

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. :

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

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

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

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PROCEEDINGS

before Mr. Nicholas Walstra and Ms. Stacie Cathcart,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Thursday,
July 12, 2018.

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VOLUME IV

- - -

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21 - Direct Testimony 761 782
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22 - Direct Testimony 785 844
of Steven Fetter,
filed on March 16, 2017

23 - Direct Testimony 845 852
of Sarah E. Lawler
filed on June 1, 2017

24 - Direct Testimony 853 871
of Scott B. Nicholson
filed on June 1, 2017

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RESA EXHIBIT IDENTIFIED ADMITTED

1 - "Don't Fence Me Out" by 833 845
Steve Fetter Published
in Public Utilities
Fortnightly

- - -

IGS EXHIBIT IDENTIFIED ADMITTED

8 - IGS-INT-02-001, 863 872
IGS-INT-01-016, and
IGS-INT-01-017

- - -

OCC EXHIBIT IDENTIFIED ADMITTED

4 - OCC-INT-02-046 866 873

- - -

1 Thursday Morning Session,
2 July 12, 2018.

3 - - -

4 EXAMINER WALSTRA: We'll go on the
5 record. We're here for Day 4 of In Re: Duke Energy
6 Incorporated.

7 Duke, you may call your next witness.

8 MS. PASHOS: Thank you, your Honor. Our
9 next witness is John L. Sullivan.

10 (Witness sworn.)

11 EXAMINER WALSTRA: Thank you. Please
12 take a seat.

13 MS. PASHOS: And could we ask
14 Mr. Sullivan's two pieces of testimony be marked as
15 Duke Energy Ohio's Exhibit 19, that would be his
16 direct testimony in Case 17-32-EL-AIR; and as Duke
17 Energy Ohio Exhibit 20, that would be his
18 supplemental testimony in support of the stipulation.

19 EXAMINER WALSTRA: So marked.

20 (EXHIBITS MARKED FOR IDENTIFICATION.)

21 MS. PASHOS: Thank you.

22 - - -
23
24
25

1 JOHN L. SULLIVAN, III

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

4 DIRECT EXAMINATION

5 By Ms. Pashos:

6 Q. And do you have the testimonies in front
7 of you?

8 A. I do.

9 Q. Okay.

10 EXAMINER WALSTRA: You may approach.

11 MS. OLIVE: Thank you.

12 MS. PASHOS: Sorry.

13 Q. Could you please state your name and
14 title for the record.

15 A. I'm John L. Sullivan, III. I'm the
16 Assistant Treasurer of Duke Energy Corp.

17 Q. And what is your business address?

18 A. 550 South Tyron Street, Charlotte, North
19 Carolina.

20 Q. And did you cause to be prepared prefilled
21 testimony in these cases?

22 A. I did.

23 Q. And do you have before you what's been
24 identified as Duke Energy Ohio's Exhibit 19?

25 A. Yes.

1 Q. And is that your direct testimony filed
2 in the distribution rate case?

3 A. Yes.

4 Q. And do you also have before you what's
5 been marked as Duke Energy Ohio's Exhibit 20?

6 A. Yes.

7 Q. And is that your prefiled testimony filed
8 in support of the stipulation?

9 A. Yes.

10 Q. Do you have any changes or corrections to
11 either piece of testimony?

12 A. No.

13 Q. And if I were to ask you the same
14 questions as are contained in Exhibit 19 today, with
15 the exception of the credit ratings which I believe
16 your supplemental testimony updates, but with that
17 exception, would your answers be the same?

18 A. Yes.

19 Q. And if I were to you ask the same
20 questions as are contained in Petitioner's Exhibit
21 20, would your answers be the same?

