- Duke's predecessor
25 or Duke ever pay dividends to Ohio distribution

1 customers?

2 A. I don't have personal knowledge of
3 whether they did or did not.

4 Q. Okay. Do you think the facts of a
5 particular case are relevant to the Commission's
6 decision in that case?

7 A. Are you asking for a legal opinion?

8 Q. I am asking for your opinion as a witness
9 in this case.

10 A. I believe that the facts in a case, yes,
11 will guide the Commission's decision. They are
12 required, by statute, to render a decision based upon
13 the facts before them.

14 Q. Okay. And Duke's -- Duke sold most of
15 its Ohio generation plants other than OVEC -- excuse
16 me. Scratch that.

17 Duke sold its Ohio generation plants,
18 other than OVEC, in 2014, right?

19 A. I would disagree, Mr. Mendoza. Duke
20 Energy Ohio transferred its owned generating assets
21 to an affiliate in 2014, which, in turn, sold those
22 to a third party in 2015. The OVEC units are not a
23 Duke Energy Ohio-owned generating asset.

24 Q. Thank you for that.

25 And the Duke Corporation affiliate that

1 sold those units in 2015, what was the name of that
2 affiliate just for the record?

3 A. Duke Energy Commercial Asset Management
4 also known as DECAM.

5 Q. And it's fair to say that the market for
6 the coal plants was a good bit better in 2015 than it
7 is today; isn't that right?

8 A. I don't know.

9 Q. If the -- if the buyer of those coal
10 plants sought a refund of the purchase price at that
11 time, do you think Duke would accommodate that?

12 MR. D'ASCENZO: Objection. Calls for
13 speculation.

14 EXAMINER WALSTRA: Sustained.

15 Q. (By Mr. Mendoza) Okay. And then if you
16 would please take a look at page 10 of your
17 testimony. Do you see at line 13 where you say that
18 the price stabilization rider "will provide a hedge"?

19 A. I do.

20 Q. Would you agree that if OVEC prices
21 remain above market prices for every year of the
22 rider, that there would be no hedge effect?

23 A. I think the OVEC rider, Rider PSR, would
24 still function as a hedging mechanism.

25 Q. Okay. And how is that?

1 A. Well, that is the purpose of a future
2 hedge, Mr. Mendoza, right? I mean you are asking me
3 to speculate as to what might happen in the future in
4 respect of OVEC costs vis-a-vis the market. But
5 today, as we are assessing the reasonableness and the
6 appropriateness of this hedge, we have to understand
7 it's underlying premise that, in fact, it is going to
8 protect against rising market prices.

9 Q. That is what you say.

10 A. Correct.

11 Q. But my -- and I am --

12 MR. D'ASCENZO: Objection, argumentative.

13 Q. And I am asking you to speculate, I admit
14 it, but the only speculation -- the only hypothetical
15 is this: In every year of the rider, wholesale
16 market power prices remain below OVEC's cost of
17 providing power, and in that situation there would be
18 no hedging effect for your customers' bills; isn't
19 that right?

20 A. I don't think, sir, that that's an
21 appropriate question given the degree of speculation.
22 We all know the wholesale market is going to change.

23 Q. Whether it's appropriate speculation or
24 not, isn't the -- if the hypothetical were true,
25 there would be no hedge effect, right?

1 A. I think, sir, that assumes facts that are
2 not in evidence.

3 Q. Actually that's -- well, I don't think
4 that's an appropriate objection to the question.

5 MR. MICHAEL: I am not even sure the
6 witness can make one.

7 (Laughter all around.)

8 Q. We can move on then.

9 One last question. You talk about some
10 of the purported protections in the stipulation. I
11 think you guys refer to them as "conditions" and one
12 of them refers to annual prudence reviews, right?

13 A. With respect to the OVEC rider, sir?

14 Q. Yes.

15 A. That's correct.

16 Q. Thank you.

17 And Duke does not intend to seek the
18 Commission's preapproval for capital spending
19 decisions at OVEC, right?

20 A. The prudency review, as reflected in the
21 stipulation, concerns the company's handling of its
22 entitlement and participation of that entitlement in
23 the wholesale market.

24 Q. And so the answer to my question is that
25 Duke does not intend to seek preapproval of capital

1 spending decisions at OVEC, right?

2 A. That's correct.

3 MR. MENDOZA: Your Honor, I have no
4 further questions.

5 EXAMINER WALSTRA: Thank you.

6 Ms. Fleisher.

7 MS. FLEISHER: There we go. Thank you.

8 Just a couple of questions, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Fleisher:

12 Q. Ms. Spiller, you are serving as a witness
13 in this case regarding application of the
14 Commission's stipulation standard, correct?

15 A. Correct.

16 Q. And as such, is it your opinion that
17 under that standard the individual provisions of the
18 stipulation should benefit ratepayers?

19 A. The stipulation as a whole. The question
20 would be whether that stipulation, as a whole,
21 satisfies the Commission's three-part test.

22 Q. And so you think it would be appropriate
23 under the stipulation standard to approve a
24 stipulation containing provisions that harm
25 ratepayers?

1 A. I am not sure what provisions you are
2 talking about that harm ratepayers, but I believe,
3 again, the stipulation on balance will be reviewed by
4 the Commission under the three-part test.

5 Q. And I am going to go ahead and ask again
6 because I am not sure you answered. I am just asking
7 for your opinion on the standard -- application of
8 the standard as a whole, not with respect to any
9 concrete provision, but is it your opinion that the
10 Commission could approve the stipulation under the
11 standard containing a provision that harmed
12 ratepayers?

13 A. I don't believe there are any such
14 provisions in this stipulation.

15 MS. FLEISHER: And, your Honor, could you
16 direct the witness to answer in response to my
17 question, "yes" or "no"?

18 EXAMINER WALSTRA: Ms. Spiller, in a
19 hypothetical, not regarding this stipulation, could
20 you answer the question regarding her version of the
21 question?

22 THE WITNESS: Well, your Honor, I am
23 struggling because I don't -- I am not going to
24 invade the province of the Commission. I think the
25 Commission will look at a document in its entirety.

1 And you're -- you are asking me if a stipulation was
2 harmful to customers, would the Commission approve
3 it? Is that the question?

4 Q. (By Ms. Fleisher) I'm asking in your role
5 as a purported, you know, expert on the Commission's
6 stipulation standard, whether you believe that under
7 that standard that you're testifying to, the
8 Commission could appropriately approve a stipulation
9 containing a provision that harmed ratepayers?

10 MR. D'ASCENZO: I am going to object,
11 your Honor. The question itself is vague. I don't
12 know what she means by "harm ratepayers."

13 EXAMINER WALSTRA: Overruled.

14 A. I suppose the Commission could.

15 MS. FLEISHER: Thank you, your Honor.
16 That's all.

17 EXAMINER WALSTRA: Mr. Whitt.

18 MR. WHITT: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Whitt:

22 Q. Ms. Spiller, my understanding is that
23 a -- the Standard Service Offer customers' rates will
24 be established through an auction; is that right?

25 A. That's correct, Mr. Whitt.

1 Q. And customers would also have the ability
2 to choose a CRES supplier for service, correct?

3 A. Correct, under the ESP.

4 Q. Okay. And picking up the line of
5 questioning earlier about a -- the OVEC arrangement
6 providing a hedge, what is Duke attempting to hedge?

7 A. They're hedging against the volatile
8 wholesale market prices that form the SSO generation
9 supply rates that nonshopping customers pay. It's
10 also a hedging mechanism in respect of those prices
11 that our shopping customers would pay pursuant to
12 competitive retail electric service contracts which
13 presumably should be predicated upon market prices as
14 well.

15 Q. Whatever price or rate is established
16 through the SSO auctions would not be influenced by
17 whether OVEC is economic or not, would it?

18 A. Sir, I'm sorry, can you use your
19 microphone and restate that question?

20 Q. Sure.

21 The wholesale cost of energy in the Duke
22 service area is not dependent on -- on OVEC, is it?

23 A. No. OVEC is -- is not used to supply --
24 OVEC's output is not used to supply SSO load.

25 Q. So there is no need to hedge -- there is

1 no need for a hedge for SSO customers because OVEC
2 load is not used to bid into the markets that
3 determine the rates that SSO customers pay, correct?

4 A. As I interpret your question, Mr. Whitt,
5 I need to disagree. OVEC -- the OVEC entitlement,
6 the OVEC output transacts in the PJM wholesale
7 market, certainly insofar as Duke Energy Ohio is
8 concerned, that is the same wholesale market through
9 which auction participants, those serving the SSO
10 supply, engage and procure capacity. It would be the
11 same wholesale market in which CRES providers
12 participate and procure capacity and energy.

13 Q. And Duke Energy Ohio voluntarily entered
14 into the amended ICPA in 2011, correct?

15 A. It voluntarily agreed to amendments that
16 were favorable to financing terms.

17 Q. Okay. Would it be more appropriate to
18 describe the OVEC proposal as a hedge to -- or for
19 Duke Energy Ohio as opposed to its retail customers?

20 A. I don't believe so.

21 MR. WHITT: That's all I have.

22 EXAMINER WALSTRA: Thank you.

23 - - -
24
25

CROSS-EXAMINATION

By Mr. Oliker:

Q. Good morning, Ms. Spiller.

A. Good morning, Mr. Oliker.

Q. I have been waiting a long time for this.

A. I can only imagine.

EXAMINER WALSTRA: I was waiting for
someone to say it.

Q. Just a few questions for you this
morning, Ms. Spiller. I would like to follow-up on
the OVEC conversation. Would you -- do you know the
date that the Department of Energy determined that it
would no longer take power from OVEC?

A. I don't know -- I don't have that exact
date committed to memory, Joe.

Q. Would you agree it was around 2000 if you
know?

A. Again, I don't have the exact date
committed.

Q. Okay. And you understand that the ICPA
was amended and restated in around 2004, correct?

A. Correct.

Q. Would you agree had it not been amended
and restated, it would have been expired on its own
terms in 2006?

1 A. I don't know what the original term was.
2 I believe in 2004 the term was extended to 2024 or
3 2026.

4 Q. And had it not been amended and restated,
5 do you know when it would have expired?

6 A. At what time?

7 Q. The -- had the sponsoring companies not
8 amended and restated the ICPA in 2004, do you know
9 when it would have otherwise expired under its own
10 terms?

11 A. I would have to look at the original
12 agreement. I don't have that date committed to
13 memory.

14 Q. Would you agree, subject to check, it was
15 around 2006?

16 A. I'll trust you on that one, Joe.

17 Q. Okay.

18 A. The agreement says what it says, right?

19 Q. It does.

20 Okay. And would you agree that there was
21 a settlement between the Department of Energy and
22 OVEC to resolve the Department of Energy's
23 outstanding obligations to purchase power?

24 A. At what time?

25 Q. Around the 2003 time frame.

1 A. I am not aware of the particulars of any
2 such arrangement or agreement.

3 Q. Turning to your direct testimony in
4 support of the stipulation. You've indicated that
5 the PSR insulates against the risk of sudden swings
6 in market prices for power, correct?

7 A. Correct. And is there a particular part
8 of the testimony that you are referring to?

9 Q. No. Well, first, are you aware of how
10 often the PSR is reconciled?

11 A. Under the stipulation, it would be
12 quarterly.

13 Q. Would you agree that the SSO auctions are
14 often determined based upon laddered and staggered
15 auctions?

16 A. The ultimate price that's reflected in
17 Riders RC and RE, yes, it is a composite of a series
18 of auctions.

19 Q. And would you agree that those auctions
20 are currently structured to be a multi-year slice of
21 a tranche?

22 A. I am not understanding the phrase the
23 auctions are multiple year. There are different
24 product terms within each auction. It could be one-,
25 two- or three-year terms.

1 Q. Thank you for correcting my question.

2 And would you agree that CRES providers
3 often offer multi-year products to customers?

4 A. I've not -- I would agree with that
5 statement.

6 Q. Do you know of any customers in the Duke
7 Energy Ohio service territory that are on a real time
8 energy price product?

9 A. I'm not aware. I've not inquired into
10 that particular issue.

11 Q. And on page 8, you indicate that all
12 customers will benefit through the reduction in the
13 company's base electric distribution rates. Would
14 you agree that while the company's base electric
15 distribution rates are proposed to be reduced, the
16 net impact of the stipulation will cause base
17 distribution rates to increase as a result of the
18 riders?

19 A. I would not agree that base distribution
20 rates are increasing because of riders.

21 Q. But to clarify your answer, you would
22 agree that distribution rates are, in fact,
23 increasing as a result of the stipulation?

24 A. There are certain distribution riders,
25 yes, the net impact is probably a 2- to 3-percent

1 increase for customers under the stipulation.

2 Q. And on page 8 you reference the monthly
3 customer charge. Are you an expert in rate design
4 and cost of service?

5 A. I am not.

6 Q. And which witness would be better suited
7 to answer those questions, Ms. Spiller?

8 A. I would tender those questions,
9 Mr. Oliker, to Jim Riddle and/or Don Wathen.

10 Q. Also Mr. Ziolkowski?

11 A. I am sure he -- I know he is much more
12 knowledgeable than I, so he's another potentially
13 appropriate witness.

14 Q. Sorry to jump and I realize I missed a
15 subject on page 11. You indicate that the company
16 has made efforts to transfer its entitlement under
17 the ICPA?

18 A. The company will, going forward, make
19 those efforts.

20 Q. And I would assume you have reviewed the
21 ICPA from time to time?

22 A. I have from time to time.

23 Q. Would you agree that there is an option
24 under the ICPA to transfer an OVEC entitlement to a
25 third party?

1 A. There is an option that comes with
2 particular criteria spelled out in the ICPA.

3 Q. And has -- do you know if that section is
4 9.183(e), Ms. Spiller?

5 A. I believe it's in Section 9, but I
6 don't -- if you would like to pull out the ICPA, we
7 can look at that together, Mr. Oliker.

8 Q. I don't know how many copies I have, so
9 you may have to bear with me a minute.

10 MR. OLIKER: May I approach, your Honor?

11 EXAMINER WALSTRA: You may.

12 Q. Ms. Spiller, is the document I placed in
13 front of you the Inter-Company Power Agreement that
14 was amended and restated in 2011?

15 A. Yes, I believe it is.

16 MR. OLIKER: Your Honor, I would like to
17 mark this document as IGS Exhibit 1.

18 EXAMINER WALSTRA: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. And, Ms. Spiller, does IGS Exhibit 1
21 appear to be a clear and accurate copy of the
22 Inter-Company Power Agreement?

23 A. Yes. The cover of your exhibit,
24 Mr. Oliker, is a discovery response that would not be
25 a part of the agreement itself. But otherwise, yes.

1 Q. Okay. And turning to Article 9.

2 A. Okay. I'm there.

3 Q. Which I believe starts on page 15 of the
4 ICPA itself. Would you agree that this article
5 dictates the rights and obligations for a company
6 seeking to transfer an interest in OVEC?

7 A. It is not the only place in which a
8 transfer of the entitlement or the interest is set
9 forth. Oh, wait. Hang on. That is correct. I
10 believe, Mr. Olikier, Section 9.18 speaks of the
11 opportunity to transfer, whether to an affiliate or
12 to a third party, unaffiliated third party.

13 Q. Do you agree it also addresses a
14 company's attempt to transfer it, to transfer to an
15 affiliate third party, correct?

16 A. I don't know that it addresses their
17 attempt. It addresses the terms that would have to
18 be satisfied to enable that transfer to an affiliate
19 as defined under the ICPA.

20 Q. And turning to 9.183(e), would you agree
21 that some of the requirements that you referenced in
22 our prior discussion are set forth in that section?

23 A. So the subparagraph that you reference,
24 subparagraph (e), talks about the conditions after
25 that right of first refusal to the co-sponsor.

1 Q. Thank you for streamlining the
2 discussion.

3 You would agree that the processes, under
4 the agreement, before you can transfer to anyone
5 else, you must first give the other co-sponsors the
6 right to effectively buy you out?

7 A. I would disagree. If we are talking
8 about an unaffiliated third party, the ICPA does
9 require that right of first refusal. There is no
10 right of first refusal if you are looking to transfer
11 to a qualified affiliate.

12 Q. And a qualified affiliate is an entity
13 that has a credit rating of at least triple B
14 negative under Standard & Poor's?

15 A. The affiliate would be that as defined
16 under Article 1, as well as, yes, they have to have
17 particular creditworthiness.

18 Q. And could you explain the other criteria
19 that have to be satisfied in order to transfer an
20 OVEC interest on an affiliate?

21 A. Well, one, you need the affiliate. As
22 defined under the ICPA, the affiliate needs to have
23 the creditworthiness. You also, I believe, the
24 transferring co-sponsor needs to assume a full
25 guarantee for all of the rights and obligations of

1 the transferee affiliate. You also need the consent
2 of OVEC and/or its counsel.

3 Q. And in the event that OVEC's counsel
4 withheld consent, would you agree it would have to be
5 reasonable?

6 A. I think that's a customary contractual
7 provision.

8 Q. And am I correct that, to date, Duke
9 Energy Ohio has not sought to transfer its OVEC
10 interest to an affiliate with a triple B negative
11 Standard & Poor's credit rating? And also meeting
12 the other conditions such as stepping into the shoes
13 of Duke Energy Ohio under the agreement?

14 A. So Joe, I cannot go back through the
15 duration of the ICPA, that Duke Energy Ohio did
16 attempt to transfer to an affiliate, the affiliate
17 did not have the required credit metrics.

18 Q. And in that attempt to transfer to the
19 affiliate, did the affiliate agree to step into the
20 shoes of Duke Energy Ohio without alteration to the
21 agreement as it exists? If you know?

22 A. I don't know -- that's not a condition to
23 the transfer. They would have assumed Duke Energy
24 Ohio's obligations under the ICPA.

25 Q. And did they agree to assume all

1 obligations without modification?

2 A. I believe so, but that does not speak to
3 what would have been Duke Energy Ohio's remaining
4 obligation upon transfer.

5 Q. Switching gears, Ms. Spiller. Am I
6 correct that you personally have not done any
7 analysis of the operation and maintenance expenses or
8 capital costs proposed for recovery through
9 distribution rates?

10 A. I'm sorry, can you restate your question,
11 Joe?

12 Q. Am I correct that you are not personally,
13 in this testimony, offering any opinions on the
14 reasonableness of the costs that are being proposed
15 for recovery through distribution rates?

16 A. Through distribution rates, no, I have
17 not done -- no.

18 Q. Okay. And turning to page 14. Given
19 your prior answer, am I correct that you have not
20 provided or performed any analysis of costs and
21 distribution rates that may relate to the provision
22 of the Standard Service Offer?

23 A. I have not personally performed such an
24 analysis.

25 Q. Okay. And on page 15 you testify about

1 the vitality of the retail -- competitive retail
2 electric market, correct?

3 A. Correct.

4 Q. And would you agree that Duke Energy Ohio
5 has not had an affiliate that provides retail --
6 competitive retail electric service for at least
7 three years now?

8 A. I believe that the Duke Energy Retail
9 entity was -- was sold to Dynegy in 2015, Mr. Olikier,
10 and, correct, there is no present affiliated
11 competitive retail electric service provider in
12 southwest Ohio.

13 Q. And so, it has been at least three years
14 since you have had responsibilities regarding
15 competitive offers for CRES customers in the Duke
16 service territory?

17 A. I don't understand what you mean we've
18 had responsibility for those offers.

19 Q. I'm speaking to your personal experience,
20 Ms. Spiller. It has been -- my question is you have
21 not represented a CRES provider in any fashion for at
22 least three years?

23 MR. D'ASCENZO: Objection, your Honor.
24 He's asking information that is privileged. He's
25 asking about her representation of other companies

1 for Duke Energy. And that is protected.

2 MR. OLIKER: Your Honor, I'm just merely
3 seeking background regarding her capacity to testify
4 to these statements in her testimony. I am not
5 asking for what that recommendation or advice might
6 have been in that capacity.

7 EXAMINER WALSTRA: Overruled.

8 A. So since we sold Duke Energy Retail in
9 2015, I have not represented it since that time.
10 That doesn't mean I am unaware of the CRES level and
11 switching rates of our customers.

12 Q. And you mention that minimal limits on
13 switching should ensure that there are numerous and
14 diverse suppliers. You would agree that that is one
15 characteristic you identify in your testimony,
16 correct?

17 A. One characteristic I have what,
18 Mr. Olikar?

19 Q. Of what you believe is going to set the
20 stage for a competitive market, correct?

21 A. I believe in southwest Ohio, the stage
22 has already been set. The minimal limits that we
23 have in respect of shopping certainly are reflected
24 in the high degree of active CRES providers, as well
25 as the high percentage of load and customers that are

1 now served by CRES providers.

2 Q. Would you agree that CRES providers'
3 perception of the playing field may also impact the
4 degree of competition in the Duke service territory?

5 A. I would think that perception pretty
6 favorable given there are over 80 registered CRES
7 providers in our territory.

8 Q. The answer is yes, Ms. Spiller?

9 A. It may affect their perception of the
10 competitive market.

11 Q. And on page 22, you discuss battery
12 storage technology. Are you an expert in
13 battery-related functionalities, Ms. Spiller?

14 A. I believe not, Mr. Oliker.

15 Q. And I apologize if I missed this, are you
16 an engineer?

17 A. No. I tried, and opted for law school.

18 Q. On page 25, you indicate that the company
19 will learn important information about battery
20 storage; is that correct?

21 A. Correct.

22 Q. Would you agree that several entities
23 within PJM Interconnection and Ohio are already
24 investing in batteries?

25 A. I think batteries are being invested in

1 for different reasons, so within PJM it could be more
2 a frequency-reserve-type issue. It's not the purpose
3 of our battery storage proposal.

4 Q. And is the purpose of your battery
5 proposal exclusively to defer distribution investment
6 through substations?

7 A. So I would say, Mr. Oliker, probably that
8 the primary purposes are that, sort of deferring or
9 delaying investments that would need to be made in
10 distribution systems, as well as improving
11 reliability on the distribution side. There is --
12 those are the primary purposes for the battery
13 project proposal.

14 Q. And I think you covered this earlier, but
15 am I correct that you did not participate at all in
16 the preparation of the cost-of-service study?