22 A. Yes.

23 MS. PASHOS: With that, Mr. Sullivan is
24 available for cross-examination.

25 EXAMINER WALSTRA: Thank you.

1 MR. MENDOZA: Your Honor, would you
2 entertain motions to strike at this time?

3 EXAMINER WALSTRA: I would.

4 MR. MENDOZA: I move to strike the
5 Moody's reports that are attached to Mr. Sullivan's
6 testimony. They're both out-of-court statements.
7 They're hearsay. Duke is offering them for the truth
8 of the matter asserted. I would note that none of
9 the people who wrote this document, Laura Schumacher,
10 Michael Haggarty, Jim Hempstead, none of these people
11 appeared in this proceeding. And I would note that
12 these documents are particularly prejudicial to -- to
13 me because there are statements in there that are
14 inconsistent that I would like to ask the authors
15 about.

16 For example, at one point they say the 19
17 percent cash flow to debt figure is -- is of
18 significance and another place they use -- they refer
19 to high teens which is ambiguous and could mean
20 something other than 19 percent, and I would like to
21 ask them, you know, why did they write 19 percent in
22 one place and high teens in another place and some
23 other questions, but the basic point is these are all
24 hearsay and they should not be admitted.

25 MR. WOLTZ: Your Honor, if I may. OCC

1 would join in that motion to strike both exhibits,
2 and OCC would like to point out the PUCO has
3 previously struck exhibits similar to this that the
4 authors have not been presented for
5 cross-examination, that they are being asserted for
6 the truth of the matter.

7 Further, on Exhibit 2, your Honor, we
8 would like to add to that motion to strike that that
9 Moody's report is for Duke Energy Corporation which
10 is the parent corporation of Duke Energy Ohio. The
11 PUCO has no jurisdiction over Duke Energy
12 Corporation. They are not located in Ohio and they
13 do not provide public utilities to residents in the
14 state of Ohio so, therefore, it is definitely not
15 relevant to this proceeding.

16 MS. PASHOS: If I may, your Honor.
17 Mr. Sullivan is here to testify about financial
18 integrity, credit quality, and what credit ratings --
19 what is important to credit rating agencies. As
20 such, these types of reports are not only typically
21 admitted in rate case -- rate proceedings but they
22 are particularly relevant to Mr. Sullivan's
23 testimony. He's here to answer questions to the best
24 of his ability about them. But, again, these are
25 reports that are typically offered both in direct and

1 on cross-examination in a variety of rate proceedings
2 and they are intricately related to his testimony.

3 EXAMINER WALSTRA: I'm going to deny the
4 motion to strike. It is something that he clearly
5 relied on in his testimony. This is an
6 administrative hearing. The Bench has discretion to
7 allow in hearsay that is -- that is relevant. But
8 the Commission will give it the weight it deserves.

9 MR. MENDOZA: Thank you, your Honor.

10 MR. WOLTZ: Your Honor, if I may? Just
11 to clarify, are you also denying the motion to strike
12 the second exhibit given that the PUCO has no
13 jurisdiction or authority over Duke Energy
14 Corporation?

15 EXAMINER WALSTRA: Yes. I'm also denying
16 that one.

17 MR. WOLTZ: Thank you, your Honor.

18 MR. MENDOZA: Your Honor, my second
19 motion, may I ask one foundational question of the
20 witness or should I wait to do that in my -- could I
21 alternatively just do the motion to strike during my
22 cross.

23 EXAMINER WALSTRA: You can just save it
24 for cross.

25 MR. WOLTZ: In that case, your Honor, OCC

1 does have a few more motions to strike.

2 EXAMINER WALSTRA: Okay.

3 MR. WOLTZ: In the direct testimony
4 starting on page 3, line 15, going through page 4,
5 line 4. OCC seeks to strike this information given
6 your previous ruling that this information is no
7 longer compatible with the settlement. It does not
8 discuss -- here, Mr. Sullivan discusses the
9 ratemaking treatment -- ratemaking treatment that's
10 being requested in the original applications that no
11 longer is relevant given the proposed settlement in
12 this case.

13 MS. PASHOS: May I briefly respond? This
14 is obviously a very brief summary of what was
15 initially requested. You know, it shows the starting
16 point for this case. It also goes beyond that and
17 discusses the proposed capitalization, the debt and
18 equity ratio, which is entirely relevant to the
19 stipulation.

20 MR. WOLTZ: But, your Honor, if I may,
21 the ROE proposed in this and I believe the debt and
22 equity ratio is no longer current as has been updated
23 in the stipulation.

24 MS. PASHOS: I believe the capitalization
25 ratios are the same in the stipulation.

1 MR. WOLTZ: And, your Honor, it does
2 appear the capital structure is the same. However,
3 where Duke discusses they are looking for a 1 percent
4 increase, we actually know that this is now going to
5 be a decrease in the revenue requirement and the ROE
6 is not the same as it is in the proposed settlement.

7 EXAMINER WALSTRA: I'll grant the motion
8 to strike.

9 MR. WOLTZ: Thank you, your Honor.

10 MR. PRITCHARD: Could I have the
11 reference again?

12 EXAMINER WALSTRA: Page 3, starting at
13 line 15, going through page 4, end of line 4.

14 MR. PRITCHARD: Thank you.

15 MR. WOLTZ: And then for OCC's next
16 motion to strike, your Honor, looking at page 8 of
17 the direct testimony, lines 1 through 4. OCC moves
18 to strike given the same rationale as the last motion
19 to strike. This is no longer the current ROE
20 proposed; therefore, it is no longer relevant to the
21 settlement.

22 MS. PASHOS: Again, this is a brief
23 summary of what was initially proposed. I do think
24 it is relevant in terms of the range that Dr. Morin
25 proposes.

1 EXAMINER WALSTRA: I'll grant the motion.

2 MR. WOLTZ: Thank you, your Honor.

3 And then looking at page 11 of the direct
4 testimony, lines -- page 11, lines 12 through 20.
5 OCC seeks to strike this as it is no longer
6 compatible with the settlement. In this section,
7 Mr. Sullivan discusses testimony from other witnesses
8 that have not been provided for cross at this point,
9 will no longer be provided given that their testimony
10 is not compatible with the settlement, and this
11 section in general would no longer be compatible with
12 the settlement.

13 MS. PASHOS: Are you proposing that the
14 schedules also -- that he discusses be struck?

15 MR. WOLTZ: As long as those are no
16 longer the schedules attached to the settlement, yes.

17 MS. BOJKO: Could I have the reference
18 again?

19 MR. WOLTZ: It's page 11, lines 12
20 through 20.

21 MS. BOJKO: Of the direct.

22 MR. WOLTZ: Of the direct.

23 MS. PASHOS: I believe yesterday another
24 party put these in the schedules at least in
25 evidence.

1 MS. WHITFIELD: I believe it was C. They
2 put Schedule C in. I don't think it was D.

3 EXAMINER WALSTRA: I believe it was
4 Schedule C that was put in; is that correct?

5 MS. KINGERY: That is correct, your
6 Honor, it was C that came in, but D was also referred
7 to in the testimony of Mr. Ziolkowski that Mr. Olier
8 put in as an exhibit.

9 MR. WOLTZ: Your Honor, I would also like
10 to strike everything that Ms. Kingery just said.
11 It's the standard here before the PUCO that one
12 attorney will speak on behalf of a witness at a time.
13 Ms. Kingery is out of turn in that respect.

14 EXAMINER WALSTRA: That is the standard
15 here, but I believe we were trying to get
16 clarification what was in our -- in the record.

17 MS. GLOVER: If I may your Honor,
18 Schedules A through C were moved into evidence, but
19 you did not admit them. That was Exhibit 7 that you
20 denied.

21 EXAMINER WALSTRA: I'll grant the motion
22 to strike.

23 MS. WHITFIELD: And just to confirm, are
24 the schedules also being stricken given that they
25 relate to rate of return that's no longer consistent?

1 EXAMINER WALSTRA: That is part of the
2 motion.

3 MS. WHITFIELD: Okay.

4 EXAMINER WALSTRA: Is that part of your
5 motion?

6 MR. WOLTZ: Yes, your Honor.

7 And then, your Honor, OCC will move to
8 strike on page -- beginning page 11, line 21, through
9 page 12, line 2. Given the fact we just struck --
10 have stricken those schedules, we will again seek to
11 restrike those schedules because they are not
12 compatible with the set.