17 A. I did not develop the cost-of-service
18 study. Certainly, in my prior capacity, I would have
19 reviewed it.

20 Q. Are you familiar with the way Duke
21 assigns the customers' demand charge for distribution
22 rates?

23 A. That's a better question for Mr. Wathen.

24 Q. Okay. Turning to page 13 of
25 Mr. Henning's ESP testimony.

1 EXAMINER WALSTRA: Exhibit 7? Exhibit 7?

2 MR. OLIKER: Thank you, your Honor.

3 Q. (By Mr. Oliker) Lines 2 and 3, you
4 indicate that unbundled generation service permits a
5 customer to compare competitive offers, correct?

6 A. Correct.

7 Q. Would you agree that the primary purpose
8 of unbundling is to permit customers to evaluate and
9 compare competitive offers in the market?

10 A. I don't know that that's the primary
11 purpose. We were required to unbundle by the General
12 Assembly. It was part and parcel to moving to the
13 deregulated market.

14 Q. Do you agree that that was one of the
15 purposes of unbundling?

16 A. To allow a comparison?

17 Q. Yes.

18 A. I think that's probably a fair assessment
19 of what the General Assembly may have intended back
20 in 1999.

21 MR. OLIKER: Okay. Your Honor, if I
22 could have just one minute, please?

23 EXAMINER WALSTRA: Sure.

24 Q. Ms. Spiller, at page 10 in reference to
25 the PSR. And this is in your direct testimony, I

1 apologize.

2 A. I'm there.

3 Q. At page 10 you indicate the Commission
4 has provided similar nonbypassable recovery for AEP's
5 Ohio entitlement. Would you agree that if the
6 Supreme Court of Ohio reverses the Commission
7 decision to provide such cost recovery for AEP Ohio,
8 the Commission should equally reject Duke's proposal
9 here?

10 A. I do not agree with that statement.

11 Q. Are there differences between what you
12 proposed and what AEP Ohio proposed regarding the PSR
13 in their PPA?

14 A. I believe that there are some mechanical
15 differences or conditions as between the riders for
16 the two companies. The argument, Mr. Oliker, as I
17 recall, on appeal with respect to the AEP OVEC rider
18 is that that rider constituted an unlawful transition
19 revenue. I disagree with that statement insofar as
20 it concerns Duke Energy Ohio, particularly how the
21 OVEC-generating assets were not reflected or ever in
22 Duke Energy Ohio's base rates. So there are material
23 differences.

24 Q. Would you agree that prior to 2000,
25 OVEC -- when Ohio restructured its competitive retail

1 electric market, OVEC was not recovered through any
2 of the Ohio EDUs' base rates?

3 A. I can't speak to the other EDUs. OVEC
4 has never been in Duke Energy Ohio's base rates.

5 MR. OLIKER: Okay. Thank you. Those are
6 all the questions I have, your Honor.

7 THE WITNESS: Thank you, Mr. Oliker.

8 EXAMINER WALSTRA: Thank you.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Michael:

12 Q. Good morning, Ms. Spiller.

13 A. Good morning.

14 Q. You read Don Wathen's testimony in the
15 ESP case, correct?

16 A. At one point in time, correct.

17 Q. Okay. And on page 8 of that testimony,
18 Mr. Wathen states the following, and I'm quoting,
19 "The Commission approved the Price Stabilization
20 Rider (Rider PSR) in Case No. 14-841-EL-SSO, et al."
21 Do you agree with that statement?

22 A. Sir, I don't have a copy of Mr. Wathen's
23 testimony in front of me.

24 MR. MICHAEL: May I approach, your Honor?

25 EXAMINER WALSTRA: You may.

1 MR. MICHAEL: I am going to go ahead and
2 read it again, your Honor.

3 MR. D'ASCENZO: What page?

4 MR. MICHAEL: Page 8, line 20.

5 A. So, yes, you read the highlighted portion
6 correctly.

7 Q. Okay. And my question is do you agree
8 with that statement by Mr. Wathen?

9 A. The Commission approved a placeholder
10 rider in 14-841.

11 Q. Okay. And that rider approved in 14-841
12 is the same rider you're seeking to populate in this
13 case, correct?

14 A. So it's 14-841?

15 Q. Correct.

16 A. Just so we're clear, and so we are
17 seeking through this stipulation, as a term of the
18 stipulation, Rider PSR would be populated.

19 Q. Okay. And that rider that you're seeking
20 to populate in this case is the same rider that was
21 approved in Case No. 14-1841, correct?

22 A. Correct. It's Rider PSR.

23 Q. And there is no material differences
24 between the rider approved in that case and the rider
25 you are seeking to populate in this case, correct?

1 A. I would disagree. The Commission, in
2 2015, approved a placeholder rider. So there was --
3 there were -- there were no terms or conditions
4 associated with the rider at that time. Within the
5 stipulation before the Commission in these
6 proceedings, there are terms or conditions associated
7 with Rider PSR.

8 Q. Okay. Other than populating the rider,
9 is the rider any different in this case than it was
10 approved in 14-1841?

11 A. Sir, I would restate what I just said.

12 Q. Okay. Tell me how they are different.

13 A. The Rider PSR, as approved by the
14 Commission in 14-841, was simply a placeholder rider.
15 There were no terms or conditions associated with
16 that rider. There was no rate associated with the
17 rider.

18 Q. Okay. Other than the rate, what other
19 terms and conditions are you seeking approval of in
20 this case?

21 A. Well, as reflected in the stipulation,
22 sir, Rider PSR would carry a term effectively
23 January 1 of 2018 through May 31 of 2025. There are
24 also conditions in respect of the company's recovery.

25 The rider excludes, among other things,

1 and it's detailed in the stipulation, forced outages.
2 It excludes capacity performance assessments. It
3 excludes carrying costs.

4 The rider -- the net revenues, a credit
5 or a charge, are a function of costs minus those
6 revenues received in monetizing the entitlement in
7 the market.

8 There is also a prudence review. The
9 terms of the stipulation set forth that Rider PSR
10 will be updated quarterly.

11 There is an obligation for the
12 Commission -- for the company, going forward, to seek
13 reasonable efforts to transfer the entitlement.

14 So if you would like me to pull out the
15 stipulation to be sure I got them all, I am happy to
16 do that.

17 Q. No. That would be fine. Thank you for
18 offering.

19 A. Sure.

20 Q. So in 18-41 -- 14-841, the mechanism of
21 the PSR Rider, though, worked the same as you just
22 described, which is to say you would collect the
23 delta between the costs of OVEC and the market
24 revenues of OVEC, correct?

25 A. So you keep saying it's "18-41." It's

1 14-841. I just want to be sure the record is clear.

2 Q. Thank you. I do too.

3 A. The company had proposed that sort of
4 mechanism for determining the credit or charge under
5 Rider PSR costs as compared to revenues. But the
6 Commission did not get to that point in entering its
7 decision in April of 2015. The decision was again a
8 placeholder rider.

9 Q. Okay. So in 14-1841, the Commission
10 didn't approve the mechanism by which costs would be
11 recovered through Rider PSR?

12 A. They simply approved a placeholder rider.
13 They did not approve a particular mechanism. There
14 was no rate associated with the rider.

15 Q. So the Commission did not say in
16 14-184 -- pardon me, 14-841 that through Rider PSR
17 Duke could collect the difference between OVEC costs
18 and PJM market revenue.

19 MR. D'ASCENZO: Objection, asked and
20 answered, your Honor.

21 EXAMINER WALSTRA: Overruled.

22 A. Correct. The Commission recognized the
23 merit to a hedging mechanism, approved a placeholder,
24 Rider PSR, the details of which would be determined
25 in a separate proceeding. The proceeding that the

1 company initiated under 17-872, et al., was, in fact,
2 that proceeding.

3 Q. And in 14 -- pardon me, in 14-841, did
4 the Commission say that if and when Rider PSR was
5 populated, it would be subject to quarterly updates?

6 A. I don't recall that that would be in the
7 order.

8 Q. Okay. If Rider PSR is only a charge on
9 customers, it has no hedge benefit, correct?

10 A. I think we are getting back to the
11 question that Mr. Mendoza asked earlier.

12 Q. Exactly where I want to go.

13 A. Can I finish?

14 Q. Sure.

15 A. Thank you.

16 You're asking me to assume that this will
17 forever be a charge. I think it still functions as a
18 hedge against volatile wholesale market price.

19 Q. Even if it's always a charge?

20 A. Yes.

21 Q. How -- if it's always going in the same
22 direction as the market, how could it be hedging
23 market prices in the wholesale market?

24 A. As we sit here today, sir, that is the
25 purpose or function of the hedge. It's anticipated

1 to run countercyclical to what we know are volatile
2 market prices.

3 Q. Okay. But the Commission has to base its
4 decision in this case, as in every case, as the
5 record evidence before it, correct?

6 A. As well as its precedent, that's correct.

7 Q. Okay. And the record evidence before the
8 Commission regarding the cost of Rider PSR is
9 provided by Judah Rose on behalf of the company,
10 correct?

11 A. Correct.

12 Q. And Jim Wilson on behalf of the Ohio
13 Consumers' Counsel, correct?

14 A. I've not read any of the OCC's testimony.

15 Q. Okay. And Judah Rose forecasts that the
16 Rider PSR will be a charge on customers for the
17 duration of the proposed ESP, correct?

18 A. I don't believe that that's correct, sir.

19 Q. Okay. He forecasts that it be \$77
20 million. Does that refresh your recollection at all?

21 A. I don't believe that that's a fair
22 assessment of his testimony.

23 Q. Okay. Why is that not a fair assessment
24 of his testimony?

25 A. I believe he shows that it can be, in

1 fact, a push and potentially favorable and that was
2 an outcome that was made a few weeks ago. There have
3 been additional changes, particularly in the FERC
4 space, that reflect or confirm that volatility in the
5 wholesale market.

6 Q. Rider PSR could only act as a hedge
7 though as it relates to whatever the PJM wholesale
8 market prices are, correct?

9 A. It's a hedge as against generation
10 supply.

11 Q. Okay. But if it's moving in the same
12 direction as the market, it's not hedging anything,
13 correct?

14 A. We anticipate that it would run
15 countercyclical to those market prices.

16 Q. But that anticipation is not supported by
17 either Mr. Rose's testimony or Mr. Wilson's
18 testimony, correct?

19 A. Again, I have not read Mr. Wilson's
20 testimony. I would disagree with your interpretation
21 of Mr. Rose's testimony but would ask you to probably
22 delve further into that line of questioning with him.

23 Q. Okay. Well, you're sponsoring the
24 settlement, Ms. Spiller, so I am going to, if it's
25 okay with you, continue asking you questions --

1 A. Sure.

2 Q. -- about it. If it is true that Mr. Rose
3 forecasts that Rider PSR will be negative for the
4 duration of the ESP, and if it is true that
5 Mr. Wilson forecasts that Rider PSR will be a
6 negative or a charge for the duration of the ESP,
7 then you would agree that Rider PSR does not move
8 countercyclical to the PJM wholesale markets,
9 correct?

10 A. I think, sir, that that statement is
11 predicated upon assumptions we don't know to be true.

12 Q. Well, so I know you've been in these
13 hearing rooms before, Ms. Spiller, and you realize
14 the attorneys have the opportunity to ask experts
15 hypothetical questions, correct?

16 A. I believe your expert witness in this
17 instance would be Mr. Rose. It is his forecast.

18 Q. Okay. You've read his forecast, correct?

19 A. I did at one point, yes.

20 Q. Okay. I am going to ask you to make two
21 assumptions for the hypothetical question I am going
22 to ask you. The first assumption is that Rider PSR
23 is a charge on customers for the duration of the ESP.
24 Do you understand that assumption?

25 A. I understand that assumption.

1 MR. D'ASCENZO: I am going to object to
2 this line of questioning, your Honor. This is beyond
3 the scope of Ms. Spiller's testimony. She is not the
4 expert in -- regarding market forecasts. That's
5 Mr. Rose. Mr. Michael can ask these questions to
6 Mr. Rose and that would be appropriate, but it's not
7 appropriate for Ms. Spiller.

8 MR. MICHAEL: Your Honor, Ms. Spiller
9 does testify and has stated here in this hearing room
10 today that Rider PSR is a hedge, and I am exploring
11 the extent to which it is a hedge, under what
12 circumstances it is a hedge. I am not asking
13 Ms. Spiller to endorse Mr. Rose's forecasts nor am I
14 asking her to endorse Mr. Wilson's forecasts. I am
15 asking a hypothetical and asking her to make an
16 assumption which this Commission has on numerous
17 occasions allowed attorneys to ask hypothetical
18 questions of this nature.

19 EXAMINER WALSTRA: I am going to
20 overrule. I don't think right now his question is
21 getting into the intricacies of a forecast. I think
22 it is just a hypothetical.

23 MR. MICHAEL: Thank you, your Honor.

24 Q. Do you need the question repeated?

25 A. Well, you only gave me one of your two

1 assumptions.

2 Q. Okay. Do you need the question reasked?

3 A. I need the second assumption and then the
4 question, sir.

5 Q. Okay. So the first assumption, just to
6 go back, is that Rider PSR is always a charge,
7 according to Mr. Rose, for the duration of ESP. Do
8 you understand that assumption?

9 A. I understand.

10 Q. And the second assumption is that Rider
11 PSR is always a charge for the duration of the ESP
12 according to Mr. Wilson's forecast. Do you
13 understand that assumption?

14 A. So it's always a charge.

15 Q. Correct.

16 A. Okay.

17 Q. And then the question is given those two
18 assumptions, Rider PSR does not act as a hedge
19 because it's moving in the same direction as market
20 price, correct?

21 A. No. I don't think your question -- if
22 market prices are going up, the value of Rider PSR
23 increases.

24 Q. Okay. Now, I am focusing on the hedge
25 value now. Previously you testified it would be

1 countercyclical. You do expect the PSR to be
2 countercyclical, correct?

3 A. That's the proposed structure, correct.

4 Q. And my question is based on the
5 assumption is if -- if Rider PSR is going in the same
6 direction as the markets, it's not acting
7 countercyclically as a hedge, correct?

8 A. I guess I'm struggling with going the
9 same direction. Are you saying that market prices
10 are going to decline over the next seven years?

11 Q. No, that market prices are always going
12 to be above -- pardon me, below OVEC's costs.

13 A. So that's where I'm struggling with going
14 in the same direction.

15 Q. Okay. So if OVEC's -- if Rider PSR is a
16 charge on customers, that means that PJM market
17 prices are below OVEC's costs, correct?

18 A. Correct.

19 Q. And if that is the case, then Rider PSR
20 isn't going to act as a hedge because it's going to
21 be an additional charge on customers above and beyond
22 whatever the PJM wholesale market price is, correct?

23 A. I need to go back, Mr. Michael, and
24 qualify that statement. The costs or -- the credits
25 or charges to be recovered through Rider PSR or to

1 flow through Rider PSR are a function of costs as
2 well as net revenues. I believe in our prior
3 exchange we were comparing only OVEC costs in the
4 wholesale market. I don't think we should lose sight
5 of the revenue component.

6 Q. Okay. Are you through?

7 A. I am.

8 Q. Okay. So I don't think we were
9 neglecting the revenue component, but I gotta get
10 back to the question. If wholesale revenues is less
11 than OVEC's cost, it's going to be a charge on
12 consumers, correct?

13 A. Through Rider PSR, correct.

14 Q. Okay. And if that is the case, it's just
15 going to be an additional charge on consumers
16 consistent with whatever the charge in the wholesale
17 market is, correct?

18 A. Correct.

19 Q. So at that point in time, it's going to
20 have no hedge value because it's both going to be a
21 charge whether it's from the wholesale market or
22 through Rider PSR, correct?

23 A. If we assume there's no continued
24 volatility in the wholesale market, correct.

25 Q. If you turn to your testimony at page 4,

1 lines 1 through 4, Ms. Spiller. And that is where
2 you adopt the rate case testimony and the ESP
3 testimony of Mr. Henning, correct?

4 A. Correct.

5 Q. And if you could please turn to his
6 testimony on -- in the ESP case, I believe it is.
7 Bear with me a moment, please.

8 Yes. In his AIR testimony, Duke Energy
9 Ohio Exhibit 6, I want to focus your attention, if I
10 can, Ms. Spiller, on lines 8 through 19.

11 A. On what page, sir?

12 Q. On page 13.

13 A. Okay.

14 Q. It's correct that Duke, as part of the
15 settlement, has dropped its efforts to pursue what it
16 describes as the customer informational campaign,
17 correct?

18 A. That's correct.

19 Q. Ms. Spiller, if I could direct your
20 attention back to your direct testimony, please, and
21 specifically page 14, lines 3 through 12, and let me
22 know when you are there, please.

23 A. Lines 3 through 12?

24 Q. Yes, ma'am.

25 A. Okay.

1 Q. It's correct, Ms. Spiller, that Duke
2 missed its CAIDI standards in the year 2016, correct?

3 A. I believe that's correct.

4 Q. And it's true, Ms. Spiller, that Duke
5 missed its CAIDI standards in 2017, correct?

6 A. Correct.

7 Q. And it's true that Duke missed its SAIFI
8 standards in 2017, correct?

9 A. I believe that's correct.

10 Q. Now, you say in your testimony that DCI's
11 purpose is to invest in infrastructure to make the
12 infrastructure more safe and reliable, correct?

13 A. Correct.

14 Q. The DCI approved in Case No. 14-1841
15 wasn't sufficient for Duke to provide safe and
16 reliable service at least as measured by CAIDI and
17 SAIFI standards in 2016 and 2017, correct?

18 A. I would disagree; and, again, sir, you
19 keep calling it 14-1841.

20 Q. I apologize if I did that.

21 A. That's okay. Just for purposes of the
22 record because Mr. Brown testifies in this proceeding
23 that absent the infrastructure investments that were
24 made under Rider DCI since its approval in 2015,
25 reliability metrics could have been less favorable

1 and more problematic. As a result of all of the work
2 that we're doing under DCI, there are necessarily
3 more planned outages, and those planned outages are,
4 in fact, incorporated into Duke Energy Ohio's
5 reliability metrics.

6 Additionally, sir, we have adopted CESAR
7 which are Cardinal Electric Safety Rules. We have
8 implemented those primarily because of very tragic
9 accidents that have happened since 2015, requiring,
10 among other things, special protection when working
11 around hot lines, as well as pre-job briefings and
12 traffic safety measures, all of which can contribute
13 to the outage times.

14 MR. MICHAEL: Your Honor, if I could have
15 the question and answer read back to me, please.

16 EXAMINER WALSTRA: Sure.

17 (Record read.)

18 MR. MICHAEL: Thank you.

19 Your Honor, I would like to strike
20 everything after the word "metrics," after the
21 response.

22 EXAMINER WALSTRA: And why is that?

23 MR. MICHAEL: I was asking the witness
24 about reliability standards, and the witness -- the
25 first part of her answer was responsive. After that,

1 she went to CESAR; is that what it's called?

2 THE WITNESS: It's -- the acronym is
3 C-E-S-A-R.

4 MR. MICHAEL: Yes, which is nonresponsive
5 to the question I asked.

6 MR. D'ASCENZO: Your Honor, if I may,
7 Ms. Spiller was explaining her answer and the reasons
8 why reliability scores are what they are. She said
9 that she disagreed with his -- Mr. Michael's premise
10 and then went on to explain why she disagreed. It's
11 perfectly appropriate for her to do so, your Honor.

12 MR. MICHAEL: I don't think the new CESAR
13 standards are responsive.

14 MR. D'ASCENZO: Your Honor, what she was
15 explaining was the fact that the Cardinal Electric
16 Safety Rules, among other things in her explanation,
17 have contributed to the length of outages, because
18 there are additional safety protocols that the
19 company follows that necessarily results in longer
20 outages because we have to take those steps.

21 EXAMINER WALSTRA: Motion is denied.

22 MR. MICHAEL: Thank you, your Honor.

23 Q. (By Mr. Michael) So, Ms. Spiller, if I
24 understand your response correctly, when you refer to
25 Mr. Brown, you were saying that Duke would have

1 missed its '16 and '17 CAIDI standard and its '17
2 SAIFI standard by an even wider margin had Duke not
3 had Rider DCI, correct?

4 A. No. I don't think, sir, that's a fair
5 characterization -- characterization, so I'll try to
6 unpack it a little bit more.

7 So CAIDI and SAIFI -- well, CAIDI
8 certainly has, as one of its input, the number of
9 outages. We have to look at those. We also have to
10 look at the duration of the outages. Because of the
11 implementation of CESAR and other safety protocol, as
12 well as because of the inclusion of planned outages,
13 including those in respect of work performed under
14 Rider DCI, those outage durations may -- are larger
15 now than would have otherwise been the case. But the
16 DCI is allowing us to address, among other things,
17 aging infrastructure as well as hazard trees that can
18 increase and extend outage times.

19 So the DCI certainly has been instructive
20 and I would say incredibly beneficial as we address
21 reliability issues regarding our distribution system.

22 Q. Okay. So notwithstanding charging Duke's
23 customers under DCI, Duke still missed '16 and '17
24 CAIDI standards, correct?

25 A. For the reasons I articulated, yes.

1 Q. And it still missed the '17 SAIFI
2 standards, correct?

3 A. Correct.

4 Q. And you would agree, Ms. Spiller, your
5 capacity as the President of Duke Ohio with
6 consumer -- or customer relations responsibilities,
7 government relation responsibilities, that missing
8 reliability standards is contrary to the public
9 interest, correct?

10 A. We don't take lightly any allegation of
11 missing a standard, reliability or otherwise; but,
12 yes, reliability is critically important to us, and
13 we understand its importance to our customers as
14 well.

15 Q. Does Duke currently maintain its
16 distribution system in accordance with the CAIDI and
17 SAIFI standard in the proposed settlement?

18 A. Are we within those standards?

19 Q. Uh-huh.

20 A. I believe that to be the case, yes.

21 Q. Were those -- those standards have not
22 yet been approved by the PUCO though, correct?

23 A. That's correct.

24 Q. Ms. Spiller, if you would please turn to
25 your direct testimony at page 2.

1 EXAMINER WALSTRA: Is this a good time
2 for a break?

3 MR. MICHAEL: It is, your Honor,
4 definitely.

5 EXAMINER WALSTRA: We'll go off the
6 record.

7 (Discussion off the record.)