13 EXAMINER WALSTRA: Are you going to go
14 through the rest of the page?

15 MR. WOLTZ: It appears as such, yes.
16 Would you like to go ahead and do that now?

17 EXAMINER WALSTRA: Might as well.

18 MR. WOLTZ: So OCC will move to strike
19 the rest of the page as well.

20 EXAMINER WALSTRA: And the accompanying
21 schedules?

22 MR. WOLTZ: And the accompanying
23 schedules and also I believe page 13, lines 1 through
24 5.

25 MS. PASHOS: And some of these schedules

1 obviously are still relevant to the stipulation in
2 terms of capital structure, Number 1.

3 Number 2, to the extent these are
4 required schedules to be filed with the rate case,
5 even though through testimony, settlements, or
6 whatever, rate cases can change, positions in rate
7 cases can change. We object to striking the
8 schedules that are requirements to be filed with rate
9 cases.

10 MR. WOLTZ: And, your Honor, I would like
11 to point out they have moved the application itself
12 into evidence and they can base any arguments on
13 that. But to admit testimony on the schedules that
14 are no longer relevant would be incompatible with
15 your previous rulings.

16 MS. PASHOS: Then it's not clear to me
17 whether you are proposing to strike the schedules in
18 addition to the testimony or just the testimony?

19 MR. WOLTZ: To clarify, we would be
20 proposing to strike both the schedules and the
21 testimony, you are correct. I stand corrected on my
22 previous argument.

23 MS. PASHOS: And the Staff Report
24 incorporates many of these schedules as well. Again,
25 the starting point for the rate case, it is what it

1 is. It's a roadmap. No one is prejudiced by a
2 statement that this is what the starting point for
3 the rate case was.

4 MR. WOLTZ: And, your Honor, I would
5 disagree with that statement. Parties have proposed
6 a settlement in this case and now they are attempting
7 again -- once again to litigate the underlying case
8 as well as the proposed settlement which prejudices
9 all parties in this case.

10 MS. PASHOS: That is not what is
11 happening here. And I would also point out the
12 application with all these schedules has already been
13 admitted.

14 EXAMINER WALSTRA: I'm going to deny
15 these motions to strike. These schedules simply
16 describe their financial position. I don't think --
17 again, it's part of the application already and I
18 don't think any party is prejudiced by these being
19 in.

20 MR. WOLTZ: Thank you, your Honor. We
21 have no more motions to strike at this time.

22 EXAMINER WALSTRA: Mr. Dove.

23 MR. DOVE: Thank you, your Honor. I have
24 no questions.

25 EXAMINER WALSTRA: Ms. Leppla.

1 MS. LEPPLA: No questions.

2 EXAMINER WALSTRA: Mr. Mendoza.

3 MR. MENDOZA: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Mendoza:

7 Q. Good morning, Mr. Sullivan.

8 A. Good morning.

9 Q. If you would please turn to page 9 of
10 your supplemental testimony, please.

11 A. Yes.

12 Q. Do you see on line 10 where the number
13 18 million is listed?

14 A. I do.

15 Q. And you assessed the potential impact of
16 \$18 million recovery under Rider PSR, right?

17 A. Correct.

18 Q. Did you review an OVEC forecast other
19 than the one provided by Duke Witness Judah Rose?

20 A. No.

21 MR. MENDOZA: Your Honor, I would move to
22 strike that sentence that begins "For context," that
23 entire sentence and then also the line in the chart
24 below "Adjusted to include Rider PSR" for the same
25 reason that I had moved to strike their sunk costs

1 forecast. These are irrelevant. Duke is citing
2 evidence that purports to make this deal look more
3 favorable to customers than their own -- excuse me.
4 They are not citing evidence, citing a number that
5 purports to make the impact to Rider PSR more
6 favorable to customers than their own forecast and I
7 think this is prejudicial, misleading. If the line
8 had said a "Hypothetical, made-up, no illustration of
9 Rider PSR" I think there would be less damage, but
10 because it says "Adjusted to include Rider PSR," I
11 think it's misleading. I think it has no place in
12 the record.

13 EXAMINER WALSTRA: Duke.

14 MS. PASHOS: Yes. The table itself says
15 it's for purposes of illustration to show kind of
16 directionally what the impact of this is. You know,
17 the Commission can give that appropriate weight and
18 Mr. Sullivan can be cross-examined on the numbers and
19 the assumptions and the illustrative nature of them.

20 MR. MENDOZA: Your Honor, I think the
21 point that sometimes you can have things in your
22 testimony for illustration has some merit. I would
23 say in this case they're talking about the core issue
24 in the case and if they wanted to offer an
25 illustration of the actual impact, I think that would

1 have had some value here. But instead they've
2 offered illustration on something that is -- that is
3 a fact not in evidence and so I think it's
4 misleading. I mean, I thought -- I thought Judah
5 Rose's testimony on the sunk cost issue was
6 intentionally misleading. I don't know what the
7 intent here was. But it seems like there's an effort
8 to disavow their own facts and it's prejudicial to
9 those of us opposed to this rider.

10 MS. PASHOS: Again --

11 EXAMINER WALSTRA: I'm going to deny the
12 motion to strike. I think that's something that can
13 be explored in cross-examination and argued in brief.

14 MR. MENDOZA: Okay. Thank you, your
15 Honor.

16 Q. (By Mr. Mendoza) Mr. Sullivan, where did
17 you get this \$18 million number from?

18 A. In consultation with other members of
19 Duke Energy Ohio.

20 Q. They told -- Duke -- members of Duke
21 Energy Ohio told you to use an \$18 million number?

22 A. Yes.

23 Q. And who were those people?

24 A. In consultation with Don Wathen.

25 Q. Okay.

1 MR. NUGENT: Your Honor, IGS would move
2 to object to the response -- I'm sorry -- move to
3 strike the response to the source of the income as
4 hearsay.

5 EXAMINER WALSTRA: Overruled.

6 Q. (By Mr. Mendoza) Mr. Sullivan, you did
7 not perform a quantitative analysis to show that the
8 benefits to Duke Energy Ohio's customers of
9 maintaining a Baal Moody's rating are greater than
10 the net customer cost for Rider PSR, right?

11 A. I did not.

12 Q. And same question for an A minus -- did
13 you say A negative or A minus for S&P rating?

14 A. A minus.

15 Q. Okay. And you did not do a quantitative
16 analysis to show that the benefits of Duke Energy
17 Ohio's customers of maintaining an A minus S&P rating
18 are greater than the net ratepayer losses under Rider
19 PSR, right?

20 A. I did not do a quantitative analysis.
21 The -- the approach we took was to consider the
22 quantitative and qualitative aspects of potentially
23 seeing a degradation in some of our core credit
24 metrics which are important to maintaining our
25 existing credit rating.

1 Q. And so the answer to my question was no?

2 A. Correct.

3 Q. Okay. You did not quantify the increased
4 borrowing cost for Duke Energy Ohio if its credit
5 rating -- if its Moody's credit rating was changed to
6 Baa2, right?

7 A. I did not, because doing so is based on a
8 variety of assumptions that would be hard to
9 quantify.

10 Q. And so credit ratings are impacted by a
11 multitude of factors; is that right?

12 A. That is correct.

13 Q. And that's true for Duke Energy
14 Corporation, right?

15 A. Yes.

16 Q. And it's also true for Duke Energy Ohio,
17 that its credit ratings are impacted by a multitude
18 of factors, right?

19 A. Correct.

20 Q. Okay. You did not quantify the increased
21 borrowing costs for Duke Energy Ohio if its credit
22 ratings -- if its S&P credit rating was changed to
23 BBB plus, right?

24 A. Correct.

25 Q. And did you understand my question to

1 mean capital Bs?