8 (Thereupon, at 11:57 a.m., a lunch recess
9 was taken.)

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Monday Afternoon Session,
July 9, 2018.

- - -

EXAMINER WALSTRA: We'll go back on the
record.

Ms. Spiller, you are still under oath.

THE WITNESS: Thank you, your Honor.

- - -

AMY B. SPILLER

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

CROSS-EXAMINATION (Continued)

By Mr. Michael:

Q. Ms. Spiller, your responsibilities
include responsibility for community relations,
economic development, and charitable contributions,
correct?

A. Correct.

Q. And if you please turn to your direct
testimony at page 23 and I'll draw your attention to
lines 10 through 14 in particular, please.

A. Okay.

Q. The stipulation provides for funding for
weatherization programs administered by People
Working Cooperatively and other programs administered

1 by the City of Cincinnati, correct?

2 A. Correct.

3 Q. And those funds come from base rates,
4 correct?

5 A. As part of the stipulation, that's
6 correct.

7 Q. Okay. The programs, weatherization
8 programs and the programs administered by Cincinnati
9 aren't necessarily available in the entirety of
10 Duke's service territory, correct?

11 A. So the PWC would provide services
12 throughout the Duke Energy Ohio footprint. The City
13 of Cincinnati, in the agreement set forth in the
14 stipulation, would be targeted on city residents.

15 Q. Okay. It's not in the public interest
16 for all customers to pay for programs that aren't
17 available to all customers, correct?

18 A. I disagree with that.

19 Q. So you think it's appropriate for all
20 customers to pay for programs that are only available
21 in the City of Cincinnati?

22 A. I do, particularly these programs that
23 are aimed at at-risk or less-fortunate low-income
24 customers.

25 Q. Okay. You could fund those programs

1 through shareholder dollars, correct?

2 A. That's possible but that's not the
3 agreement.

4 Q. If I could draw your attention,
5 Ms. Spiller, to page 2 of your direct testimony and
6 specifically lines 10 through 13.

7 A. I'm there.

8 Q. Okay. You say that your responsibilities
9 include ensuring that Duke's services are provided in
10 accordance with applicable federal and state laws and
11 regulations, correct?

12 A. Sure.

13 Q. And did you do that in this case?

14 A. Yes.

15 Q. If I could draw your attention to page 3,
16 lines 15 through 17, please.

17 A. I'm there.

18 Q. Okay. Duke is not in poor financial
19 health right now, correct?

20 A. Duke's credit ratings are stable.

21 Q. Okay. So Duke is not in poor -- Duke
22 Ohio is not in poor financial condition right now,
23 correct?

24 A. How do you define "poor financial
25 condition," sir?

1 Q. Well, let's use your definition because
2 Duke Ohio is seeking a Rider PSR for financial
3 stability, correct?

4 A. Among other things.

5 Q. Okay. So right now, Duke is not
6 financially unstable, correct?

7 A. I would say that the company presently
8 has -- is financially healthy, but the health of the
9 company is being watched very closely by analysts and
10 credit rating agencies, particularly in respect of
11 the outcome of Rider PSR.

12 Q. And, Ms. Spiller, what are the regulatory
13 mechanisms to what you are referring in that portion
14 of your testimony that I drew your attention to?

15 A. Rider PSR.

16 Q. Is that the only one?

17 A. That -- that serves to mitigate rate
18 volatility. I would say that is one.

19 Q. Okay. And that rider then is aimed at
20 maintaining Duke's financial integrity, correct?

21 A. It has what I would say, sir, is a
22 two-part purpose; the first of which is to provide
23 that hedging mechanism for our customers. A hedging
24 mechanism to protect against the volatile wholesale
25 market prices, as well as assist in the company's

1 financial health.

2 Q. If you could -- if I could draw your
3 attention to page 5, lines 5 through 9, Ms. Spiller.

4 A. I'm there.

5 Q. Without the financial support that you
6 reference in those lines, is it your position that
7 Duke will lose its good credit rating?

8 A. I think that's very likely, although
9 company witness Jack Sullivan is better suited to
10 offer testimony on that point and I believe do so in
11 this proceeding.

12 Q. Okay. So if Duke gets the financial
13 support from Rider PSR, will Duke rule out abrupt
14 cost increases for Duke's customers?

15 A. I'm not -- I don't believe that you're
16 interpreting that testimony correctly, sir.

17 Q. Why don't you help me then.

18 A. Gladly. So what the testimony here is,
19 the purpose of the testimony in these particular
20 lines is to talk about Rider PSR and, again, its
21 two-part purpose, one of which is to mitigate or
22 temperate volatility that all of our customers are
23 exposed to because of the dependence on the wholesale
24 market for energy and capacity.

25 The secondary purpose is that concerning

1 the company's credit ratings, and as I am sure you
2 can appreciate, the cost at which Duke Energy Ohio
3 accesses those capital markets is ultimately a cost
4 that's borne by our customers.

5 Q. Okay. So your testimony here says, when
6 discussing Rider PSR, that it will ultimately be
7 "mitigating against abrupt cost increases for our
8 customers." Did I read that correctly?

9 A. That portion of the testimony you read
10 correctly.

11 Q. Okay. So as it relates to that portion
12 of the testimony, is Duke, therefore, ruling out
13 abrupt cost increases for its customers if it gets
14 Rider PSR?

15 A. I believe that -- I can't speak to
16 absolutely everything, sir, that might happen in the
17 future. The approval of Rider PSR, as part and
18 parcel to this stipulation, will, I believe, go a
19 long way in preserving the company's good credit
20 ratings, ratings that in compromise could cause those
21 abrupt changes in customer rates.

22 Q. Okay. If I can draw your attention to
23 line 14 on that same page, Ms. Spiller.

24 A. Just line 14 or the entire sentence?

25 Q. Just line 14.

1 A. Okay.

2 Q. And you describe the settlement as
3 "comprehensive and intricately structured." What do
4 you mean when you describe it as "intricately
5 structured"?

6 A. Well, I would venture a guess this would
7 be the first circumstance in which parties
8 collectively came together to resolve a multitude of
9 issues we have and proceedings. We have a base
10 distribution rate case that has been settled in
11 connection with an electric security plan, as well as
12 other proceedings to populate or to adjust Rider PSR
13 and address the company's reliability standards. So
14 I do believe it is complex. Again, to my knowledge,
15 I have not seen a settlement that pulls together all
16 of those issues.

17 Q. And sticking with lines 14 and 15 on this
18 page, Ms. Spiller, due to the complex intricately
19 structured settlement, Duke will rule out making
20 unpredictable rate increases, correct?

21 A. I'm not sure I follow your question that
22 we will rule out making unpredictable rate increases.
23 Any rate increases that the company would implement
24 would be pursuant to Commission approval.

25 Q. Well, let's look at what you said in your

1 testimony, if we can. Starting on line 13 it says
2 "This complex settlement is comprehensive and
3 intricately structured to mitigate the impact of
4 unpredictable rate increases to the extent possible
5 and is balanced to afford the Company an opportunity
6 to continue to invest in our electric delivery system
7 and modernize the grid in a measured manner that
8 fosters reliability performance." Did I read that
9 correctly?

10 A. You did.

11 Q. And so my question is: Is Duke going to
12 rule out unpredictable rate increases if this
13 settlement is approved?

14 A. To the extent possible.

15 Q. And it's not entirely possible you may
16 have to come in for a rate increase, correct?

17 A. It's not entirely possible that we may
18 have to come in for a rate increase?

19 Q. No. You can't rule out coming in for a
20 rate increase even if this stipulation is approved.

21 A. We are required to come in for a rate
22 case no later than March -- May 31 of 2024, so that
23 would be during the term of the ESP.

24 Q. And Duke could come in before then as
25 well, correct?

1 A. That's possible.

2 Q. In that sentence I read, Ms. Spiller, you
3 used the word "opportunity," correct?

4 A. I did.

5 Q. It's possible that as a result of the
6 settlement, Duke won't continue to invest in
7 modernizing its grid, correct?

8 A. Under the stipulation, Duke Energy Ohio
9 will indeed continue to invest in modernizing its
10 distribution grid.

11 Q. Does the settlement mandate that Duke do
12 so?

13 A. Does it require us to make investments in
14 the system?

15 Q. Correct.

16 A. I think that is certainly the intention
17 of the settlement, particularly with respect to
18 Riders DSR, ESS, and PowerForward.

19 Q. Okay. Can you point me in the
20 stipulation where it mandates that Duke invest in
21 modernizing its system?

22 A. Well, I think Rider DCI talks about the
23 investments we will be making in the system.

24 Q. And we talked about earlier that didn't
25 work because Duke missed the CAIDI and SAIFI

1 standards, correct?

2 A. Well, that was your view it didn't work.
3 I would beg to differ.

4 Q. If you didn't meet your standards, it
5 didn't work, correct?

6 A. No. I don't agree with that.

7 Q. So you can fail to meet your standards
8 governing reliability but still have a reliable
9 distribution system?

10 A. We did not meet the metrics for two
11 years. Rider -- and I explained to you, sir, why
12 that was the case. I am more than happy to go
13 through that conversation again, but the system is
14 reliable.

15 Q. But the fact is you missed your standards
16 for those two years, correct? Okay?

17 MR. D'ASCENZO: Objection, your Honor.
18 Asked and answered, argumentative.

19 EXAMINER WALSTRA: Overruled. It's
20 getting close.

21 A. Again, sir, that's correct.

22 Q. Thank you.

23 If could I draw your attention,
24 Ms. Spiller, to page 5, lines 21 and 22, please.

25 A. I'm there.

1 Q. Is the protection against the risk of
2 sudden swings in market prices for power to which you
3 are referring, is that Rider PSR?

4 A. Yes.

5 Q. Are there any other riders that fit under
6 that description?

7 A. I would say that Rider PSR most aptly
8 fits under that description. I would also say, sir,
9 that the company's continued reliance on the
10 competitive market via the competitive bidding
11 process that's reflected in the stipulation also
12 mitigates, but certainly would not protect against
13 sudden swings inasmuch as Rider PSR does.

14 Q. Okay. I would like to draw your
15 attention, Ms. Spiller, to page 6, lines 1 through
16 18, and I want to talk about Rider PSR for a little
17 bit, if we can.

18 A. Sure.

19 Q. In Case No. 14-841, Rider PSR was
20 approved under Revised Code 4928.143(B)(2)(d),
21 correct?

22 A. I don't know if it was subpart (d), but
23 it was approved under the ESP provisions.

24 Q. Okay. And Duke here is seeking approval
25 for a populated PSR under the ESP statute, correct?

1 A. I would beg to differ. Duke Energy Ohio
2 is seeking approval to adjust and amend Rider PSR,
3 and that was filed in a separate proceeding, 17-872.

4 Q. Okay. So there -- Duke is not seeking
5 approval of a PSR under the ESP statute in this
6 proceeding.

7 A. I believe we were following the
8 Commission order to -- to institute a separate
9 proceeding. Rider PSR is, in fact, mentioned in the
10 ESP proceeding only in respect of extending the term,
11 a term that was established in 18-841 -- I am
12 sorry -- 14-841. Now you got me doing it.

13 Q. See, there is a method to my madness.

14 A. I'm still listening.

15 Q. So in this proceeding, Duke is not
16 asserting any other authority for approving Rider PSR
17 than that which the PUCO relied in Case No. 14-841,
18 correct?

19 A. I would disagree only inasmuch as
20 rider -- the authority, if you will, is what I
21 believe to be the three-part test for stipulations.
22 The Commission will view this stipulation in its
23 entirety and ascertain whether it meets the
24 three-part test.

25 Q. Okay. But there still has to be a

1 statutory basis upon which the Commission can approve
2 a rider, correct?

3 A. A statutory basis for a rider?

4 Q. Uh-huh.

5 A. Are you talking about a discrete
6 statutory basis for a particular rider?

7 Q. Correct.

8 A. Well, I would say that the Commission's
9 ratemaking authority is derived from statute. But
10 there could be a generic statute that enables the
11 establishment of a rider.

12 Q. So you are aware, Ms. Spiller, as an
13 attorney, that the Ohio Supreme Court has said that
14 in order to approve a rider as part of an ESP, it has
15 to fit one of the statutory provisions that lays out
16 what different charges there can be, correct?

17 A. I would agree that that's the correct
18 interpretation of 4928.143.

19 Q. And there was a statutory basis that the
20 PUCO relied on in Case No. 14-841, correct?

21 A. Correct.

22 Q. And Duke is not asserting any new or
23 different or statutory basis as part of this
24 proceeding, correct?

25 A. Correct. To the extent the Commission

1 were to look at the ESP provisions for purposes of
2 Rider PSR, I believe it properly fits within those
3 enabling provisions.

4 Q. Okay. And is the enabling provision,
5 perhaps this will refresh your recollection, the
6 assertion that Rider PSR will be a financial
7 limitation on customer shopping?

8 A. Correct. A term or condition related to
9 bypassability limitation on shopping that has the
10 function of providing stability.

11 Q. How would the net revenues associated
12 with Duke's contractual entitlement to OVEC be
13 calculated?

14 A. How will the net revenues be calculated?

15 Q. Uh-huh.

16 A. In the most simplest form, and I would
17 suggest detail be requested of Mr. Wathen, but they
18 will take the costs that are allocated to Duke Energy
19 Ohio under the Inter-Company Power Agreement and
20 compare those to the revenues received by Duke Energy
21 Ohio in connection with its participation in the
22 wholesale market.

23 Q. And the difference will be either
24 credited or charged to customers, correct?

25 A. Correct.

1 Q. Okay. Is -- does the OVEC cost portion
2 include a return on and of investment in OVEC?

3 A. The Inter-Company Power Agreement,
4 Mr. Michael, details the cost components. I believe
5 there is perhaps a slight return, but I would refer
6 to the IGS exhibit for confirmation.

7 Q. Please do so.

8 A. I believe that to be the case under the
9 Demand Charge, Section 5.03.

10 Q. And just so the record is clear,
11 Mrs. Spiller, what I understand you to be saying is
12 that Rider PSR will include a return on and of
13 investment in OVEC as per the Inter-Company Power
14 Agreement?

15 A. It would -- the costs would be those that
16 are set forth in the FERC-approved Inter-Company
17 Power Agreement; one of which is a product of 2.089
18 multiplied by the total number of shares of capital
19 stock.

20 Q. Okay. So it does include a return on and
21 of investment?

22 A. If that's a fair way to interpret that
23 calculation.

24 Q. Well, I am asking you. Is that a fair
25 way to interpret that calculation?

1 A. I don't know that that's a return on and
2 of the investment, but it is a return component.

3 Q. And Duke is asking that some costs be
4 included in Rider PSR, correct?

5 A. Duke is asking that the costs charged to
6 it under the Inter-Company Power Agreement be
7 included in Rider PSR.

8 Q. And those include sunk costs, correct?

9 A. Those include the charges that are set
10 forth in the FERC-approved agreement.

11 Q. And those include sunk costs, correct?

12 A. Which you define as what, sir?

13 Q. You read Judah Rose's testimony, correct?

14 A. I did.

15 Q. Okay. And Mr. Rose spends some degree of
16 time making a distinction between sunk costs and
17 other type of costs, correct?

18 A. For purposes of his forecast, that's
19 correct.

20 Q. Correct. And he takes no position on
21 whether or not sunk costs should be included in Rider
22 PSR, correct?

23 A. He expresses a view, excuse me, but
24 defers to the Ohio Commission, I believe.

25 Q. Okay. And my question is: Using

1 Mr. Rose's definition of sunk costs, is Duke asking
2 the Commission to include sunk costs in Rider PSR?

3 A. I don't have his definition in front of
4 me, sir.

5 Q. Okay. So is Duke asking for sunk costs
6 to be included in Rider PSR?

7 A. Duke Energy Ohio is asking that all of
8 the costs allocated to it pursuant to this
9 FERC-approved rate be included in Rider PSR.

10 Q. Ms. Spiller, you referenced demand
11 charges earlier. Do those include a return on
12 equity?

13 A. I think what they include is one
14 component that we previously discussed. It's a
15 multiplier factor, right?

16 Q. So does that include a return on equity?

17 A. I don't know -- it doesn't specifically
18 refer to a return on equity or a return on and of
19 capital.

20 Q. Okay. Has Duke ever used OVEC to serve
21 its customers?

22 A. No, not to my knowledge.

23 Q. Has Duke ever included OVEC costs in a
24 fuel adjustment clause?

25 A. No.

1 Q. Has Duke ever tried to recover any OVEC
2 costs from its customers?

3 A. The only time in -- the only time prior
4 to these proceedings in which the company sought to
5 include OVEC would have been in the filing made under
6 14-841 where, in fact, we proposed a mechanism
7 similar to that reflected in the stipulation here
8 today.

9 Q. And that's Rider PSR?

10 A. Correct. And I will say, sir, you're
11 calling on my memory here. I would have to look at
12 the initial filing, the public record would confirm
13 it for us, but the initial filing in 11-354. It was
14 a nine-year ESP that did not receive any favor from
15 intervenors.

16 Q. There's an OVEC plant in Ohio and one in
17 Indiana, correct?

18 A. Correct.

19 Q. And Duke's entitlement is approximately
20 9 percent?

21 A. Correct.

22 Q. And power under Rider PSR will not be
23 used to serve Duke's customers, correct?

24 A. Correct.

25 Q. Will OVEC sell the power to Duke and then

1 Duke will bid it on the PJM markets?

2 A. I don't believe OVEC sells their power to
3 Duke. Duke Energy Ohio is entitled to 9 percent of
4 the output of those units.

5 Q. Okay. But it's got to pay costs under
6 the ICPA, correct?

7 A. Correct.

8 Q. Okay. So Duke will pay the costs under
9 the ICPA and then Duke Ohio will bid the power onto
10 the PJM markets, correct?

11 A. Into capacity, correct. And then it
12 would have the right to participate in the wholesale
13 energy markets real time and day-ahead.

14 Q. How -- has Duke determined who at the
15 company is going to actually be doing the bidding
16 into the PJM markets?

17 A. We do have a functional unit that takes
18 care of that for us.

19 Q. What is the name of that functional unit?

20 A. Mr. Michael, I don't know the name of the
21 functional unit.

22 Q. Okay. Are they currently bidding OVEC
23 into the PJM markets?

24 A. They are.

25 Q. Okay. And is the process by which they

1 bid into the PJM markets going to change at all as a
2 result of Rider PSR if it's approved?

3 A. I don't know and I further hesitate
4 because we're now treading on what could be
5 proprietary confidential information in respect to
6 participation in a competitive market.

7 Q. Rider PSR is going to be nonbypassable,
8 correct?

9 A. Correct.

10 Q. So its effects on shopping will be
11 neutral, correct?

12 A. Correct.

13 Q. It will neither advantage or disadvantage
14 shopping, correct?

15 A. Correct.

16 Q. You assert, Ms. Spiller, that Rider PSR
17 will afford Duke access to reasonably priced capital
18 markets, correct?

19 A. Correct.

20 Q. And is that -- is Duke losing money now
21 on its OVEC entitlement?

22 A. Today?

23 Q. Uh-huh.

24 A. I don't have the exact figures today,
25 Mr. Michael.

1 Q. Okay. I appreciate that. Do you know --
2 I don't need exact figures. My question was whether
3 or not Duke Ohio is losing money on its OVEC
4 entitlement right now.

5 A. I believe today that if Rider PSR were
6 implemented, it would be a charge.

7 Q. If I could direct your attention,
8 Ms. Spiller, to page 8, lines 11 through 13 of your
9 direct testimony.

10 A. I'm there.

11 Q. What is "Back-up Delivery service"?

12 A. It is actually a voluntary service that
13 the company provides for those customers of ours who
14 are particularly sensitive to generation -- I'm
15 sorry -- to supply and interruption in supply.

16 So it's a -- in essence, it is a service
17 through which we would reserve back-up capacity for
18 those customers and they would pay the charge under
19 the tariff for that voluntary service.

20 Q. Will the reduction in charges be made up
21 from other customers?

22 A. I'm not following your question.

23 Q. Sure.

24 On page 8, lines 11 through 13, you
25 reference a benefit from the reduction in the charges

1 for that service. Do you see that?

2 A. I do.

3 Q. And my question is will the reduction in
4 charges be made up by customers other than the ones
5 taking Back-up Delivery service?

6 A. No. If I am understanding your question
7 correctly. So the revenues that we receive under the
8 Back-Up Delivery Power rider are actually an offset
9 to the revenue requirement. But we are reducing the
10 charges under that rider with respect to those
11 customers that elect that voluntary service.

12 Q. Okay. And just so I'm clear, Duke is not
13 seeking to recover that reduction from other
14 customers that do not take Back-up Delivery service.

15 A. That's correct.

16 Q. If I could draw your attention,
17 Ms. Spiller, to page 10, lines 5 through 15, of your
18 testimony.

19 A. I'm there.

20 Q. Okay. Is Duke's PSR structure identical
21 to AEP's PPA rider?

22 A. As I previously stated, sir, I believe
23 that the mechanics are the same. At the highest
24 level, the cost allocated to AEP Ohio or Duke Energy
25 Ohio under the ICPA would be offset by revenues. And

1 I believe that the condition is similar. Again, I
2 don't have the AEP document with which to compare,
3 but I believe some of the conditions are similar.

4 Q. And is it structured similar to Dayton
5 Power and Light's reconciliation rider?

6 A. The Dayton stipulation again describes
7 the mechanics of the costs as offset by the net
8 revenues. The Commission modified that to be a
9 nonbypassable rider so I would say they are similar
10 in that respect. I can't speak to conditions that
11 may exist with regard to Dayton's rider.

12 Q. But you would stand by your testimony
13 that there's structured -- Duke's PSR is structured
14 identical to AEP Ohio's and DP&L's OVEC riders?

15 A. Correct with respect to the cost and
16 revenue and the nonbypassability.

17 Q. You assert in that portion of your
18 testimony, Ms. Spiller, that Rider PSR will allow
19 Duke to appropriately maintain its overall credit
20 quality, correct?

21 A. Correct.

22 Q. And is that because, as you referenced
23 earlier, that you believe Rider PSR would be a charge
24 if it were implemented today. The reason why it
25 would help Duke appropriately maintain its overall

1 credit quality is because OVEC is currently a drain
2 on Duke Ohio's finances, correct?

3 A. I would not say it that way, sir. I
4 would -- Mr. Sullivan can certainly elaborate much
5 better than I, but the rating agencies are watching
6 Duke Energy Ohio and the outcome of the OVEC -- of
7 the OVEC rider. And there is presently uncertainty,
8 and as I am sure you can appreciate, that uncertainty
9 is a pretty significant consideration for rating
10 agencies.

11 Q. And through Rider PSR, Duke is looking to
12 shift that uncertainty from its shareholders onto its
13 customers, correct, by charging them money to
14 subsidize the OVEC plant?

15 A. Duke Energy -- first, I would absolutely
16 disagree with your notion of a subsidy, but Duke
17 Energy Ohio is looking to implement a hedge for our
18 customers with respect to the volatility they will
19 undoubtedly face in the wholesale market.

20 As I've stated previously, there is a
21 two-fold purpose to Rider PSR. The first of which is
22 that hedging mechanism. The second of which is
23 financial stability of the company; something the
24 Commission has previously identified as critically
25 important.

1 Q. And I want to focus on the uncertainty
2 part of that, if I can, Ms. Spiller. And my point is
3 that Duke is asserting that Rider PSR will remove
4 that uncertainty from the company, correct?

5 A. It will -- it will mitigate the credit
6 rating risks currently facing the company.

7 Q. And that's because it's going to charge
8 customers for the difference between OVEC's revenues
9 and cost, correct?

10 A. Or credit them.

11 Q. And there is no forecast involved in this
12 case at all that there is going to be a credit under
13 Rider PSR, correct?

14 A. I would -- I would again defer to
15 Mr. Rose in that regard. I would probably disagree
16 with your interpretation of his forecast.

17 Q. Well --

18 A. And your --

19 Q. I'm sorry.

20 A. And the fact that we seem to not be
21 taking into consideration more recent events that
22 will affect the volatility, further perpetuate the
23 volatility in the wholesale market.

24 Q. Is Mr. Rose going to testify to those
25 more recent events?

1 A. I am sure.

2 Q. It is not currently in his written
3 testimony, is that what you are telling me?

4 A. Well, there are events that happened --
5 that transpired after his testimony was filed. I
6 believe Mr. Rose does talk generally about activities
7 at the federal level that affect the wholesale
8 market.

9 Q. Can you give me a summary of what those
10 events are, Ms. Spiller?

11 A. Well, I certainly cannot articulate all
12 that Mr. Rose will testify to, but I am sure you are
13 aware of the June 2 order from the FERC concerning
14 PJM's proposals with respect to modifications to the
15 capacity market.

16 I suspect, sir, you are probably also
17 aware of the activity prompted by the Department of
18 Energy with respect to compensation related to
19 diverse generating resources.

20 Q. All right. If I could draw your
21 attention to footnote 6 and on page 10, Ms. Spiller.
22 Those references are to FirstEnergy's ESP case,
23 right?

24 A. They are in reference to the ESP
25 application it filed in 2014.

1 Q. And F -- FirstEnergy did not get approved
2 in that case an equivalent to Duke's proposed PSR
3 Rider, right?

4 A. So the FirstEnergy utilities are not
5 co-sponsored under the Inter-Company Power Agreement,
6 and so it's understandable that they would not have a
7 mechanism to advance similar to Rider PSR.

8 Q. Did they ask for one before that case
9 came out with an Opinion and Order?

10 A. What the FirstEnergy utilities asked for
11 was a purchase power agreement with an affiliate.

12 Q. Okay. So they did ask for, initially, an
13 equivalent to Duke's PSR Rider, correct?

14 A. I think they are a little different.

15 Q. I mean, they were both related to OVEC's
16 revenues and costs, correct?

17 A. OVEC was included in the FirstEnergy
18 companies' purchase power agreement. I did not study
19 the structure, sir, of the proposal.

20 Q. But in any event, you know they did not
21 get a rider similar to Rider PSR in that ESP case,
22 correct?

23 A. The Commission approved their purchase
24 power agreement rider or mechanism, whatever it was.
25 And it did include OVEC as well as nuclear and coal

1 plants owned by an affiliate.

2 Q. If I could direct your attention to lines
3 16 through 19 on page 10, Ms. Spiller.

4 A. I am there.

5 Q. And you talk there about what company
6 witnesses Sullivan and Fetter are going to discuss,
7 correct?

8 A. Correct.

9 Q. Without Rider PSR, Duke's overall credit
10 quality, cash from operations coverage ratios, and
11 credit rating would be adversely affected, right?

12 A. Well, I don't believe they focus solely
13 on Rider PSR. You've inserted those words into that
14 portion of the testimony, but, yes, their testimony
15 does indicate the significance of a potential harm to
16 customers if the stipulation as proffered is not
17 approved.

18 Q. And Rider PSR is the biggest component of
19 that stipulation as it relates to what Mr. Sullivan
20 and Mr. Fetter are testifying to, correct?

21 A. I believe it's a significant portion,
22 correct.

23 Q. Okay. So Duke's credit ratings would be
24 adversely affected then if Rider PSR is not approved,
25 correct?

1 A. I believe so. I believe that's their
2 testimony, but they can confirm.

3 Q. I want to ask you, Ms. Spiller, if I can,
4 when Rider PSR will be charged. Is Duke looking to
5 recover costs under Rider PSR back to January 1,
6 2018?

7 A. For purposes of calculating the rider,
8 yes, we would go back to January 1 of this year.

9 Q. And when will Rider PSR be charged if its
10 approved? What would be the first billing cycle?

11 A. That is somewhat speculative for me to
12 identify a date certain. Once we have the
13 Commission's Order, we would need to file the
14 compliance tariffs which the Commission would then
15 need to approve, and so I can't identify exactly when
16 that would happen.

17 Q. Okay. And what would the initial amount
18 be?

19 A. I don't know, sir.

20 Q. But you do concede it will be a charge?

21 A. I have not done the math. You are asking
22 me today?

23 Q. Uh-huh.

24 A. I believe that it would be a charge, but
25 I don't have the exact numbers. I have not done the

1 calculation.

2 Q. And you read Mr. Wathen's testimony in
3 support of the settlement, correct?

4 A. I believe so.

5 Q. And you know that Mr. Wathen says it's
6 going to be an \$18 million charge. Do you recall
7 reading that part of his testimony?

8 A. I don't recall specifically reading that.
9 I don't disagree with Mr. Wathen's testimony.

10 Q. Now, there is reference in your
11 testimony, Ms. Spiller, to an annual prudency review,
12 correct?

13 A. Correct.

14 Q. What will be reviewed for prudency?

15 A. As agreed upon by the many parties to the
16 stipulation, there will be a prudency review with
17 respect to the company's handling of its entitlement
18 in the competitive markets.

19 Q. Will the prudency review extend to
20 investments made in OVEC? By Duke Ohio?

21 A. Duke Energy Ohio is not making
22 investments in OVEC.

23 Q. So it's not going to make any investments
24 to upgrade the facilities or upgrade the plants or
25 anything like that?

1 A. Duke Energy Ohio doesn't make those
2 investment decisions.

3 Q. Who makes those investment decisions?

4 A. The owner and operator of the companies,
5 OVEC.

6 Q. And is Duke Ohio involved in those
7 decisions at all?

8 A. Duke Energy Ohio is a member of the board
9 and participates in certain decisions.

10 Q. Including investments made in those
11 plants.

12 A. I'm not familiar with the list of issues
13 that would be presented to the board for approval
14 versus the list of issues and decisions that are
15 within the privy of OVEC to make.

16 Q. Okay. So let's -- let's assume for the
17 purpose of my question that investment decisions are
18 brought to the board. Are you with me so far?

19 A. I'm following you.

20 Q. Okay. Would those -- would Duke's input
21 into those investment decisions be subject to the
22 PUCO's prudence review?

23 A. I don't believe under the stipulation,
24 no. It's only with respect to the handling of those
25 issues that we control which is the handling of our

1 entitlement.

2 Q. How about the bidding strategy of the
3 OVEC entitlement into the PJM markets, will that be
4 subject to PUCO prudence review?

5 A. That's what I just described. It's the
6 handling of our entitlement.

7 Q. I wasn't entirely sure what you meant by
8 handling the entitlement, so that's why I asked.

9 Let me ask you a little bit about
10 information sharing, Ms. Spiller. Duke will commit
11 to share information with the PUCO in connection with
12 Rider PSR, correct?

13 A. Duke Energy Ohio will participate in an
14 audit.

15 Q. Okay. Will it provide any information
16 that staff asks for as a result of that audit?

17 A. Any information that Staff asks for with
18 respect to the agreed-upon audit?

19 Q. Uh-huh.

20 A. I would probably like to know what that
21 information is, but we typically have a very
22 cooperative arrangement with Staff.

23 Q. Well, you are aware, Ms. Spiller, that in
24 the AEP PPA rider case, the Commission outlined a
25 number of different factors that it would consider

1 when passing judgment upon PPA or PSR riders,
2 correct?

3 A. I think in the original decision from the
4 AEP case, maybe circa 2014, that that was a part of
5 the Commission's order in the subsequent decisions in
6 which the Commission actually approved their OVEC
7 rider, the Commission was not bound by or dictated by
8 those factors.

9 Q. Correct. And those factors also appear
10 in the Opinion and Order in Case No. 14-841, correct?

11 A. Correct.

12 Q. Okay. And one of those factors that the
13 Commission would consider is what they described as
14 full information sharing, correct?

15 A. We may be sort of parsing words with
16 respect to the factors. There were, I believe, five
17 factors that the Commission delineated that it would
18 potentially consider with respect to a subsequent
19 filing. There was other criteria that the Commission
20 also addressed in that decision.

21 Q. Correct. And my question is: One of
22 those criteria was full information sharing between
23 the utility and Commission Staff, correct?

24 A. I don't recall that. You would need the
25 order.

1 Q. Duke Energy -- Duke Ohio is committed to
2 full information sharing regarding Rider PSR with
3 PUCO Staff though, correct?

4 A. Well, the stipulation, Mr. Michael, sets
5 forth the terms and conditions to which Rider PSR is
6 subject. Among those is an audit. A prudence
7 review, again, of our handling of the entitlement.
8 It is our practice, as a company, to cooperate with
9 Staff in connection with any audit.

10 Q. And you anticipate proceeding with
11 that -- what you describe as cooperation with Staff
12 as relates to Rider PSR audits?

13 A. I don't anticipate our behavior and
14 interaction with Staff to change.

15 Q. For any cost recovery, Ms. Spiller,
16 sought by Duke under Rider PSR, the Commission would
17 have the authority to make a disallowance of any cost
18 recovery, correct?

19 A. I would disagree with the statement "a
20 disallowance of any cost recovery." This rider, as
21 set forth in Attachment C of the stipulation, will be
22 subject to both a financial and prudence review. And
23 so there is the potential for adjustments to the
24 rider.

25 Q. So, for example, if the Commission found

1 that Duke did something imprudent in terms of cost
2 recovery it sought under Rider PSR, the Commission
3 would have the authority to disallow that
4 imprudent -- imprudently-incurred cost, correct?

5 A. If it concerns the handling of the
6 entitlement, I believe that's correct.

7 Q. What do you mean when you are talking
8 about "the handling of the entitlement"?

9 A. Sure. So Duke Energy Ohio is entitled to
10 9 percent of the capacity from those OVEC generating
11 units. We may take a commensurate amount of energy.
12 We then have the opportunity to participate with --
13 with that output in the wholesale markets.

14 Q. Okay. So what exactly then does handling
15 that entitlement mean? Bidding it onto the PJM
16 markets?

17 A. You could bid it into the base residual
18 auction. You could also engage in the real time and
19 day-ahead energy markets administered through PJM.

20 Q. How about bilateral contracts?

21 A. I suppose that's possible.

22 Q. Okay. Is it possible that Duke will
23 enter into bilateral contracts with the OVEC
24 entitlement even if Rider PSR is approved?

25 A. That's possible.

1 Q. And would the Commission have the
2 authority to evaluate the prudence of such
3 arrangements?

4 A. I believe that that is within the
5 provision of the stipulation, the prudence review
6 defined there.

7 Q. If I could draw your attention to
8 page 12, line 19, Ms. Spiller.

9 A. The complete sentence or just a portion
10 thereof?

11 Q. You can read the complete sentence.

12 A. Okay. Okay. I'm there.

13 Q. Does sharing of customer data have a
14 cost?

15 A. The IT investments that the company is --
16 is making in order to enable the provision of
17 customer energy usage do have a cost. And that is
18 reflected in the stipulation. I believe with respect
19 to the IT work alone, that is set forth in
20 stipulation Attachment F.

21 Q. And will that be recovered through the
22 PowerForward Rider?

23 A. Correct.

24 Q. You discuss in that sentence,
25 Ms. Spiller, appropriate customer approval as it

1 relates to sharing customer information -- customer
2 data?

3 A. Uh-huh.

4 Q. What do you mean when you say
5 "appropriate"?

6 A. Well, certainly customer authorization
7 and CRES providers or third parties securing that
8 authorization is critically important for a variety
9 of reasons, I am sure you can appreciate, among those
10 slamming, as well as the potential improper release
11 of customer proprietary information. So we certainly
12 want to ensure that customer proprietary data is
13 transmitted to CRES providers, that it is done so
14 pursuant to the proper protection and appropriate
15 customer authorization.

16 Q. So what is the proper protections?

17 A. I think it's a secured -- that the
18 securing of customer authorization for the release of
19 the data.

20 Q. Okay. And what form will that
21 authorization take, which is to say written, verbal?

22 A. I don't know ultimately -- or all of the
23 forms that that authorization may take. I believe,
24 Mr. Michael, the Commission regulations require a
25 written form of customer authorization. So, end of

1 day, there will have to be something in writing to
2 confirm customer consent.

3 Q. And Duke will not release customer data
4 until it gets that written?

5 A. It's not our practice to release data
6 without customer consent.

7 Q. In writing.

8 A. Correct.

9 Q. If I could draw your attention,
10 Ms. Spiller, to page 16 of your testimony, lines 14
11 through 15.

12 A. Okay. I'm there.

13 Q. And in this part of your testimony you
14 are talking about how certain provisions of the
15 settlement advance state policy regarding various
16 matters, correct?

17 A. Correct.

18 Q. And in the lines to which I drew your
19 attention, you assert that "The Stipulation does not
20 affect Duke Energy Ohio's commitment to meet energy
21 efficiency and peak demand reduction standards
22 required under Ohio law," correct?

23 A. Correct.

24 Q. And the settlement could not exempt Duke
25 from complying with those standards required under

1 Ohio law, correct?

2 A. Not with respect to the proceedings
3 resolved by way of the stipulation.

4 Q. I want to draw your attention,
5 Ms. Spiller, if I could, still on page 16, but your
6 comments regarding "decouples volumetric sales from
7 revenue," lines 20 and 21.

8 A. Correct.

9 Q. Explain to me how that decoupling
10 volumetric sales from revenue works.

11 A. What happens with this?

12 Q. Yes.

13 A. So as customers use less energy, the
14 commensurate -- there would be a commensurate decline
15 in revenues collected, right? So what the decoupling
16 rider does is actually decouple and ensure from a
17 certain class of customers that Duke Energy Ohio is
18 made whole irrespective of the way in which they
19 consume energy.

20 Q. And that class of customers includes
21 residential customers, correct?

22 A. Correct.

23 Q. And so under the decoupling, low-usage
24 customers would pay more than if Duke was charging
25 based solely on a volumetric charge, correct?

1 A. That may be possible, but I would defer
2 to Mr. Wathen.

3 Q. If I could draw your attention,
4 Ms. Spiller, to page 17 of your testimony, lines 14
5 through 19.

6 A. I'm there.

7 Q. And in the second line, line 15, you
8 discuss "costs of programs." Do you see that?

9 A. I do.

10 Q. And how much are the costs of those
11 programs?

12 A. At this point, sir, I don't know all of
13 the programs that may be included in Rider
14 PowerForward or Rider PF, so I can't articulate or
15 define a specific number for you.

16 Q. If I could draw your attention,
17 Ms. Spiller, to page 20 of your testimony, lines 15
18 through 16. Duke, through the settlement, could not
19 exempt itself from complying with applicable rules,
20 correct?

21 A. As a unilateral entity, Duke Energy Ohio
22 could not exempt itself from compliance with rules or
23 regulations.

24 Q. And it couldn't do so as part of a
25 settlement either, correct?

1 A. I think the parties to a settlement could
2 recommend a waiver from a particular Commission
3 regulation.

4 Q. Okay. And Duke is not doing so in this
5 case, correct?

6 A. We are not asking to be exempt from any
7 regulations that concern market power, unfair sales
8 practices, and the like.

9 Q. If I could draw your attention to
10 page 21, lines 3 and 4 -- 3 through 6 actually.

11 A. I'm there.

12 Q. Duke, by way of a stipulation, couldn't
13 exempt itself from the Commission's jurisdiction,
14 correct?

15 A. I believe the Commission's jurisdiction
16 is statutory. I don't know that any party could
17 exempt any entity from a statutory provision.

18 Q. And if I could draw your attention to
19 lines 7 through 9 on that same page, Ms. Spiller.

20 A. I'm there.

21 Q. Irrespective of the settlement, the
22 Commission would still continue to have oversight of
23 the competitive procurement used by Duke Energy Ohio,
24 correct?

25 A. Irrespective of the settlement?

1 Q. Correct.

2 A. But the competitive procurement process
3 or competitive bidding plan is part and parcel to the
4 settlement.

5 Q. Well, it was also part of the
6 application, correct?

7 A. Correct.

8 Q. Okay. And does -- so irrespective of the
9 settlement, if you were -- if Duke was going to do
10 the competitive procurement, the PUCO would have
11 authority of oversight over that competitive
12 procurement, correct?

13 A. I guess I'm struggling, sir, because I'm
14 not sure of the vehicle through which that
15 competitive bidding plan is being approved.
16 Certainly within the context of this settlement and
17 consistent with what the company proposed in its
18 application, we have continued the competitive
19 bidding plan to procure generation supply and, as an
20 element of that, the Commission does have oversight.

21 Q. So if -- the point, Ms. Spiller, is
22 whether or not Duke did the competitive procurement
23 as a result of the application or the settlement, the
24 PUCO would still have oversight of that competitive
25 procurement, correct?

1 A. I believe the Commission's rules for an
2 ESP, unless waived, would require their oversight.

3 Q. Okay. And if I could draw your attention
4 to lines 12 and 13 on that same page, Ms. Spiller.

5 A. Now, I need to back up because actually
6 it's probably within the context of the market rate
7 offer that you would want the Commission's oversight
8 as determined by regulation. The ESP provisions do
9 not contain any language that speaks specifically to
10 procuring generation supply through a competitive
11 procurement plan.

12 Q. Okay. So if the statute doesn't permit
13 that, how could Duke Energy Ohio ask for it?

14 A. Well, within -- so we could go back to
15 2011 and talk a lot about how we got to where we are
16 today. But for purposes of the competitive bidding
17 process plan that's reflected in this stipulation,
18 the ESP provisions require that the company include
19 details around the procuring and pricing of
20 generation supply. I don't believe there is any
21 further requirement in the statute itself.

22 Q. But to the extent that Duke proposes
23 competitive procurement as you acknowledged earlier,
24 the Commission would have an oversight authority over
25 that competitive procurement process, correct?

1 A. Not by statute and I don't even believe
2 by Commission regulation insofar as an electric
3 security plan is concerned. The company has agreed,
4 within the context of this stipulation and further
5 proposed in its application filed last year, to
6 perpetuate that competitive bidding plan structure,
7 that did include Commission oversight.

8 Q. So you think utilities in the State of
9 Ohio, including Duke, could prevent the Commission
10 from oversight when they competitively procure
11 generation through an ESP?

12 A. You were asking me, sir, at least I
13 interpreted your question as asking for the statutory
14 basis. You were suggesting that the company could
15 not avoid Commission oversight for a competitive
16 procurement plan and we were having a conversation
17 around the origination or the basis for that
18 oversight.

19 MR. MICHAEL: Okay. So I would move to
20 strike the answer to that question, your Honor. I
21 asked the witness a very specific question about
22 whether or not Duke took the position that utilities
23 in Ohio, including Duke, could prevent Commission
24 oversight when a utility does a competitive
25 procurement of generation for an ESP, and the witness

1 response to that question was not responsive.

2 MR. D'ASCENZO: Your Honor, she was
3 explaining her answer. She was trying to respond to
4 the question and the basis of her answer and why she
5 was taking the position that she could -- she was.

6 EXAMINER WALSTRA: I am going to
7 overrule. She was answering. She even said as she
8 understood your question. So if you need to clarify,
9 you can clarify.

10 MR. MICHAEL: Okay. I'll clarify your
11 Honor. Thank you.

12 Q. (By Mr. Michael) So, Ms. Spiller, my
13 question is: Is it Duke's position that utilities in
14 Ohio can deny Commission oversight of a competitive
15 procurement process authorized under an ESP?

16 A. The ESP, in and of itself, does not speak
17 to a competitive procurement plan or the details
18 associated with that plan. That said, the company
19 has never sought to evade the Commission's oversight
20 of its competitive procurement processes that it has
21 implemented since 2012.

22 Q. And is that because the Commission has
23 statutory authority to do that? Oversight?

24 A. As I just said, the ESP provision does
25 not statutorily describe the Commission's oversight

1 of a competitive procurement plan for generation
2 supply. The company has agreed to that oversight.

3 Q. Okay. So the question is: It has agreed
4 to do so, but could it equally say "No, I'm not going
5 to let you, Commission, oversee our competitive
6 procurement"?

7 A. The company has nothing to hide in
8 respect of its competitive procurement process and so
9 I find it unlikely that we would tell the Commission
10 they could not have a role.

11 Q. If I could draw your attention,
12 Ms. Spiller, to the bottom of page 21, lines 20
13 through 22.

14 A. 21 and 22?

15 Q. Yes, ma'am.

16 A. Okay.

17 Q. And those technologies include
18 technologies that neither Duke nor anybody else knows
19 the cost of at this point in time because we have no
20 directives under the PowerForward initiative,
21 correct?