2 A. I did.

3 Q. Thank you.

4 If you would, would you turn to page 4,
5 line 17 of your testimony -- supplemental testimony,
6 please.

7 A. Line 17 of which page?

8 Q. Page 4. And actually the sentence starts
9 on line 16. Do you see the sentence that starts
10 "These stakeholders want to be confident" and then it
11 goes on to say "allow the company to recover
12 prudently incurred costs..."? Do you -- I am just
13 asking if you see that testimony.

14 A. Yes, I have found the statement. I was
15 reading the question to get some context.

16 Q. And allowing a utility to recover
17 imprudently-incurred costs is not necessary for a
18 stable regulatory environment, right?

19 A. Can you repeat the question?

20 MR. MENDOZA: Karen, I'm sorry, would you
21 please reread the question.

22 (Record read.)

23 Q. I'll restate the question.

24 Allowing a utility to recover
25 imprudently-incurred costs is not necessary for a

1 "stable regulatory environment," right?

2 A. I don't know that a utility -- I'm not
3 sure I can answer that question.

4 Q. Okay. So you know that a stable
5 regulatory environment requires utilities to recover
6 thorough prudently-incurred costs, but you don't know
7 what happens -- what the effect of allowing
8 imprudently-incurred costs is; is that right?

9 A. I'm not familiar with situations in which
10 utilities are allowed to incur imprudently-incurred
11 costs.

12 Q. Fair enough. And it's not the Public
13 Utilities -- Public Utilities Commission of Ohio's
14 job to guarantee a rate of return on private
15 companies' joint ventures, right?

16 MS. PASHOS: I object. Under the basis
17 that's a vague question. I'm not sure what it means.
18 Sometimes a joint venture could be utility-related,
19 sometimes it could not be.

20 Q. Okay. Imagine -- let me know which part
21 of this question you don't understand, Mr. Sullivan.
22 Imagine there's a utility that -- a company that is
23 not a regulated distribution utility in Ohio. Does
24 the Public Utilities Commission have an obligation to
25 allow that unregulated company to return a rate of

1 return on its capital investments?

2 A. I think you are asking me about my
3 opinions of Ohio utility ratemaking, and there would
4 be other witnesses of Duke Energy Ohio that would be
5 better prepared to answer that question.

6 Q. No. I was asking about your statement --
7 you offered an opinion about what a stable regulatory
8 environment is and I just wanted to make clear that
9 potential rate of return for unregulated joint
10 ventures doesn't have any impact on a stable
11 regulatory environment, you know, in the way you are
12 using that phrase. Would you agree with that?

13 MS. PASHOS: And I am going to object
14 again to the extent it's getting beyond what the
15 credit perspective is versus what jurisdiction the
16 PUCO has. I think that's improper.

17 EXAMINER WALSTRA: Overruled.

18 Q. You can answer the question or you can
19 try.

20 A. The intent of my comment about the
21 importance of stability was meant broadly to Duke
22 Energy Ohio and other utilities that investors value
23 stability of cash flows, predictability --
24 predictability and consistency of regulatory
25 framework.

1 MR. MENDOZA: Okay. We'll leave it for
2 the briefs. Your Honor, I have no further questions.

3 EXAMINER WALSTRA: Thank you.

4 Ms. Fleisher?

5 MS. FLEISHER: Thank you, your Honor.
6 Just a few questions.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Fleisher:

10 Q. Mr. Sullivan, my name is Madeline
11 Fleisher. I represent the Environmental Law & Policy
12 Center.

13 I wanted to ask you, if OVEC were, in
14 fact, earning a profit on the market, retaining those
15 revenues would be beneficial for Duke Energy Ohio's
16 credit rating, correct?

17 A. If it translated into improvements in
18 their consolidated credit metrics, I would have to
19 agree.

20 Q. And you didn't perform any calculations
21 showing the effect on Duke Energy's Ohio credit
22 rating if OVEC were earning a profit, did you?