22 A. Correct.

23 Q. Drawing your attention to the top of
24 page 22, Ms. Spiller, lines 1 through 3.

25 A. I'm there.

1 Q. Are the battery energy storage systems
2 going to be owned by Duke?

3 A. They would be. At least that's my
4 expectation they would be, Mr. Michael.

5 Q. Okay. And do you know the cost of those
6 battery energy storage systems?

7 A. For purposes of the stipulation, that
8 investment would be no more than \$20 million.

9 Q. Okay. So you don't know the precise
10 costs at this point in time?

11 A. I do not.

12 Q. In lines 3 through 5, Ms. Spiller, you
13 talk about the attributes of battery storage,
14 correct?

15 A. Correct.

16 Q. Is one of those attributes that if the
17 grid goes down, the battery can step in to supply the
18 generation?

19 A. I don't believe that's the function of
20 the battery storage projects that we're advancing
21 under this stipulation. They are a distribution
22 investment.

23 Q. Okay. But, so a battery works by storing
24 electricity, correct?

25 A. I believe so.

1 Q. Okay. And to the degree that electricity
2 from the battery is used, that would be supplied to
3 the end-use customer, correct?

4 A. It would be provided to distribution
5 customers.

6 Q. Okay. And so from that perspective, the
7 battery's filling the role of OVEC, for example, so
8 rather than getting energy from OVEC, customers would
9 be getting their energy from the battery, correct?

10 A. I think they're materially different. As
11 I shared with Mr. Oliker, I believe there are
12 different types of battery projects that do exist.
13 The battery projects that we're advancing here are at
14 the distribution level, they would be a distribution
15 investment.

16 Q. I realize that's what you call it, but in
17 practical reality, the battery is stepping into the
18 shoes of the power plant and supplying energy to the
19 end-use customer, correct?

20 A. I don't believe that the intention here
21 is for these batteries to replace the OVEC generating
22 units or any other generating units.

23 Q. So when would the batteries be used then?

24 A. They are being used for purposes of
25 delaying or deferring distribution system investments

1 and helping reliability at the distribution level.

2 Q. And how do batteries help with
3 reliability at the distribution level?

4 A. Well, that's something you would probably
5 have to ask Mr. Kuznar.

6 Q. Because you don't know?

7 A. I am not an expert in battery storage,
8 sir.

9 Q. I want to draw your attention,
10 Ms. Spiller, if I can, to page 23, lines 3 through 18
11 of your testimony.

12 A. I'm there.

13 Q. And among other things in that testimony,
14 you talk about, for example, on line 14, stability in
15 an otherwise volatility market through Rider PSR. Do
16 you see that?

17 A. I do.

18 Q. Has Duke done any comparison of the cost
19 of Rider PSR or the estimated cost of Rider PSR and
20 the cost of volatility from a consumer's perspective?

21 A. Can you define what you mean by "the cost
22 of volatility"?

23 Q. Sure. To the degree that Duke is
24 proposing Rider PSR to address volatile markets, it
25 supposedly has some benefit to it, right?

1 A. Correct.

2 Q. Okay. And that purported benefit isn't
3 being provided to customers for free, correct? They
4 have to pay for it through Rider PSR.

5 A. Well, I probably quibble when you say
6 they have to pay for it. Rider PSR will either be a
7 credit or a charge.

8 Q. Okay. So if it's a charge, they have to
9 pay for it, correct?

10 A. Correct.

11 Q. Okay. And my question is: Has Duke done
12 any analysis or studies of comparing the cost of
13 Rider PSR, the estimated cost of Rider PSR, and what
14 consumers are willing to pay to reduce volatility?

15 A. Have we surveyed customers on what they
16 may pay to reduce volatility?

17 Q. Could I have my question reread, please,
18 your Honor?

19 EXAMINER WALSTRA: Sure.

20 (Record read.)

21 A. So I am trying to understand your
22 question. Are you asking if we have surveyed
23 customers?

24 Q. I am asking what I asked which is has
25 Duke done any analysis or studies?

1 A. With respect to what customers would be
2 willing to pay to mitigate volatility?

3 Q. Comparing the cost of Rider PSR and what
4 they are willing to pay to mitigate volatility, yes.

5 A. We have not done that study. That
6 doesn't reduce the value of Rider PSR as a hedge.

7 Q. If I could draw your attention,
8 Ms. Spiller, please to page 27 of your testimony,
9 lines 14 through 16.

10 A. I'm there.

11 Q. What relevant and important principles
12 and practices did you consider?

13 A. Well, I think, above all, we are going to
14 look at -- we look at all of the proceedings that
15 have been resolved by way of this stipulation. When
16 you look at the principles, practices that may be, if
17 I may, wrapped up in a rate case, an electric
18 security plan, a rider mechanism that provides a
19 valuable hedging mechanism while simultaneously
20 protecting the financial integrity of the utility;
21 this settlement I would say, through the
22 implementation or perpetuation of riders, mitigates
23 against abrupt rate impacts for customers, something
24 that is critically important to them.

25 This rider -- I'm sorry -- this

1 stipulation advances the Commission's mission
2 statement among those things concerning the provision
3 of safe, reliable service, utility service, while
4 protecting the financial integrity of the -- of the
5 utility. This stipulation properly balances the
6 interest of customers, the State, and the company. I
7 believe that the stipulation -- and I am not the only
8 one to believe this because it's provided for in the
9 stipulation but that the stipulation advances State
10 policy.

11 Q. Okay. So let's unpack that a little bit.
12 I understand that's what you think the stipulation
13 does, but I want to know what principles and
14 practices you measured, what the stipulation
15 purportedly does against. So, on the one hand, you
16 have what you assert the stipulation will do and
17 then, under the three-part test, you have to measure
18 what you think the stipulation will do against
19 important regulatory practices and principles,
20 correct?

21 A. Correct.

22 Q. And I want to know what those principles
23 and practices are.

24 A. Well, I think there are -- there are
25 various principles and practices, Mr. Michael, those

1 that are certainly a function of ratemaking and the
2 regulatory paradigm here in Ohio, right? There is
3 certainly a practice that the Commission has in
4 rec- -- and one that they've embraced, more so now
5 than ever, is advancing the modernized distribution
6 grid.

7 Q. Would you say, Ms. Spiller, that cost
8 causation is an important regulatory principle or
9 practice?

10 A. It can be, correct.

11 Q. Okay. Duke's customers didn't cause any
12 costs associated with the OVEC ICPA, correct?

13 A. But you're missing the point of the rider
14 as a hedging mechanism.

15 MR. MICHAEL: I move to strike, your
16 Honor, and ask you to direct her to answer my
17 question. On redirect she can answer that one if
18 she'd like.

19 EXAMINER WALSTRA: I am going to deny the
20 motion but you can -- she did not answer your
21 question.

22 MR. MICHAEL: Okay. Thank you. May I
23 have the question reread, please.

24 (Record read.)

25 A. The customers are the beneficiary of

1 those costs in the Inter-Company Power Agreement.

2 Q. But they were never served with power
3 from OVEC, correct?

4 A. Not directly, that's correct.

5 Q. Okay. So they didn't -- they are paying
6 for a plant from which they didn't receive power, so
7 they didn't cause any costs associated with the
8 generation of that power, correct?

9 A. They are getting the benefit of the
10 generation from those units.

11 Q. But they never used the generation from
12 those units though, correct?

13 A. Historically that is correct.

14 Q. I want to bring your attention to
15 page 28, Ms. Spiller, in particularly lines 1 through
16 4.

17 A. I'm there.

18 Q. In there you assert that Mr. Wathen --
19 you say, "As Mr. Wathen explains, this Stipulation
20 results in a negligible change to customer rates."
21 Do you see that?

22 A. I do.

23 Q. In whose opinion does it result in a
24 negligible change to customer rates? Your own?

25 A. Mr. Wathen articulates that in his

1 testimony. I would concur with his position that, on
2 average, with all of the benefits reflected in this
3 stipulation, customers will realize an approximate 2-
4 to 3-percent increase in rates. I would say that
5 that is a negligible change to customer rates.

6 Q. Okay. But those rates don't include the
7 cost of every proposal that would be authorized under
8 the settlement, correct? For example, Rider PF's
9 cost is unknown at this point in time.

10 A. Portions of it, that's correct.

11 Q. Okay. We don't know how much the Rider
12 PSR is going to cost at this point in time, correct?

13 A. Or credit back to customers.

14 Q. Okay. So there -- there's no evidence
15 that shows it's only going to be a negligible change
16 to customer rates because we don't know what the
17 customer rates are going to be yet, correct?

18 A. Mr. Wathen has determined -- I mean he
19 has performed an assessment of those rates with the
20 known information we have today.

21 Q. Okay. And there is a lot of information
22 that we don't know today, correct?

23 A. I would not say there is a lot. There is
24 some.

25 Q. Okay. You wouldn't say there is a lot of

1 information about the cost of Rider PSR that we don't
2 know?

3 A. You said there is a lot of information we
4 don't know. We don't know for certain what the costs
5 of rider -- costs -- charges or credits under Rider
6 PSR will be for the next seven years.

7 MR. MICHAEL: If I can just have a
8 moment, your Honor, to consult with my colleagues and
9 I may be done.

10 EXAMINER WALSTRA: Okay. We'll go off
11 the record for a second.

12 (Discussion off the record.)

13 EXAMINER WALSTRA: We'll go back on the
14 record.

15 MR. MICHAEL: Thank you, your Honor.

16 Q. (By Mr. Michael) Ms. Spiller, I wanted to
17 go back to some questions I was asking you about sunk
18 costs and whether or not Duke is asking the
19 Commission for authority to charge customers for sunk
20 costs under Rider PSR. Do you recall that
21 discussion?

22 A. I recall your question.

23 Q. And at that point in time you were asking
24 me to define sunk costs for you, and I referred to
25 Mr. Rose's testimony, and you said you didn't have

1 it, and I moved on from that point in time. So I
2 wanted to define sunk costs for you in my own words
3 and then ask you that question, okay?

4 A. Your words as opposed to Mr. Rose's
5 words?

6 Q. Correct. I will let Mr. Rose speak for
7 Mr. Rose's self.

8 A. Okay.

9 Q. So sunk costs, for the purpose of this
10 question, are costs that have already been incurred
11 as a result of -- are at OVEC. So money that has
12 already been spent at OVEC. Are you with me?

13 A. I'm with you.

14 Q. Okay. And based on that definition, will
15 Duke be asking for authority to recover sunk costs
16 from customers under Rider PSR?

17 A. Mr. Michael, as I shared before, Duke
18 Energy Ohio will be asking to recover the net
19 revenue, so costs minus revenues, and the costs part
20 of that equation would be costs allocated to Duke
21 Energy Ohio under the Inter-Company Power Agreement.
22 That Inter-Company Power Agreement includes a
23 FERC-approved formula rate, if you will, for
24 identifying the costs that are allocated to Duke
25 Energy Ohio.

1 Q. And using my definition of sunk costs,
2 are they included in that formula rate or not?

3 A. I'm not entirely certain because many of
4 the components of the FERC-approved formula rate are
5 reference to the Uniform System of Accounts, and I
6 certainly could not tell you, without research, what
7 certain of these accounts pertain to.

8 Q. So we talked about earlier, Ms. Spiller,
9 the fact that Mr. Rose spent, you know, a not
10 insubstantial amount of time discussing sunk costs in
11 his testimony, correct?

12 A. He did.

13 Q. Okay. Why did Mr. Rose -- who directed
14 Mr. Rose to address that issue?

15 A. Mr. Rose did an analysis and a forecast
16 of the OVEC entitlement.

17 Q. Okay. But he talked about sunk costs in
18 his testimony for some reason and I want to know who
19 at the company told him to do that.

20 MR. D'ASCENZO: I am going to object,
21 your Honor. This is starting to get into privileged
22 and work product information.

23 MR. MICHAEL: I mean, it's part of the
24 man's testimony.

25 EXAMINER WALSTRA: I think if it gets

1 into that territory, Ms. Spiller will let us know.

2 MR. MICHAEL: She is an attorney after
3 all.

4 A. You're asking who informed Mr. Rose or
5 helped inform him in the assumptions that he should
6 use for purposes of his analysis? I am just trying
7 to understand the question.

8 Q. Yes, yes.

9 A. That is attorney-client information.

10 Q. Okay. Ms. Spiller, I mean, maybe I'm
11 making it more difficult, right? Mr. Rose has two
12 different numbers in his testimony, at least, or I
13 should say two different sets of numbers. One is a
14 number that includes sunk costs and how much Rider
15 PSR will cost. Another is a number that includes
16 sunk costs when he says how much PSR will cost.
17 You're familiar with that, correct?

18 A. I am.

19 Q. And what I want to know is Duke asking to
20 collect sunk costs or not. It's not a difficult
21 question. I mean, the public has a right to know
22 what they are going to be charged for, and Duke knows
23 what the answer to that question is, and that's all I
24 want to know. I am not trying to be tricky.

25 A. And I am not trying to be tricky in the

1 answer. The costs that are allocated to the company
2 are those that are a function of the Inter-Company
3 Power Agreement.

4 Q. Okay.

5 A. So I think the question is probably
6 better directed to Mr. Rose in whether or not those
7 costs for investments, previously made, fit within
8 the demand charge.

9 Q. Okay. Well, Mr. Rose is testifying to
10 various forecasts and estimates and economic matters
11 and we'll have plenty of questions for him. But
12 you're the witness sponsoring the settlement. You
13 are an attorney and you are the President of Duke
14 Energy Ohio. Are you able to tell me whether or not
15 Duke is going to seek to recover sunk costs through
16 Rider PSR?

17 MR. D'ASCENZO: Objection, your Honor.
18 This is getting argumentative at this point. It's
19 asked and answered several times now.

20 EXAMINER WALSTRA: Overruled.

21 A. Mr. Michael, if those costs fit within
22 the Inter-Company Power Agreement, then, yes. But,
23 again, there are a Uniform System of Accounts that
24 are defined by account numbers. I don't know what
25 those relate to without a cross-reference to the

1 Uniform System of Accounts. But this is very
2 transparent. The Inter-Company Power Agreement is
3 publicly available. We're not hiding anything from
4 customers. It articulates the FERC-approved formula
5 rate.

6 Q. Okay. And just so I -- and if this is
7 the answer, that's fine, Ms. Spiller. But I am not
8 going to give up because we are talking tens of
9 millions of dollars here. Are you not able to say
10 whether or not Duke Energy Ohio is going to ask the
11 Commission for authority to include sunk costs as
12 part of its recovery under Rider PSR?

13 A. If they are included within the
14 FERC-approved rate, they would be included in the
15 calculation of Rider PSR.

16 Q. And are they included in the
17 FERC-approved rate?

18 A. Again, sir, I can't answer that without a
19 cross-reference to the Uniform System of Accounts.

20 Q. Ms. Spiller, you are aware that under the
21 ICPA, OVEC has foregone recovery of the equity return
22 from the sponsoring companies, correct?

23 A. I'm not aware of that. I know they
24 suspended a dividend.

25 Q. Okay. And is there anything in the

1 settlement that would prevent OVEC from reinstituting
2 the recovery of the equity return that they
3 suspended?

4 A. OVEC is not a party to this stipulation
5 before the Commission, so I would say no.

6 MR. MICHAEL: Your Honor, may I approach
7 the witness?

8 EXAMINER WALSTRA: You may.

9 MR. MICHAEL: I would like to have
10 marked, if we could, your Honor, OCC Exhibit 1.

11 EXAMINER WALSTRA: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. (By Mr. Michael) Ms. Spiller, I've given
14 you what we previously marked as OCC Exhibit 1. And
15 on the cover of that document it says "Annual Report
16 - 2016. Ohio Valley Electric Corporation and
17 Subsidiary Indiana-Kentucky Corporation, correct?

18 A. It does.

19 Q. And have you seen this document before?

20 A. I don't know that I have seen this exact
21 document before, Mr. Michael.

22 Q. And this is the most recent annual report
23 that OVEC has set forth, correct?

24 A. I don't know that to be true.

25 Q. Now, when you say you don't know if

1 you've seen this exact document, what do you mean by
2 that?

3 A. I have seen prior annual reports from
4 OVEC.

5 Q. Okay. And you are not ruling out that
6 you saw the 2016 annual report for OVEC, correct?

7 A. That is correct. I don't recall seeing
8 it.

9 Q. Okay. If I can bring your attention, if
10 I could, Ms. Spiller, to page 9 of that document.
11 And specifically to the paragraph regarding Rate
12 Regulation.

13 A. The two paragraphs?

14 Q. Correct.

15 A. Okay. I'm there.

16 Q. Okay. I am going to read a sentence from
17 that, Ms. Spiller, and please tell me if I read it
18 correctly. "However, during 2014, the Companies
19 began reducing their billings under the ICPA in order
20 to effectively forego recovery of the equity return
21 and to pass only incurred costs on to customers
22 through the ICPA billings." Did I read that
23 correctly?

24 A. You did.

25 Q. Okay. And I believe what is described

1 there is consistent with your prior testimony that --

2 MR. D'ASCENZO: Your Honor, I would like
3 to object. Ms. Spiller said she has -- she's not
4 sure that she's ever seen this document. There's
5 been no authentication that it is what Mr. Michael's
6 is suggesting it is. I would say, your Honor, that
7 qualifies as hearsay and I would object to its use at
8 this point.

9 MR. MICHAEL: Your Honor, first off, Duke
10 is one of the sponsoring companies to OVEC. They are
11 one of the owners of OVEC. We have the president of
12 Duke Energy Ohio here who said that she had seen
13 annual reports put forth by the Ohio Valley Electric
14 Corporation. I believe she did say she couldn't
15 remember if she saw this one specifically, but she
16 did concede she had reviewed annual reports before
17 from OVEC. And as the President of one of the
18 sponsoring companies to OVEC, I think it's perfectly
19 appropriate for inquiry into subject matters stated
20 in the annual report.

21 MR. OLIKER: Your Honor, may I also be
22 heard? If this document is not permitted into
23 evidence, then no documents from OVEC should be
24 admitted into evidence without an OVEC witness
25 testifying. And if you read Mr. Rose's testimony, he

1 relies upon OVEC throughout his testimony and OVEC is
2 not here. So in light of the fairness, I think it's
3 only appropriate this document come in.

4 MR. D'ASCENZO: Your Honor, there is a
5 remarkable difference between trying to admit a
6 document that is purported to be from OVEC versus the
7 testimony of Mr. Rose. Mr. Rose can explain where he
8 received the information that he received and how he
9 relied upon it under cross-examination. That's not
10 what this is. This is a document that is alleged to
11 be the annual report of OVEC who Ms. Spiller has said
12 she doesn't recall if she's ever seen this. She's
13 not an appropriate witness to be cross-examined
14 under -- of this document. It's hearsay.

15 MR. MICHAEL: If we can't ask the
16 President of one of the sponsoring companies about
17 the -- one of the sponsoring companies of OVEC about
18 OVEC's annual report.

19 MR. OLIKER: Your Honor, if I may add,
20 this document is publicly available on OVEC's
21 website. You could also take administrative notice
22 given that the web link is readily available. I am
23 looking at it right now.

24 MR. MENDOZA: Your Honor, I would just
25 add that the company produced portions of that

1 document in discovery, so any aspect of surprise or
2 something to seeing the most recent annual report is
3 not well taken.

4 EXAMINER WALSTRA: I'll overrule the
5 objection. Go ahead.

6 MR. MICHAEL: Thank you, your Honor.
7 After that discussion, may I have the question read
8 back?

9 EXAMINER WALSTRA: I think you were about
10 halfway through.

11 MR. MICHAEL: I was halfway through. He
12 interrupted me? All right.

13 Q. (By Mr. Michael) So I think my question,
14 Ms. Spiller, if I remember, was that the sentence we
15 just read was consistent with your prior testimony
16 regarding the fact that OVEC had foregone charging
17 its sponsoring companies for equity return and that
18 portion that you just read confirms that, correct?

19 A. So you and I had talked about the
20 dividend and what I shared with you was that I was
21 aware of OVEC, which is the companies defined in this
22 annual report, as having suspended the dividend.
23 Your question was about the recovery of the equity
24 return, and you read this statement in their annual
25 report correctly.

1 Q. Okay. And were you aware of the fact
2 that OVEC had effectively foregone recovery of the
3 equity return?

4 A. As I previously said, I was not.

5 Q. Okay. And having read this now, you
6 would agree, Ms. Spiller, that nothing in the
7 settlement would prevent OVEC from reinstituting the
8 recovery of the equity return, correct?

9 A. Again, OVEC is not a party to the
10 stipulation, so that's correct.

11 MR. MICHAEL: Okay. I don't have any
12 further questions, your Honor.

13 Thank you very much, Ms. Spiller.

14 THE WITNESS: Thank you, Mr. Michael.

15 EXAMINER WALSTRA: Thank you.

16 Take a 10-minute recess and come back for
17 redirect.

18 (Recess taken.)

19 EXAMINER WALSTRA: We'll go back on the
20 record.

21 Any redirect?

22 MR. D'ASCENZO: Thank you, your Honor.
23 Just a few questions.

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25

1 REDIRECT EXAMINATION

2 By Mr. D'Ascenzo:

3 Q. Ms. Spiller, do you recall questions
4 about -- and discussion under cross-examination about
5 the suspension of the dividend by OVEC?

6 A. I do.

7 Q. If the dividend were to be reinstituted,
8 can you explain what will happen?

9 MR. MENDOZA: Your Honor, I object to
10 this question. I asked the witness if she had any
11 knowledge of Duke paying dividends and she
12 essentially said she did not. So if the witness
13 doesn't have knowledge, that's fine, but I don't
14 think they get to come in with, you know, facts, if
15 she doesn't have knowledge on this point.

16 MR. D'ASCENZO: Your Honor, this was not
17 in relation to Mr. Mendoza's questioning. This was
18 in relation to some of the questioning that happened
19 with Mr. Michael and about the suspension of OVEC's
20 dividend; not any dividend related to Duke paying a
21 dividend.

22 EXAMINER WALSTRA: Overruled.

23 A. So Duke Energy Ohio is a shareholder in
24 OVEC and would receive a dividend as a shareholder in
25 OVEC. To the extent that OVEC reinstitutes that

1 dividend, it's my belief that that will flow through
2 the Rider PSR as a credit under that rider.

3 Q. Thank you.

4 Can you explain -- there was a lot of I
5 think confusion in the cross-examination about some
6 of the various terms under the ICPA. Can you please
7 explain the difference between an owner and a
8 co-sponsor under the ICPA?

9 A. Sure.

10 Again, as I mentioned, Duke Energy Ohio
11 is a shareholder in OVEC and it's reflected in OCC
12 Exhibit 1. I believe if you look at page 1 of that,
13 it identifies the shareholders of OVEC and their
14 various percentages of equity. So that is one
15 category of entities that has a relationship, if you
16 will, to OVEC.

17 The other group of entities are sponsors.
18 They have a contractual relationship with OVEC under
19 the Inter-Company Power Agreement. Those entities
20 are also identified in OCC Exhibit 1 on page 1 as
21 well as under the Inter-Company Power Agreement.

22 Q. Thank you.

23 And finally, Ms. Spiller, do you recall
24 questions from Mr. Olikier regarding the ability of a
25 co-sponsor to transfer its entitlement to an

1 affiliate?

2 A. I do.

3 Q. And that discussion, I believe, centered
4 around I think it was a Section 9 of ICPA. You had
5 mentioned that there were other provisions in the
6 ICPA that also addressed it. Could you explain where
7 those are?

8 A. Yes. And I may have contributed to the
9 confusion as to entities and how they are defined
10 under the Inter-Company Power Agreement. Mr. Olikier
11 and I were talking about transfer from a co-sponsor
12 to an affiliate and referenced the definition in the
13 definition section. We need to go further in the
14 definition section to that of a permitted assignee
15 and that is a definition that speaks to the transfer
16 between a co-sponsor and its affiliate.

17 Q. Can you explain how that works under the
18 ICPA?

19 A. Sure.

20 If you look at the definition, and
21 talking again about a transfer between the co-sponsor
22 and its affiliate as defined under the Inter-Company
23 Power Agreement, the sponsoring company can transfer
24 to that permitted assignee if they have the requisite
25 credit rating. If they do not have that requisite

1 credit rating, then the transferor co-sponsor would
2 have to agree to guarantee all of the obligations
3 under that Inter-Company Power Agreement. And,
4 again, you would still need the permission from OVEC
5 or its counsel.

6 Q. So just to make sure it's clear, if under
7 the hypothetical that Mr. Olikier had proposed that
8 whether Duke Ohio could transfer its entitlement to
9 an affiliate, who would have to be the guarantor of
10 that obligation?

11 A. If the permitted assignee does not have
12 the requisite credit rating, the transferor, i.e.
13 Duke Energy Ohio, would have to assume that that --
14 that guarantee for all of the responsibilities and
15 obligations for the duration of the Inter-Company
16 Power Agreement.

17 MR. D'ASCENZO: Thank you. No further
18 questions.

19 EXAMINER WALSTRA: Thank you.

20 Any additional cross going down the line?
21 Mr. Olikier?

22 MR. OLIKER: Just a few questions, your
23 Honor.

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RECROSS-EXAMINATION

By Mr. Oliker:

Q. Ms. Spiller, to follow-up on Mr. D'Ascenzo's questions, would you agree that Duke did not create an affiliate with the requisite credit rating and then seek to transfer the OVEC interest to that affiliate?

A. Duke Energy Ohio sought to transfer the ICPA to an existing affiliate.

Q. And am I correct that Duke never attempted to transfer its interest in the ICPA to an affiliate with the requisite credit rating?

A. To my knowledge, and again, Joe, I think I shared I can't go back since the inception of the contract, but in more recent history, they did not attempt to -- they attempted to transfer to one affiliate and it did not have the requisite credit rating.

Q. Would you agree that Duke could have created such an affiliate at the time of the transfer of its assets to Dynegy?

A. I don't know how Duke would create an affiliate that has the sufficient or the requisite credit ratings. That's well beyond my bailiwick.

Q. Do you remember the purchase price for

1 the Duke Energy assets that were transferred to
2 Dynegy?

3 MR. D'ASCENZO: Objection, your Honor.
4 This is beyond the scope of redirect at this point.

5 A. I don't know the transfer price and that
6 would certainly be confidential information.

7 MR. OLIKER: Okay. Well, she answered my
8 question. Those are all the questions I have, your
9 Honors. Thank you, Ms. Spiller.

10 EXAMINER WALSTRA: Thank you.

11 Mr. Michael?

12 MR. MICHAEL: No, your Honor.

13 EXAMINER WALSTRA: Thank you,
14 Ms. Spiller.

15 THE WITNESS: Thank you, your Honor.

16 EXAMINER WALSTRA: Further motions?

17 MR. D'ASCENZO: Yes, your Honor. We
18 would like to move Duke Energy Ohio Exhibits 1, 2, 3,
19 4, 5, 6, and 7 into the record at this point.

20 EXAMINER WALSTRA: Okay. Any objections?

21 MR. MICHAEL: We would object, your
22 Honor, just reiterating our motions to strike.

23 EXAMINER WALSTRA: Noted. They will be
24 admitted.

25 MR. D'ASCENZO: Thank you, your Honor.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 MR. OLIKER: Rocco, could I hear the
3 exhibit list again?

4 MR. D'ASCENZO: Do you want what each one
5 is?

6 MR. OLIKER: Just the number.

7 MR. D'ASCENZO: Okay. 1 through 7.

8 MR. OLIKER: Oh, 1 through 7.

9 MR. D'ASCENZO: Yes.

10 MR. OLIKER: I thought you skipped some.

11 EXAMINER WALSTRA: Do you want to move
12 yours?

13 MR. OLIKER: Thank you, your Honor. IGS
14 would move into the record IGS Exhibit 1.

15 EXAMINER WALSTRA: Any objections?

16 MR. D'ASCENZO: No, your Honor.

17 EXAMINER WALSTRA: It will be admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER WALSTRA: And OCC?

20 MR. MICHAEL: We move OCC Exhibit 1, your
21 Honor.

22 EXAMINER WALSTRA: Any objections?

23 MR. D'ASCENZO: Subject to the prior
24 objection that I made, your Honor.

25 EXAMINER WALSTRA: Okay. Understood.

1 But I will admit that. I think it is a
2 publicly-available document. Even in her redirect
3 she was referencing the document, so I will allow it.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER WALSTRA: I think that is
6 everything.

7 MR. DOVE: We would have a limiting
8 objection since they were allowed in for the purposes
9 of them being a summary, that's all they could be
10 used for going forward.

11 EXAMINER WALSTRA: We can address it as
12 it comes up going forward with other witnesses.

13 MR. DOVE: Correct. I am asking about
14 the testimony that we're letting in now.

15 EXAMINER WALSTRA: Right. The Henning
16 testimony you are referencing?

17 MR. DOVE: Uh-huh.

18 MR. D'ASCENZO: Your Honor, it's already
19 been admitted at this point.

20 EXAMINER WALSTRA: Right. It's part of
21 the record. I mean, if there is other -- I realize I
22 am allowing it in as a summary. But if we -- if
23 other witnesses come up that that ruling further
24 applies to, we can address it with those witnesses.

25 Call your next witness.

1 MR. D'ASCENZO: Can we go off the record
2 for just a moment?

3 EXAMINER WALSTRA: Sure.

4 (Discussion off the record.)

5 EXAMINER WALSTRA: We'll go back on the
6 record.

7 Call your witness.

8 MR. D'ASCENZO: Thank you, your Honor.
9 For its next witness, Duke Energy Ohio calls Judah
10 Rose. Your Honor, may we also approach with
11 documents?

12 EXAMINER WALSTRA: You may.

13 (Witness sworn.)

14 EXAMINER WALSTRA: I know you are about
15 to address this, but is this the updated versions?

16 MR. D'ASCENZO: It should -- those are
17 with the corrected redactions, your Honor?

18 EXAMINER WALSTRA: Correct, yeah.

19 MR. D'ASCENZO: They are not.

20 EXAMINER WALSTRA: Okay. Okay. Whenever
21 you are ready.

22 MR. D'ASCENZO: Your Honor, for purposes
23 of the record, we would like to mark as Duke Energy
24 Ohio Exhibit No. 8, the public supplemental testimony
25 of Judah Rose.

1 EXAMINER WALSTRA: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. D'ASCENZO: As Duke Energy Ohio
4 Exhibit 8A, the confidential version of Mr. Rose's
5 testimony.

6 EXAMINER WALSTRA: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. D'ASCENZO: His supplemental
9 testimony, that is.

10 As Duke Energy Ohio Exhibit 9, his public
11 direct testimony filed on March 31, 2017. And as
12 Duke Energy Ohio Exhibit 9A, the confidential version
13 of Mr. Rose's direct testimony filed on March 31,
14 2017.

15 EXAMINER WALSTRA: So marked.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 MR. D'ASCENZO: Thank you.

18 EXAMINER WALSTRA: Whenever you are
19 ready.

20 MR. D'ASCENZO: Again, for clarity of the
21 record, the company has agreed that as part of
22 Mr. Rose's supplemental testimony, that the exhibits
23 on page 20 of his testimony, Exhibits 1 and 2, would
24 be released and made public and the company will file
25 corrected versions of those pages into the record.

1 EXAMINER WALSTRA: Thank you. You said
2 that is on page 20?

3 MR. D'ASCENZO: Yes, of his supplemental
4 testimony, Exhibits 1 and 2, the tables that are
5 included there. There's some information under the
6 tables that will remain confidential, the tables
7 themselves.

8 EXAMINER WALSTRA: Thank you.

9 - - -

10 JUDAH L. ROSE

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

13 DIRECT EXAMINATION

14 By Mr. D'Ascenzo:

15 Q. Okay. Good afternoon, Mr. Rose.

16 A. Good afternoon.

17 Q. Do you have in front of you what was just
18 marked as Duke Energy Ohio Exhibits 8, 8A, 9, and 9A?

19 A. I think I just have the 8s and I am not
20 sure if I have the As. The 8 and the 9. I am not
21 sure about the As.

22 Q. One moment. We'll get those to you.

23 A. I have all four testimonies right now.

24 Q. Thank you.

25 And could you please identify those

1 documents?

2 A. They are the confidential and public
3 versions of my direct and supplemental testimony.

4 Q. And do you have any changes or
5 corrections to those?

6 A. No.

7 Q. And for purposes of the record, Mr. Rose,
8 would you please state your name, business address,
9 and position with ICF for the record?

10 A. Yes. My name is Judah L. Rose. My
11 business address is ICF, 9300 Lee Highway, Fairfax,
12 Virginia 22031; and I'm currently Executive Director
13 and Chair of the Energy Advisory Practice.

14 Q. And, again, do you have any changes or
15 corrections to either your direct or supplemental
16 testimony?

17 A. No.

18 MR. D'ASCENZO: Thank you, Mr. Rose.

19 Your Honor, the witness is available for
20 cross-examination.

21 EXAMINER WALSTRA: Thank you.

22 Unless there is a predetermined order --

23 MR. MENDOZA: Your Honor, I have some
24 motions to strike.

25 EXAMINER WALSTRA: Okay.

1 MR. MENDOZA: I would like to move to
2 strike all of the numerical projections that Mr. Rose
3 made that exclude what he calls "sunk costs." Those
4 projections are irrelevant to this proceeding. Duke
5 is seeking recovery of all OVEC costs. The existence
6 of these sunk cost projections confuses the issues in
7 this case. In fact, the testimony of this last -- of
8 the last witness went on for a long time because we
9 had to discuss what costs Duke was seeking in this
10 case. I think it's misleading to leave -- to leave
11 these numbers in the case because they have no
12 relevance. And if I can -- the particular exhibits
13 are Exhibit 1, Exhibit 38, Exhibit 39, the last
14 column, and Exhibit 40.

15 MR. OLIKER: Your Honor, IGS would join
16 in the motion as well, the same motions.

17 MS. FLEISHER: As will the ELPC.

18 MR. DOVE: And NRDC.

19 EXAMINER WALSTRA: Noted.

20 MR. HEALEY: OCC too.

21 MR. WHITT: And RESA won't be the only
22 one not objecting.

23 MS. LEPPLA: OEC and EDF as well.

24 MR. MENDOZA: And, your Honor, I would
25 just add, this issue, if you don't address this at

1 the outset, this issue is going to come up in
2 briefing, we're going to have to explain why those
3 forecasts are irrelevant, which they are. We are
4 going to spend a lot of time talking about them
5 today. This case would go a lot faster if we could
6 limit Mr. Rose's testimony to the relevant issues.

7 EXAMINER WALSTRA: Thank you.

8 Duke?

9 MR. D'ASCENZO: Your Honor, Mr. Rose
10 explains in his testimony why he did the analysis
11 that he did. Why he has an analysis for both the
12 sunk costs as well as -- including the sunk costs as
13 well as on the cash going-forward basis. It's a
14 standard analysis that's performed in the industry
15 regarding the -- without getting into confidential
16 information -- the business decisions on the
17 continued operation of generating assets. The
18 parties are -- have had this information for several
19 weeks, and with respect to his direct testimony more
20 than a year now, and are free to cross-examine him on
21 why he did the analysis and make their case in brief
22 why the Commission should or should not evaluate it.

23 MR. MENDOZA: Your Honor, if I may. I
24 would just observe that Counsel for the company did
25 not offer a reason why those forecasts are relevant

1 to any issue in this proceeding or a response to my
2 concern that it just confuses the issue, and evidence
3 for that confusion can be found in the testimony of
4 Ms. Spiller where we talked about this -- the, you
5 know, what was relevant, what was not, for a long
6 time.

7 MR. D'ASCENZO: Again, your Honor,
8 Mr. Rose's testimony explains why he did the analysis
9 that did he and why it's relevant.

10 EXAMINER WALSTRA: I am going to deny the
11 motion to strike. The Commission can weigh the
12 evidence and decide whether the information is
13 valuable or not going forward.

14 MR. MENDOZA: Okay. Thank you, your
15 Honor.

16 My second motion to strike involves a
17 couple of lines of text on line 17 and line 18.
18 Specifically, the sentence that says.

19 MR. D'ASCENZO: I am sorry to interrupt,
20 Tony. Which page and which testimony?

21 MR. MENDOZA: Oh, I'm sorry. The
22 supplemental testimony.

23 EXAMINER WALSTRA: Actually, could we go
24 off the record for a second for the court reporters
25 to fix some stuff.

1 (Discussion off the record.)

2 EXAMINER WALSTRA: We'll go back on the
3 record.

4 Mr. Mendoza, could you repeat the
5 question?

6 MR. MENDOZA: Your Honor, I move to
7 strike the sentence that begins on line 21 of page
8 17, "Finally, it is my understanding that most
9 decisions and changes to the contract require,"
10 continuing on to the next page, 18, line 1,
11 "unanimous consent." That sentence is a legal
12 conclusion. If Duke wishes to brief that issue, they
13 are able to do that. Mr. Rose is not a lawyer and
14 should not be offering his contract interpretation in
15 this setting, his policy backed testimony.

16 MR. D'ASCENZO: Your Honor, he's -- while
17 the company admits Mr. Rose is not an attorney, he
18 has, as he stated, although he has not conducted a
19 detailed history of the contract, he is aware of
20 various provisions and has reviewed, and he's just
21 saying what his lay understanding of the contract
22 states with respect to decisions and changes to the
23 contract. The Commission can weigh Mr. Rose's
24 statement as a lay witness in his interpretation and
25 give it the appropriate weight.

1 EXAMINER WALSTRA: I agree. I am going
2 to deny the motion. He is not making a conclusion.
3 He is just giving his understanding.

4 MR. MENDOZA: Thank you, your Honor.

5 EXAMINER WALSTRA: Any other motions to
6 strike?

7 MR. HEALEY: Yes, your Honor. OCC has
8 some.

9 EXAMINER WALSTRA: All right.

10 MR. HEALEY: First one is in the
11 supplemental testimony starting on page -- page 16,
12 line 21, the first full sentence on line 21 that
13 starts "I note that" and continuing through page 17,
14 line 17, the end of that paragraph. In this portion
15 of Mr. Rose's testimony, he speculates on various
16 justifications for Duke charging customers for sunk
17 costs under Rider PSR, but he says multiple times
18 throughout his testimony, including page 5, lines 2
19 to 3; page 17, line 19 to 20; and page 79, line 4 to
20 of 6, that he is not rendering any opinion on this
21 issue and is deferring to the Commission. So his
22 musing on what the Commission might or might not
23 consider in this regard are irrelevant to his expert
24 testimony given that he repeatedly says that he is
25 not providing any expert testimony on this issue.

1 Those statements, therefore, are irrelevant under
2 Rule of Evidence 401 and inadmissible under 402.

3 MR. MENDOZA: If I may, your Honor, I
4 would join that motion for the same reasons as my
5 first motion about sunk costs. It confuses the
6 issue, it's irrelevant, and there seems to be some --
7 I don't know if it's intentional attempt but there's
8 a lot of commentary in the testimony of these
9 witnesses that does not address relevant issues, and
10 it would be helpful to keep this record clean.

11 EXAMINER WALSTRA: Duke?

12 MR. D'ASCENZO: So the question, your
13 Honor, is the relevancy as pointed out by Mr. Healey.
14 Mr. Rose's testimony here is putting his -- the
15 provision -- the provisions at issue here are putting
16 Mr. Rose's testimony into context. He is stating
17 what his understanding is which is what was the basis
18 of his opinion. Although he's -- he does say that
19 he's not rendering a specific recommendation to the
20 Commission along these certain specific issues, this
21 is the foundation of -- of his understanding of the
22 contract and which -- which is what was the basis of
23 his analysis and final recommendations with respect
24 to the forecast. So, again, I believe it is relevant
25 and should be admitted and kept in his testimony.

1 MR. HEALEY: Your Honor, if I may respond
2 to that? The basis for his recommendations are
3 future price projections. This is historical
4 information about what may or may not have happened
5 in the past regarding the OVEC plants. They do not
6 in any way form the basis for his conclusions
7 regarding whether the OVEC plants should or should
8 not continue to operate. Those are based solely on
9 his other testimony, his projections, and the other
10 100 pages of his testimony that get into those
11 issues.

12 Those do not in any way rely on those
13 statements regarding the history of OVEC, whether it
14 was used in the 1950s for one purpose or another. So
15 Mr. D'Ascenzo's assertion that these form the basis
16 or in any way relate to his price projections and his
17 ultimate conclusions is not accurate.

18 EXAMINER WALSTRA: I am going to deny the
19 motion. The Commission can give the proper relevancy
20 when it weighs the testimony. It seems -- on quick
21 reading it is more context than anything.

22 MR. D'ASCENZO: Thank you, your Honor.

23 MR. HEALEY: Your Honor, I would also
24 move to strike Exhibits 9 and 9A, the direct public
25 and confidential versions of Mr. Rose's testimony in

1 their entirety.

2 MR. D'ASCENZO: I'm sorry, which?

3 MR. HEALEY: 9 and 9A.

4 MR. D'ASCENZO: Of the direct?

5 MR. HEALEY: Exhibits 9 and 9A which are
6 Mr. Rose's direct public and direct confidential
7 testimony.

8 EXAMINER WALSTRA: What pages was that?

9 MR. HEALEY: I am moving to strike them
10 in their entirety.

11 EXAMINER WALSTRA: What pages?

12 MR. HEALEY: All of the pages of Exhibit
13 9 and Exhibit 9A.

14 MR. D'ASCENZO: Sorry. There was a
15 little confusion because Mr. Rose refers to some of
16 his tables as exhibits.

17 MR. HEALEY: Okay. I'm sorry. I'm
18 moving to strike Mr. Rose's direct testimony and his
19 direct -- both the public and the confidential
20 versions, the entirety of those two pieces of
21 testimony which have been marked as Duke Exhibits 9
22 and 9A.

23 The basis for this objection is that
24 Mr. Rose has filed new testimony which replaces his
25 old testimony. Much of the testimony in the new --

1 in the new version is a substitute for his old
2 projections. He had an opportunity to file testimony
3 in support of the stipulation, and he took that
4 opportunity.

5 To the extent there was anything in his
6 old testimony that needed to be repeated, it was
7 repeat many times over. We already have lengthy
8 testimony from Mr. Rose here, I believe, of 100 some
9 odd pages. To double up on that would be consistent
10 with Mr. Mendoza's concern that we are unnecessarily
11 adding to the already voluminous record of these 10
12 consolidated cases, and we should focus on his
13 supplemental testimony which is the testimony that
14 supports the stipulation that's being considered by
15 the Commission in this case.

16 MR. D'ASCENZO: Thank you, your Honor.
17 First, I would quibble with Mr. Rose's supplemental
18 testimony being hundreds of pages. That's just not
19 an accurate assessment.

20 Second, Mr. Rose's supplemental testimony
21 refers back to his direct testimony that was filed,
22 particularly with respect to how his modeling works,
23 the cases that he used. His supplemental testimony
24 is that. It's supplemental to what he filed on
25 direct and refers back to and explains how his

1 modeling -- his proprietary modeling functions work.

2 So to exclude his direct testimony would
3 exclude a -- a very beneficial piece of information
4 for the Commission and for the parties regarding how
5 Mr. Rose actually performed his analysis. His
6 supplemental testimony merely says in many regards,
7 although he updates the numbers, that he used the
8 same methodologies that were described in his direct
9 testimony.

10 And, again, going back to your Honor's
11 original order with respect to the purpose of this
12 case on settlement, it is for information that is
13 compatible with the stipulation. Mr. Rose's
14 supplemental testimony is compatible with the
15 stipulation. Because his supplemental testimony
16 refers back to the direct and underlying modeling
17 that he performed, that is also compatible.

18 EXAMINER WALSTRA: Yeah. I am going to
19 deny this motion as well. I think there is some
20 relevancy, and it references back. The Commission,
21 as much as I don't want to sort through an extra 150
22 some pages, I do think there is some relevancy here.

23 MR. HEALEY: Thank you, your Honor.
24 That's all I have.

25 EXAMINER WALSTRA: We will go off the

1 record again.

2 (Discussion off the record.)