23 A. I didn't -- can you repeat the question?

24 Q. Sure.

25 I just wanted to ask whether you

1 performed any calculations showing the potential
2 impacts on Duke Energy Ohio's credit rating in this
3 scenario where OVEC was earning a profit that
4 resulted in additional revenue to Duke Energy Ohio?

5 A. Other than the one illustrative
6 calculation showing the potential impact of OVEC
7 recovery, I performed no analysis of OVEC's
8 profitability or lack thereof.

9 Q. So the illustrative calculation based on
10 the \$18 million figure is the only scenario you ran
11 any quantitative calculations for; is that correct?

12 A. That is correct.

13 Q. And if you'll bear with me, I want to go
14 through a hypothetical here. To be clear upfront, a
15 hypothetical. So in this hypothetical world, Duke
16 has not sold off its Ohio generation. And if Duke
17 still owned generation resources in Ohio and let's
18 say Miami Fort to make it more concrete. If Duke
19 still owned an interest in Miami Fort, and Miami Fort
20 were unprofitable, then that could have a negative
21 impact on Duke -- Duke's credit rating, correct?

22 A. If Miami Fort was unprofitable and was
23 part of Duke Energy Ohio's consolidated financials,
24 it would result in a negative impact on its credit
25 metrics.

1 Q. And if Duke had divested Miami Fort to an
2 unregulated affiliate and that unregulated affiliate,
3 still a subsidiary of Duke parent corp., were losing
4 money on Miami Fort, that could negatively impact the
5 Duke parent corporation's credit rating; is that
6 correct?

7 A. In a purely hypothetical situation as you
8 described, I presume that could be the case. The
9 reality is Duke Energy Ohio did sell its nonregulated
10 generation for all that it could at the time and took
11 the proceeds and used part of those proceeds to pay
12 down debt which resulted in improved credit quality
13 compared to other Ohio utilities that didn't do the
14 same at that time.

15 MS. FLEISHER: Your Honor, I would move
16 to strike everything after his initial response. I
17 asked about a specific hypothetical scenario. If his
18 counsel wants to redirect and get the rest of that
19 explanation about what happened outside that
20 scenario, that's within their right, but that was not
21 responsive to my question.

22 EXAMINER WALSTRA: I'll grant the motion.
23 The first sentence will remain.

24 MS. FLEISHER: Thank you, your Honor.
25 That's all I have.

1 EXAMINER WALSTRA: Mr. Whitt.

2 MR. WHITT: I will defer for the time
3 being to counsel for IGS.

4 EXAMINER WALSTRA: Mr. Nugent.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Nugent:

8 Q. Good morning, Mr. Sullivan.

9 A. Good morning.

10 Q. My name is Mike Nugent. I represent IGS
11 Energy.

12 You submitted prefiled supplemental
13 testimony in this matter to offer support for the
14 stipulation and recommendation because of the
15 potential impact the settlement could have on Duke
16 Energy Ohio's ability to maintain its credit quality,
17 correct?

18 A. Correct.

19 Q. And per your supplemental testimony, you
20 use the term "credit quality" to describe Duke Energy
21 Ohio's overall financial health and its willingness
22 and ability to repay all financial obligations in
23 full and on time, correct?

24 A. Correct.

25 Q. And your supplemental testimony includes

1 Exhibit JLS-1 which is an assessment of Duke Energy
2 Ohio's credit quality that was performed by Moody's
3 Investors Service, correct?

4 A. That is correct.

5 Q. And in that assessment, Moody's provided
6 the company credit ratings and a ratings outlook
7 which is based, in part, on the regulatory climate in
8 the Duke Energy Ohio service territory, correct?

9 A. Yes.

10 Q. If I could, I would like to direct your
11 attention to page 9 of your supplemental testimony,
12 lines 8 through 17. There you raise the issue of
13 regulatory treatment of OVEC contracts through Rider
14 PSR, correct?

15 A. Correct.

16 Q. Okay. Is it also correct that you
17 reviewed a stipulation filed in these proceedings?

18 A. Yes.

19 Q. Okay. So would you agree that Rider PSR
20 is a Duke Energy Ohio placeholder rider intended to
21 pass the net gains and losses associated with the
22 company's 9 percent interest in OVEC on to
23 ratepayers?