3 EXAMINER WALSTRA: We will go back on the
4 record.

5 Where were we? We have motions to
6 strike? Finished with motions to strike? Do you
7 have more? Are you good?

8 MR. HEALEY: No more from OCC.

9 EXAMINER WALSTRA: Okay.

10 Cross-examination. Mr. Dove?

11 MR. DOVE: Nothing at this time.

12 MR. MENDOZA: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Mendoza:

16 Q. Good afternoon, Mr. Rose.

17 A. Good afternoon.

18 Q. Your testimony provides economic
19 forecasts for the Ohio Valley Electric Corporation,
20 right?

21 A. Yes. In particular for the two power
22 plants, Clifty and Kyger Creek.

23 Q. And the time period for the projections
24 and your supplemental testimony is May -- excuse me,
25 January 1, 2018, to May 31, 2025, right?

1 A. Yes, I report results for those periods.
2 Any analysis thereafter is only in support of the
3 analysis through May 31.

4 Q. And that time -- that time period is the
5 same time period as Duke's proposed price
6 stabilization rider; is that right?

7 A. Yes, that's my understanding.

8 Q. And your overall conclusion in your base
9 case in your supplemental testimony is that Duke will
10 lose \$77 million on its share of OVEC during that
11 forecast period, right?

12 A. That is one of my conclusions. There are
13 others. But that is a conclusion related to my
14 analysis versus using the EIA case and including all
15 of the demand charges.

16 Q. Okay. Let's put aside the EIA case for
17 now. So your base case conclusion is that Duke will
18 lose -- Duke now or Duke's customers, if the rider is
19 approved, would lose \$77 million, right?

20 A. Yes, with the inclusion of all demand
21 charges. As we discussed already today, I have two
22 sets of numbers for each case.

23 Q. And your supplemental testimony you -- in
24 your supplemental testimony you also evaluate a case
25 that relied on the Annual Energy Outlook 2018

1 reference case gas forecasts; isn't that right?

2 A. Yes, that's correct.

3 Q. And that forecast -- forecast shows that
4 Duke or Duke's customers, if the rider were approved,
5 would lose \$62 million; is that right?

6 A. Yes, with a full inclusion of all the
7 demand charges. It's a second -- second result
8 relative to the four that I provide.

9 MR. MENDOZA: And, your Honor, I move to
10 strike everything after "yes."

11 EXAMINER WALSTRA: Overruled or denied.

12 Q. (By Mr. Mendoza) You relied on OVEC's own
13 projections for OVEC's costs, right?

14 A. Yes, I did.

15 Q. And you projected capacity factors for
16 each of the OVEC plants, right?

17 A. Yes, I did.

18 Q. And you relied on OVEC's data for
19 plant-wide availability, right?

20 A. Yes.

21 Q. And you relied on OVEC's data for
22 plant-wide forced outage rates, right?

23 A. Yes.

24 Q. And you did not create a capacity factor
25 projection for each of the 11 units, right?

1 A. There was some differentiation between
2 Clifty and Kyger and between some of the units, but
3 it wasn't significant and so I just reported the
4 capacity factors for Clifty and Kyger which are
5 different, albeit within I believe 2 or 3 percent on
6 average.

7 Q. So there was one capacity factor
8 projection for Clifty and then another separate one
9 for Kyger; is that right?

10 A. Yes. In my testimony I just -- this
11 came -- there is a detailed analysis that goes to the
12 unit level, some of the units are treated
13 differently, but I don't think it's a significant
14 factor.

15 Q. And where could I find that detailed
16 analysis of the different units?

17 A. I'm not sure, because I didn't consider
18 it significant, whether you could find it in any of
19 the materials I provided. You might have to go into
20 the input set of the PROMOD model which I used, was
21 one of the two models I used.

22 Q. And just to be clear, even though Sierra
23 Club asked for your capacity factor projections,
24 there's no -- no unit-by-unit projections were
25 produced in this case; isn't that right?

1 A. That's correct. I don't believe that
2 there are significant differences, but I just wanted
3 the record to be 100-percent clear.

4 Q. Okay. And the OVEC plants came into
5 operation in the 1950s, right?

6 A. Yes, that's correct.

7 Q. And Kyger Creek is the oldest
8 still-operating generating -- generating plant in
9 Ohio, right?

10 A. I don't know that to be true. It
11 certainly is an old, highly-refurbished power plant,
12 but an old plant.

13 Q. Can you think of any plant that's still
14 operating that was built in the 1950s?

15 A. There -- I have looked at this issue and
16 I believe that there are some. As to whether there
17 are still any in Ohio, I can't say. I don't mean to
18 be argumentative. This is an old power plant but a
19 highly-refurbished plant.

20 Q. And Clifty Creek is the oldest
21 still-operating plant in Indiana, right?

22 A. I have the same answer.

23 Q. You don't know?

24 A. It's an old -- definitely an old power
25 plant, highly-refurbished and, you know, I just don't

1 recall all the start dates of all the units that are
2 still on line.

3 Q. And all else equal, old plants break down
4 more than new plants, right?

5 A. Yes, if that's the only issue, but as I
6 indicated, you have to look at the specific
7 circumstances, including the annual capital
8 investments, the various different refurbishments,
9 and also the fact that because there are so many
10 units, it actually increases the reliability. But
11 all else equal, I would agree with that.

12 Q. And you did not quantify a hedge value
13 for the OVEC contract, right?

14 A. I did not provide a specific quantity. I
15 asserted that there is a value. I also asserted that
16 it's not feasible to estimate a precise value.

17 MR. MENDOZA: Your Honor, I move to
18 strike everything after "I did not provide a specific
19 quantity."

20 EXAMINER WALSTRA: I am going to deny the
21 motion.

22 MR. MENDOZA: Okay.

23 Q. (By Mr. Mendoza) Your testimony addresses
24 annual price stability; is that right?

25 A. Yes, it's close. It's addressing the

1 issue of relative volatility and I am using annual
2 statistics.

3 Q. And you didn't look at monthly OVEC cost
4 projections, right?

5 A. No. I concentrated on annual PROMOD --

6 Q. And you didn't --

7 A. -- data.

8 Q. I apologize, Mr. Rose. Did you finish
9 your answer?

10 A. Yes.

11 Q. And you didn't project monthly wholesale
12 power prices, right?

13 A. I did project monthly wholesale power
14 prices, but I did not report them, and I used the
15 PROMOD model which is operating on a monthly basis.

16 MR. MENDOZA: Your Honors, may we
17 approach?

18 EXAMINER WALSTRA: You may.

19 MR. MENDOZA: Your Honors, I would like
20 to mark these documents as Sierra Club Exhibits 1 and
21 2. I think the document that begins with "Expert
22 Declaration" I propose to mark as Sierra Club Exhibit
23 1, and the document beginning with "Motion" as Sierra
24 Club Exhibit 2.

25 EXAMINER WALSTRA: So marked.

1 (EXHIBITS MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Mendoza) Mr. Rose, if you need
3 more time, let me know, but I was going to ask you if
4 you -- did you provide a declaration in Federal
5 Bankruptcy Court on behalf of FirstEnergy Solutions?

6 A. I did.

7 Q. And does that -- does this seem to be a
8 copy of that motion -- excuse me -- of that
9 declaration?

10 A. Yes.

11 Q. And in support of that -- and in support
12 of that declaration, you performed economic forecasts
13 of the Ohio Valley Electric Corporation; isn't that
14 right?

15 A. Yes.

16 Q. And you have personal knowledge of the
17 statements in the declaration, Mr. Rose?

18 A. Yes.

19 Q. And FES filed a motion in bankruptcy
20 court that referred to your projections; isn't that
21 right?

22 A. Yes.

23 Q. And does Sierra Club Exhibit 2 look like
24 an accurate copy of that motion?

25 A. It does.

1 Q. Okay. And would you turn with me to page
2 30 -- excuse me, paragraph 32 of the motion which is
3 on page 12 of the motion. When FES says that the
4 rejection of the OVEC contract will eliminate a \$268
5 million loss, FES is referring to your forecast,
6 right?

7 A. Yes, from 2018 to 2040 so it's a 22-year
8 number.

9 Q. Right. And when FES says the rejection
10 of the OVEC contract will eliminate a loss of 12
11 million on an annual average basis, FES is referring
12 to your forecast, right?

13 A. Yes, although it says approximately, but
14 that's correct.

15 Q. And do you have a calculator on your
16 phone, Mr. Rose?

17 A. I do. I don't have my phone with me,
18 however.

19 MR. MENDOZA: Your Honor, may I approach?

20 EXAMINER WALSTRA: You may.

21 MR. MENDOZA: Okay. Thank you.

22 Q. I want to convert that 12 million figure
23 into a -- into a number that's relevant for this
24 case. And so I would ask you to multiply 12 times 9
25 and divide by 4.85 and see what the number is.

1 A. Divided by what?

2 Q. It's 12 million times 9 which is the Duke
3 share of OVEC divided by 4.85 which is the FES share
4 of OVEC.

5 A. I have performed that calculation.

6 Q. And what number did you get?

7 A. I got approximately \$22 million.

8 Q. Okay. Thank you. And let's do the
9 same -- granting that -- well, I was going to say
10 let's do the same thing for the 268 million figure,
11 but since the time period isn't the same, I don't
12 think that would be helpful, actually.

13 A. I agree it would be incorrect.

14 Q. We agree. Let's look at paragraph 14 of
15 the declaration. I'm sorry I am making you flip a
16 little bit here.

17 A. Did you say page 14?

18 Q. I'm sorry, paragraph 14 of the
19 declaration. In paragraph 14 of the declaration do
20 you see a sentence that says "I have also examined
21 sensitivity cases and all cases show high estimated
22 damages"?

23 A. Hold on. I got confused between the
24 documents. Yes, I see that.

25 Q. And is that statement accurate with

1 respect to the OVEC contract?

2 A. I don't have the numbers in front of me.
3 Overall the analysis did show damages or losses in
4 the cases for OVEC.

5 Q. Okay.

6 A. The exact amount I don't remember.

7 Q. Thank you, Mr. Rose. I'm sorry for
8 interrupting you there. One last question on this
9 topic, and I am sorry I am making you flip. But
10 would you go back to the motion on page 9, paragraph
11 26. And do you see the statement under the OVEC --

12 A. Hold on.

13 Q. I'm sorry.

14 A. Page 9, paragraph 26.

15 Q. That's right, of the motion.

16 A. I see paragraph 26.

17 Q. Okay. And do you see the third line in
18 paragraph 26 where there is the statement that "the
19 Debtors are today paying more than double the market
20 value of capacity and power"?

21 MR. D'ASCENZO: I am going to object,
22 your Honor. This is not -- he's referring to the
23 motion and that's FirstEnergy's statement. That's
24 not Mr. Rose's statement. In that regard it is
25 absolutely hearsay. They are asking Mr. Rose to

1 verify a statement that FirstEnergy Solutions made.

2 It's not a statement that he directly made.

3 MR. MENDOZA: Your Honor, I think this
4 could be cleared up after my question.

5 EXAMINER WALSTRA: All right. I will let
6 you finish the question.

7 Q. Mr. Rose, is it your understanding that
8 FirstEnergy Solutions was referring to your -- your
9 projections in support of that statement?

10 A. No. It was referring to Mr. Warvell's.

11 MR. MENDOZA: Okay. Thank you, Mr. Rose.
12 Your Honor, I have no further public
13 questions. I have a few for the confidential
14 session.

15 EXAMINER WALSTRA: Thank you.

16 Ms. Fleisher, any questions?

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Fleisher:

20 Q. Mr. Rose, is it working? Okay. That's
21 not working.

22 Just one question. Can you go back to
23 paragraph 14 on the declaration document that
24 Mr. Mendoza provided. And with respect to the
25 reference to "sensitivity cases," can you just

1 explain what is a sensitivity case?

2 A. Yes. So the sensitivity case refers to a
3 variation in the input set which either could be a --
4 in this particular case a plant parameter or a market
5 parameter. And, for example, the company gave me
6 different plant parameters that I received in this
7 case. So it can be involving variations in either
8 the market or plant parameters.

9 MS. FLEISHER: Thank you. That's all I
10 had.

11 EXAMINER WALSTRA: Thank you.

12 Mr. Whitt?

13 MR. WHITT: Your Honor, I think that IGS
14 is probably going to ask the same questions I would.
15 And to move things along, I am happy to defer to IGS.
16 It may very well eliminate my need for any questions,
17 if that's okay.

18 EXAMINER WALSTRA: That's okay with me.

19 MR. OLIKER: Thank you, Mr. Whitt, and
20 thank you, your Honors.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Olikar:

24 Q. Good afternoon, Mr. Rose.

25 A. Good afternoon, Mr. Olikar.

1 Q. To refer to some earlier questioning
2 turning to paragraph 13 of the declaration in the FES
3 bankruptcy, am I correct that you reviewed and relied
4 upon the declaration of Kevin Warvell in your
5 testimony in the FES bankruptcy case?

6 A. Yes, I did in certain areas, yes. For
7 example, his assertions with respect to what the
8 business his company was and how the power supplies
9 of various different contracts related to that.

10 MR. OLIKER: Your Honor, may I approach,
11 please?

12 EXAMINER WALSTRA: You may.

13 Q. (By Mr. Olikier) Mr. Rose, is the document
14 I placed in front of you the declaration of Kevin
15 Warvell in the FES bankruptcy case that you
16 previously referred to?

17 A. Yes.

18 MR. OLIKER: Your Honor, I would like to
19 mark that document as IGS Exhibit 2.

20 EXAMINER WALSTRA: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Mr. Olikier) And to be clear, this is
23 the document that you referred to in paragraph 13 of
24 your declaration in the FES bankruptcy case, correct?

25 A. Yes.

1 Q. And am I correct that if you look at
2 paragraph 18, Mr. Warvell refers to ICF calculating
3 that FirstEnergy Generation to be 268 million on the
4 non-discounted basis if FirstEnergy Generation is
5 required to perform under the OVEC ICPA?

6 A. I see that.

7 Q. And that reference was regarding
8 information that you provided to Mr. Warvell,
9 correct?

10 A. Yes, for the full extent of the contract
11 out to 2040, as we discussed, including very
12 different market conditions in the future than the
13 period of time I'm examining in this case.

14 Q. Okay. And to be clear from a
15 conversation you had with Mr. Mendoza earlier, you
16 would agree that FES owns just over half as much of
17 the OVEC generation as Duke Energy Ohio?

18 A. Yes. But, you know, it's not everything
19 else being equal. There's other things that are
20 going on but the ownership shares are as described.

21 Q. Mr. Rose, am I correct that you have
22 submitted two pieces of testimony in this case to
23 date?

24 A. Yes, direct and supplemental.

25 Q. And the direct testimony was filed around

1 March 31, 2017?

2 A. Yes.

3 Q. Could you identify when that testimony
4 was completed?

5 A. The actual testimony was completed prior
6 to that, but it reflected work that was initiated in
7 2016, and I don't have the exact date. It depends on
8 what section the calculations were finished in early
9 2017.

10 Q. And would you agree that you filed an
11 errata to your testimony around July 24, 2017?

12 A. Yes.

13 Q. And the purpose of the errata was to
14 update some of your calculations, correct?

15 A. I would say no. What it was is that the
16 actual numbers didn't change but the reporting and
17 the testimony that was an error. There was a
18 transposition of some of the columns in one of the
19 spreadsheets -- or more than one of the spreadsheets,
20 and so it was fixing an error but not updating the
21 numbers.

22 Q. Now, turning back to your declaration in
23 the FES bankruptcy court, would you agree at
24 paragraph 6 in the last sentence it says the "ICF
25 performed an initial analysis of the Executory PPAs

1 in mid-2017"?

2 A. Yes.

3 Q. And I'm sorry to jump around, but coming
4 back to the two pieces of testimony that you filed in
5 this proceeding, am I correct that you are no longer
6 relying upon the forecasts that were included in your
7 initially filed testimony?

8 A. I'm not relying on them to the extent
9 that they're being replaced with the supplemental
10 testimony which refers to the revised base case that
11 I did. Other than that I can't -- you have to be
12 specific. If you have a reference, I'll discuss it.

13 Q. Just so that I'm clear, Mr. Rose, you are
14 not relying upon the forecasts contained in your
15 initially filed testimony, correct?

16 A. I'm not relying on them to the extent
17 that it involves the base case. I've revised the
18 base case. However, I have some sensitivity cases
19 which I still believe are relevant with the
20 understanding that the base case has been revised.

21 MR. OLIKER: Your Honor, may I approach,
22 please?

23 EXAMINER WALSTRA: You may.

24 Q. (By Mr. Oliker) Mr. Rose, you were
25 deposed in this case, correct?

1 A. I was.

2 Q. And you gave answers under oath in that
3 deposition?

4 A. I did.

5 Q. Do you see the document that's been
6 placed in front of you?

7 A. I do.

8 Q. Does that contain your deposition from
9 July 2, 2018?

10 A. It does.

11 Q. Can you please turn to page 71.

12 A. Okay.

13 Q. Looking at line 22, the Question: Okay.
14 And I think that's my question. You're not relying
15 on your initial forecast from your direct testimony
16 any more, correct?

17 "Answer: That's correct. I am updating
18 my forecast here via the supplemental."

19 Did I read that correctly?

20 A. Yes, and the things that updated were my
21 base case, and so it's an important update, but I
22 didn't update any of the supplemental -- sensitivity
23 cases.

24 MR. OLIKER: Your Honor, I would move to
25 strike. His counsel can ask him that question on

1 redirect.

2 MR. HEALEY: I would join the motion to
3 strike. "Did I read that correctly?" There is no
4 answer other than "yes" or "no."

5 EXAMINER WALSTRA: I'll grant the motion.

6 MR. OLIKER: Thank you, your Honor.

7 Q. (By Mr. Oliker) To follow up on some of
8 the questions of Mr. Mendoza, in total in your
9 supplemental testimony there are six forecasts,
10 correct?

11 A. I'm sorry. Which six are you referring
12 to?

13 Q. Okay. I think try to restate the
14 question, Mr. Rose.

15 A. Okay. Thank you.

16 Q. Would you agree that for purposes of your
17 analysis, you used in EIA Energy Outlook base case as
18 well as an ICF forecast of market prices?

19 A. Yes.

20 Q. Okay. Then using those two sets of
21 assumptions, you also calculated net impact based
22 upon some costs, and then you also used, I believe,
23 net margins and gross margins; is that correct?

24 A. No. I did net margins with and without
25 sunk costs, so that's four, which is my problem is

1 how you got to the six.

2 Q. Okay. Did you not also do a gross margin
3 calculation?

4 A. Yes, I did a -- yes, I did a lot of
5 subsidiary calculations and for gross margin I did
6 four and then, you know, for each year as well. I
7 did a lot of forecasts.

8 Q. You would agree that the reason why you
9 performed an analysis without including sunk costs is
10 because that type of analysis would indicate whether
11 or not a rational economic participant which
12 continued to operate a plant?

13 A. Yes, that was one of the considerations
14 that I thought was -- that's the basis for including
15 it.

16 Q. And that's because if net margins
17 excluding sunk costs are positive, the unit is likely
18 to at least contract some amount of revenue that may
19 be applied to sunk cost, correct?

20 A. Yes, and it would be economic to go
21 forward recognizing there's other considerations as
22 well but that's an important factor and one of the
23 reasons why I included sunk costs.

24 MR. OLKER: Could I have his answer read
25 again.

1 (Record read.)

2 Q. Did you mean to say, Mr. Rose, why you
3 didn't include sunk costs?

4 A. Do I get to ask her to read it back? The
5 point is what I meant is the exclusion of sunk costs
6 is necessary to ask an incredibly relevant question
7 given that I concluded that there was some negative
8 expected values. Is the plan economic to continue to
9 go forward? And I concluded yes. I concluded yes
10 when -- on that basis and on another basis. There
11 are other reasons why I separated out the analysis to
12 stranded and with and without sunk costs but that was
13 a very important one.

14 Q. And to be clear, I am not trying to be
15 repetitive, Duke Energy Ohio is seeking recovery of
16 sunk costs as part of the PSR, correct?

17 A. It is a cost element in the PSR as --
18 there is revenues and there's costs and it's one of
19 the cost elements.

20 Q. And you would agree that the
21 Inter-Company Power Agreement, or ICPA, is the
22 agreement that governs Duke's obligations and rights
23 to OVEC, correct?

24 A. It's a very important document, and it
25 does affect the -- some of the obligations that Duke

1 has, yes.

2 Q. And would you agree that the ICPA
3 requires the sponsoring companies to pay a cost-based
4 rate similar to what you would expect under a
5 traditional regulatory paradigm?

6 A. Yes.

7 Q. And your testimony tries to identify the
8 market-based revenue that Duke had received for
9 selling the OVEC output into the PJM market and
10 comparing that amount to the cost-based revenue
11 requirement that Duke pays OVEC, correct?

12 A. Yes. And I focus in on the expected
13 value forecast for that.

14 Q. And in your testimony you mention that
15 the ICPA has been amended from time to time, correct?

16 A. Yes.

17 Q. Would you agree that you have not
18 reviewed the ICPA in depth?

19 A. I'm sorry. Could you repeat the
20 question?

21 Q. Would you agree that you have not
22 reviewed the ICPA in depth?

23 A. I've reviewed the ICPA. I'm not a
24 lawyer, and it wasn't a focal point of my analysis.

25 Q. And you were also aware that the ICPA has

1 been amended from time to time over the past 50 to 70
2 years?

3 A. Yes. There's been at least two
4 amendments that I'm aware of over the last X years.

5 Q. And you have not reviewed any of those
6 amendments, correct?

7 A. No. I've reviewed reviews of them, but
8 I've not reviewed them.

9 Q. And you would agree that you cannot
10 identify any specific investments that were made in
11 OVEC prior to 2001 that have not been appreciated?

12 A. Yes. We had this conversation a little
13 bit in the deposition. I fully expect that there's
14 every year capital investments that are put into the
15 power plant, but I can't -- the only two I know of
16 that are significant occurred after 2000.

17 Q. Okay. And do you know the date that the
18 Department of Energy provided notice of terminating
19 its rights to take power under the ICPA?

20 A. I don't know about notice. I know there
21 was a major diminution in 2003. My understanding
22 there is still an obligation to provide some small
23 amount of power to the Department of Energy, and but
24 it hasn't been a focal point of my analysis.

25 Q. And when you say "diminution," you mean

1 like close to 2 gigawatts?

2 A. That sounds about right.

3 Q. And just to clarify, annually 2
4 gigawatts, Mr. Rose?

5 A. Yes. I'm only just comparing the
6 capacity of the plants to the much reduced ongoing
7 obligation of OVEC.

8 Q. Okay.

9 A. So I haven't reviewed any firsthand
10 document that would directly address that.

11 Q. And, Mr. Rose, this is not the first time
12 you've testified in Ohio, correct?

13 A. That's true.

14 Q. Do you remember how many times?

15 A. Well, I mean, do we include depositions?
16 I've been testifying on and off for some time in
17 Ohio. It's a pleasure to be here.

18 Q. You would agree one of the times you
19 testified in Ohio was back around 2000 in
20 FirstEnergy's electric transition plan?

21 A. Yes.

22 Q. And in that testimony you provided a
23 projection of future market prices to support
24 FirstEnergy's request to collect transition charges,
25 correct?

1 A. I believe so. I certainly provided the
2 forecast. It was certainly an input into what I was
3 understanding to be sunk costs. And I definitely
4 remember doing the testimony as to whether they were
5 transitioned and exactly what that means that was not
6 part of my testimony.

7 Q. But you have testified regarding stranded
8 costs or transition revenue in several states,
9 correct?

10 A. I have testified in and/or consulted on
11 stranded costs -- or some costs, I would think it
12 would be more accurate, in a number of jurisdictions.

13 Q. And would you agree that transition
14 charges provide a method of compensating utilities
15 for generation-related stranded costs or sunk costs?

16 A. My understanding that that's part of the
17 main part of what they do. Again, I have been
18 questioned on just the idea of sunk costs as a
19 compensation for the change in the regulatory compact
20 but, you know, I'm not -- I am not sure 100 percent
21 what the transition charges mean, but to the extent
22 they mean sunk costs, I definitely have been involved
23 in that type of work.

24 Q. Would you agree that when it was
25 projected that the revenues a power plant would earn

1 in a competitive market would be less than a cost
2 base revenue requirement under traditional regulation
3 transition revenue was typically appropriate?

4 MR. D'ASCENZO: Objection. That's a
5 pretty vague question, asking for generalization,
6 speculation of any power plant.

7 EXAMINER WALSTRA: I am going to
8 overrule. He can answer if he knows or seek
9 clarification.

10 THE WITNESS: Could I have the question
11 read back.

12 (Record read.)

13 A. I would say some form of, if you will,
14 payment of sunk costs was appropriate, but it was in
15 my experience limited to balance sheet assets and
16 didn't involve contracted assets which had their own
17 sort of special treatment.

18 Q. And under the typical stranded cost
19 analysis that would be performed, would you agree
20 that one must determine what a generating asset could
21 earn in a deregulated market and compare it to either
22 the balance sheet net book value or expected revenues
23 under a traditional regulatory paradigm?

24 A. Yes. For the balance sheet assets
25 that's -- that's my understanding, yes. It would be

1 either the net book value or the discounted revenues.
2 We talked a little bit about this. There's a
3 specific definition in the Federal Government used
4 and but most were in agreement with that definition.

5 Q. And we talked a little bit about the
6 regulatory compact. Would you agree in the absence
7 of transition revenue that utilities that held
8 stranded costs would have a negative financial
9 performance?

10 A. In the absence of any addressing of that
11 issue?

12 Q. Yes.

13 A. Yes, I think that was a part of the
14 consideration. Again, you know, I've stated several
15 times in my testimony that I defer to the Commission
16 on this, and I didn't consider my testimony to be
17 focused in on this issue. You are asking me the
18 question. I'm trying to give an answer, but I was --
19 I was not focused in on that as part of my testimony.

20 Q. Okay. And this may be my last question,
21 I hope, on this issue, of course, so transition
22 revenue was often provided to avoid the financial
23 credit downgrade that would otherwise occur if assets
24 were negatively affected by the competitive market?

25 A. Again, there was, if you will, payment

1 associated with stranded costs or other types of
2 considerations related to stranded costs. There were
3 a lot of reasons for it. There were reasons related
4 to equity. There were reasons related to the
5 financial impact. It was -- it was to the extent it
6 was transitional that's only a subsection of a larger
7 set of issues. And all I can say with respect to my
8 testimony here, I defer to the Commission on their
9 judgment to the extent that it's relevant, and I --
10 and I'm not here to opine on what should or shouldn't
11 be done or whether that's even an issue in the case.
12 I considered it to be something that was worth having
13 the information because there was no added
14 information that was required. I felt like the issue
15 of sunk costs should be addressed since I had a
16 negative expected value so I didn't have to do any
17 additional analysis to address it to the extent that
18 it's relevant.

19 Q. I apologize for jumping around, Mr. Rose.
20 In the event that the bankruptcy court agrees with
21 your recommendation, would you agree that if
22 FirstEnergy Solutions is relieved of its obligations
23 to some extent under the ICPA, one possible outcome
24 is for Duke Energy Ohio's obligations to increase on
25 that basis?

1 MR. D'ASCENZO: Objection, your Honor,
2 calls for a legal conclusion.

3 MR. OLIKER: I am asking for his
4 understanding, your Honor. If he doesn't know, he
5 doesn't know.

6 EXAMINER WALSTRA: Overruled.

7 A. First of all, I was -- I would describe
8 my role in the FirstEnergy case was a lot of number
9 crunching. I don't want to minimize that. That's a
10 very important activity. I'm not sure how I would
11 even recommend to the bankruptcy court what it should
12 do given that I'm not a lawyer and I don't -- I
13 wasn't there to address all of the issues. But if
14 there was approval of the -- the desire to reject the
15 contracts, the -- as we discussed, the implication of
16 that from -- for, if you will, the math of what goes
17 on forward on the case, first of all, depends on the
18 probability of that occurring. There is a dispute in
19 the case about that, and I couldn't even begin to
20 handicap what that is. It's a complicated legal
21 issue.

22 Also, as we discussed, there's the issue
23 of what claims would be available to the state to the
24 estate that would flow through to the OVEC. I
25 haven't been involved in estimating, that and it's

1 very much sensitive to the ongoing policy changes
2 that are occurring at FERC and Department of Energy
3 related to resilience and capacity prices, et cetera.
4 And there's also the value of the asset which is, I
5 believe, likely to be positive that would mitigate
6 the need to sort of reach the other entities, but my
7 limited understanding is there might be some impact
8 taking into account everything I said.

9 MR. MENDOZA: Your Honor, I move to
10 strike his statements about FERC. I mean, he was
11 asked a question about what would happen if FES --
12 the question was is it possible that Duke would end
13 up with a larger share of OVEC if the FES motion is
14 answered and somehow he gratuitously brought up
15 developments at FERC and so that statement is -- is
16 not responsive to the question.

17 EXAMINER WALSTRA: I am going to
18 overrule. The Commission can give it the proper
19 weight.

20 Q. (By Mr. Olikier) Just so we're clear
21 though at the end of your answer, you did say yes,
22 it's possible, Mr. Rose?

23 A. Yes, subject to everything I said which
24 gets to the magnitude and likelihood of the effect in
25 mitigating factors which are particularly germane to

1 that case and the limited extent I understand what's
2 going on in that case.

3 Q. Going to your testimony projections,
4 Mr. Rose, would you agree that your forecast of
5 future energy prices has a correlation with natural
6 gas prices within the western PJM market?

7 A. Yes. It's a -- it's a correlation. It
8 is not a perfect correlation. It's less than a
9 perfect correlation but there is a correlation. And
10 as we also discussed, it's not just with that set of
11 gas prices. It's with a broad set of gas price.

12 Q. And you would agree that the price of
13 natural gas in the United States is largely based
14 upon the laws of supply and demand?

15 A. Yes.

16 Q. And, in fact, it is based on the
17 international demand and supply of natural gas?

18 A. Yes, to a degree. It's primarily North
19 America but there is some interaction with the, if
20 you will, not to minimize the sovereignty of Canada
21 but it's primarily North America but there is some
22 international effects primarily through the large
23 growing demand of for L&G exports and depending how
24 you consider Mexico, whether it is part of North
25 America or not, very large increases in exports to

1 Mexico.

2 Q. You would agree that there are shale
3 reserves globally?

4 A. Yes, there are. There is not a lot of
5 shale production but there is shale reserves.

6 Q. And just to hone in on your answer, you
7 would agree that to date the United States is the
8 only country that has truly tapped into shale gas
9 production effectively?

10 A. Yes.

11 Q. And in the event that the other countries
12 around the world were to tap into their shale
13 reserves, would you agree it could have an impact on
14 the global supply and demand of natural gas?

15 A. Yes.

16 Q. And in your testimony you have your ICF
17 base case and then you have the EIA Annual Energy
18 Outlook, correct?

19 A. Yes.

20 Q. And the EIA provides actually several
21 forecasts, correct?

22 A. Yes, the reference case and other cases,
23 that's correct.

24 Q. And just to be clear, you've used the
25 reference case, correct?

1 A. Yes. I think that's the most -- if you
2 are going to use a single case, that's the most
3 appropriate case to use since I'm focusing in on an
4 expected value.

5 Q. And the EIA doesn't necessarily -- let me
6 rephrase that.

7 Would you agree that the EIA's forecast
8 of natural gas is forecasting the Henry Hub?

9 A. It's one of the forecasts that they
10 provide, yes. They provide other forecasts but that
11 is certainly one that they provide.

12 Q. Is that what the reference case is based
13 off of?

14 A. The reference case that they are doing
15 which is -- I believe is their expected value case,
16 probability weighted case, involves Henry Hub and
17 other locations as well.

18 Q. But the EAI does not project base
19 differential, correct?

20 A. I believe it does but not with the
21 sufficient detail that I believe is necessary for the
22 type of analysis done here.

23 Q. Would you agree that for the past several
24 years, at least the last three or four years, the
25 reference case has been above what has actually

1 transpired in the market if we were to do a backcast?

2 A. Most of the time. It has not in every
3 single period of time, but most of the time it has.
4 Part of that relates to weather but most of the time
5 it has been on the high side.

6 Q. And in 2015, you would agree it was a
7 pretty cold winter.

8 A. The -- I believe so. The 2014 to 2015
9 winter was cold. The 2015 and '16 winter was warm,
10 and '16-17 was warm, so it depends. I don't want to
11 get confused on what 2015 is, but it was a cold
12 winter, yeah.

13 MR. OLIKER: Your Honor, I would move to
14 strike everything after I think he said "I believe
15 so," and then he talked about some other years that I
16 wasn't talking about.

17 MR. D'ASCENZO: Your Honor, if I may, he
18 was just clarifying the winter months do span over
19 more than one calendar year.

20 EXAMINER WALSTRA: Agreed. Overruled.

21 Q. (By Mr. Olikier) Mr. Rose, in your
22 testimony you talk about rate count, correct?

23 A. Yes. Do you have a particular reference?

24 Q. Not specifically but would you agree that
25 you note in your testimony that rate count is

1 important for purposes of supply?

2 A. Yes. It's a factor, yes.

3 Q. Would you agree that rate count is less
4 important than well count?

5 A. Yes. I think they are both important.
6 To the extent to which well information is more
7 detailed, that's good to have if you have it.

8 Q. And that's also because there can be
9 drilled and uncompleted wells, correct?

10 A. Yes. That's part of it.

11 Q. And as you sit here today, you cannot
12 speak to the level of drilled or uncompleted wells
13 assumed in your testimony?

14 A. I can't speak to the specific numbers. I
15 know that it's accounted for in the work we do to
16 assess supply and demand in forecasts, but I can't
17 remember exactly the status and regionally, et
18 cetera.

19 MR. OLIKER: If I could have one minute,
20 your Honor.

21 EXAMINER WALSTRA: Sure.

22 Q. (By Mr. Oliker) I just have a few more
23 questions in the public section. Mr. Rose, would you
24 agree that OVEC recently joined PJM Interconnection
25 or is in the process of integrating into the PJM

1 Interconnection?

2 A. Yes, the latter is my understanding.

3 Q. And Duke's counsel can tell him not to
4 answer if this is confidential; but, if possible, I
5 would like to get it in the public section.

6 Regarding your sunk cost analysis, am I correct that
7 you did not assume -- assume that Duke would be
8 required to pay any additional regional transmission
9 expansion planning process integration costs?

10 A. I prefer to answer that -- I don't know
11 how my counsel feels. I prefer to answer that in a
12 confidential section.

13 MR. D'ASCENZO: Agreed.

14 MR. OLIKER: Okay. I think all of the
15 other questions I have are confidential, your Honor.
16 Thank you.

17 Thank you, Mr. Rose.

18 THE WITNESS: Sure.

19 EXAMINER WALSTRA: Mr. Whitt, do you have
20 any other questions?

21 MR. WHITT: I have a few. Can I borrow
22 somebody's microphone? Does this work?

23 EXAMINER WALSTRA: I think that's the
24 broken one.

25 MR. MENDOZA: Here's one.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Whitt:

4 Q. Good afternoon, sir. I don't think we
5 have met before. My name is Mark Whitt. I represent
6 the Retail Energy Supply Association. When we talk
7 about OVEC, or when you talk about OVEC in your
8 testimony, we're talking about the Clifty Creek and
9 Kyger Creek plants, correct?

10 A. Yes.

11 Q. And the larger of those plants is
12 actually over in Indiana, isn't it?

13 A. I believe so. One's got an extra unit,
14 if you will.

15 Q. Okay. And have you had any discussions
16 or do you know whether any Ohio Commissioner or staff
17 member would even have legal authority to go over
18 into Indiana and look at records or talk to people at
19 the Clifty Creek plant if it were so inclined?

20 A. Are you asking whether they have the
21 legal right?

22 Q. Yes.

23 A. I don't know. I am not a lawyer and I
24 think it would depend on the circumstances and I
25 think they should ask first and see if they can do it

1 without forcing it, but I really can't answer that.

2 Q. Okay. You had -- I'm glad you used the
3 term "number crunching." I feel like I am using it
4 pejoratively when I say it. That's what a lot of
5 this is to me and I am not really a numbers guy. But
6 the sum and substance of your testimony is that when
7 the sunk costs analysis is included, that these OVEC
8 plants will generate electricity at a cost that's
9 above the projected market cost, correct?

10 A. Yes. But I must caveat that because when
11 you use the words "sum of my testimony" which is a
12 mathematical term is I'm also talking about providing
13 a forecast of expected values. That's a mathematical
14 term, means probability weighted. And I'm also
15 saying there's other things that are important which
16 is what possibly could happen. And as in my
17 testimony in sum also says there is a lot of reasons
18 to think that the market outcome would be different
19 than the expected value. It's an important value.
20 But it's -- there are many reasons including those
21 that are reflected in the historical record and those
22 that are reflected in policy developments at FERC and
23 DOE.

24 MR. MENDOZA: Objection, same objection,
25 your Honor. Again, we've got a gratuitous reference

1 to developments at the federal level, and he hasn't
2 gotten a single question on that topic. I think the
3 question was are -- are prices projected to be -- are
4 market prices projected to be lower than OVEC prices,
5 and it could have been a simple answer. Instead we
6 get this gratuitous reference to all these other
7 things.

8 EXAMINER WALSTRA: I'm going to deny the
9 motion, but I mean, he is getting close but.

10 Q. (By Mr. Whitt) And I'm not talking
11 about -- yeah, I am focusing here on your testimony
12 and what you've advised the Commission. You've done
13 this analysis, put together the numbers, and you're
14 informing the Commission that if Duke when you
15 include the sunk costs and look at these forecasts
16 that you did, that essentially these plants are going
17 to be money losers and that it -- it costs them more
18 to generate electricity than -- than the market
19 prices, correct?

20 A. I have the same answer that I had before.
21 It is true that on an expected value basis, on a
22 probability weighted basis, in total across the whole
23 time period, the costs including the sunk costs is
24 greater than the market revenues. But an important
25 part of my testimony is the fact that I'm providing

1 an expected value and that there's variation expected
2 around the expected value and that's an important
3 consideration in this context.

4 Q. Well, if your assumptions are correct,
5 then is it not the case that the more electricity
6 these plants generate, the more money they will lose?

7 A. If my expected value case comes out, I
8 believe that it -- it is true that the expected costs
9 in my analysis for the whole period are greater than
10 the expected revenues that are available to the
11 plant. That's the case. Is it in every year under
12 all circumstances with respect to sunk and not? No.
13 But the critical thing is I just wanted to emphasize
14 here so there is no confusion about the number
15 crunching because while it was self-deprecatory, it's
16 actually an important part of my analysis which I am
17 providing what I expect to happen in your
18 characterization of expected value and mathematical
19 probability weighted? Yes. Could other things
20 happen? Yes. Do I discuss that extensively in my
21 testimony? Yes.

22 MR. MENDOZA: Your Honor, I'm sorry.

23 MR. OLIKER: I would like to hear that
24 answer too.

25 MR. MENDOZA: I would renew the motion to

1 strike with reference to the projections showing
2 positive value. The only projections which are
3 positive value are the irrelevant projections that
4 exclude the full costs of the contract, and Duke
5 continues to try to muddle the record. Every one of
6 the relevant forecasts in this case shows the
7 customers will lose. And so there's no reason to
8 include those statements in the record. All it does
9 is it confuses the issue and we will keep having this
10 debate for the next couple of months.

11 EXAMINER WALSTRA: Again, I am going to
12 deny the motion. Again, I think he is clarifying
13 points to his testimony. It will speak for itself.

14 Q. (By Mr. Whitt) Okay. In terms of the
15 hedging concept, when -- when we use the term hedge
16 in a financial sense, would you agree that what we
17 are talking about is some mechanism to mitigate the
18 risk of loss? Would that be a fair working
19 definition?

20 A. Yes. Just to be clear, I consider it
21 similar to having a 30-year fixed mortgage, the fixed
22 rate as opposed to a series of arms. You are trying
23 to minimize a very bad outcome and so that's how I
24 see it.

25 Q. Okay. Well, let's -- so Duke does not --

1 what Duke owns are -- is an equity interest in OVEC,
2 correct?

3 A. That's part of the situation. They also
4 receive, as I understand it, an entitlement, but it's
5 part.

6 Q. Okay. And, now, if you or I bought a
7 stock and we were shareholders in some company and we
8 were concerned about a downside risk of holding that
9 stock, we could -- we could hedge by purchasing or
10 selling options, correct?

11 A. Yes, exactly. There's uncertainty about
12 what's going to happen with the stock price and
13 there's a way to protect against certain outcomes by
14 having a hedge contract so that there is a commodity,
15 and then a derivative is exactly what we have here.

16 Q. And there are open markets with published
17 data on those derivatives for hedging purposes,
18 correct?

19 A. I mean, it depends exactly what type of
20 hedge you want. But there are -- there's public
21 reporting of some -- some hedge instruments.

22 Q. Okay. And let's get a little more
23 specific. For example, if I bought a stock at \$100,
24 I could buy a put option where if the price goes down
25 to let's say \$70, then I can put that stock to

1 somebody else, and they would have to buy the
2 instrument from me and, now, I've limited my loss to
3 basically \$30. I think that's probably grossly
4 oversimplified, but am I close enough there in just
5 relaying the concept?

6 A. Yes. It's exactly what a large part of
7 my testimony is addressing which you have some
8 uncertainty about what the future stock price is and
9 are you worried about a bad outcome and you have a
10 hedge instrument and you would be probably interested
11 in what the forecast of the stock's price is, the
12 expected stock price, but you might also be worried
13 about how bad it could get, and so you would -- it is
14 one way to protect against it would be to enter into
15 that type of transaction.

16 Q. And you would need to know -- that
17 instrument would have some value to the investor as a
18 hedge instrument, wouldn't it?

19 A. Yes, for sure, it would. Say you
20 borrowed that money with, I don't know, you really
21 had to return that money that you bought the stock
22 with because you are a poor person and you don't have
23 a lot of money and if you don't return the money,
24 your family is going to be on the street or something
25 like that. Yes, you are trying to protect against a

1 bad outcome and so.

2 Q. And if the bad outcome presents itself
3 and, again, I've bought this hypothetical stock at
4 \$100, the strike price of \$70 has been reached, and
5 because I had the foresight to have this option, the
6 investment is now taken off my hand at \$70 and I've
7 stopped the bleeding on my loss, correct?

8 A. Yes. In this case the hedge instrument
9 is an option. There are other hedge instruments that
10 are not options. But that's essentially what's going
11 on.

12 Q. Okay. Now, the hedge that we're talking
13 about with respect to these OVEC plants, if the rider
14 mechanism that the -- that Duke has requested is
15 approved, there would be no limit to the amount of
16 above market energy costs that could be recovered
17 through that rider, correct?

18 A. No. The price realistically can't go
19 negative so there is at least that floor, but the
20 same is true on the upside, in fact, you know, you
21 could have an unlimited win as well. Here at least
22 there is some downside to -- but, again, you have
23 upside and downside.

24 Q. Okay. Just one minute.

25 Do you have any knowledge of how Duke may

1 have historically treated any dividends it had
2 received by virtue of its OVEC ownership, how it
3 treated those for ratemaking purposes?

4 A. I would have to say mostly no. I did
5 hear something today about it which may be relevant
6 to my work, but in general beyond what I heard today,
7 no.

8 MR. WHITT: That's all the questions I
9 have.

10 EXAMINER WALSTRA: Thank you.

11 MR. WHITT: Thank you.

12 EXAMINER WALSTRA: Mr. Healey, do you
13 anticipate more than 5 minutes of cross?

14 MR. HEALEY: Yes, definitely more than 5
15 minutes.

16 EXAMINER WALSTRA: In that case we will
17 break for today. We will be back at 9:00 a.m.
18 tomorrow.

19 (Thereupon, at 4:54 p.m., the hearing was
20 adjourned.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by us in this matter on Monday, July 9, 2018,
5 and carefully compared with our original stenographic
6 notes.

7
8 _____
9 Karen Sue Gibson, Registered
Merit Reporter.

10
11 _____
12 Carolyn M. Burke, Registered
Professional Reporter.

13 (KSG-6576)

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Summary: Transcript in the matter of the Duke Energy Ohio, Inc. hearing held on 07/09/18 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.