24 A. I understand it as a sharing mechanism.

25 Q. And how do you define "sharing

1 mechanism"?

2 A. Sharing upside and downside for the
3 purposes of a more fixed hedged rate.

4 Q. So would "upside" be better defined as
5 net gains, and "downside" being better defined as
6 losses?

7 A. Yes.

8 Q. Thank you.

9 And am I correct, for purposes of your
10 testimony, you recommend approval of the PSR to
11 insulate Duke from the financial impacts associated
12 with the competitive generation market?

13 A. My support of the stipulation is that of
14 a holistic approach where all of the components that
15 go into the stipulation and settlement are taken into
16 account.

17 MR. NUGENT: Objection, your Honor. I
18 move to strike the question as being nonresponsive.

19 MS. PASHOS: I believe he's put it in
20 words in which he can answer the question. It is
21 responsive.

22 EXAMINER WALSTRA: The motion to strike
23 is denied. You can seek clarification.

24 MR. NUGENT: Okay.

25 Q. (By Mr. Nugent) Is one of the benefits

1 then of the PSR to insulate Duke from the financial
2 impacts associated with the competitive generation
3 market?

4 A. That is one of many attributes of Rider
5 PSR.

6 Q. Thank you.

7 And would you also agree the Moody's
8 analysis you included with your supplemental
9 testimony did not expressly consider whether the
10 recovery of OVEC contract costs should be
11 nonbypassable or bypassable?

12 A. I recall Moody's being specific to
13 bypassable or nonbypassable. What I do recall is
14 Moody's specifically pointing out their expectation
15 that Duke Energy Ohio receive consistent ratemaking
16 and the fact that their outlook and their rating upon
17 Duke Energy Ohio is predicated on riders and
18 regulatory outcomes that are consistent with those of
19 other Ohio utilities.

20 Q. Okay.

21 MR. WOLTZ: Your Honor, OCC moves to
22 strike everything after the first sentence as
23 nonresponsive. He was only asked if Moody's looked
24 to the specific point of if the PSR was, I believe,
25 considered in the calculating the credit rating, not

1 any of the other things that the witness responded
2 to.

3 EXAMINER WALSTRA: Denied.

4 Q. (By Mr. Nugent) And Mr. Sullivan, if I
5 could direct you to page 10, lines 16 through 17 of
6 your supplemental testimony. There you stated "The
7 overall credit quality of Duke Energy Corporation is
8 influenced by the credit profiles of each of its
9 wholly owned electric and natural gas utility
10 subsidiaries" including Duke Energy Ohio, correct?

11 A. That is correct.

12 Q. And am I correct that Duke Energy
13 Kentucky has a Moody's rating of Baal?

14 A. That is correct.

15 Q. And am I also correct that Baal is a more
16 favorable rating than Baa3?

17 A. That is correct.

18 Q. Mr. Sullivan, isn't it true Duke Energy
19 Ohio transferred assets to Duke Energy Kentucky in
20 the past four years?

21 A. I do not know.

22 Q. More specifically generation assets.

23 A. I am not an expert on that.

24 Q. Are you aware of whether or not that
25 occurred?

1 A. I do not know.

2 MR. NUGENT: Thank you, Mr. Sullivan.

3 I have no further questions at this time.

4 EXAMINER WALSTRA: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Woltz:

8 Q. Good afternoon, Mr. Sullivan. If we
9 could turn briefly to page 5 of your supplemental
10 testimony. And then just so you're aware, at any
11 time I ask you to look at your testimony, we will be
12 looking at your supplemental unless I say otherwise.

13 A. Thank you.

14 Q. And right below line 6 you have a table
15 there; is that correct?

16 A. Yes.

17 Q. And this table lists Duke Energy Ohio's
18 current rating as it stands by Moody's and S&P; is
19 that correct?

20 A. Yes.

21 Q. And are you aware of what the lowest
22 credit rating by S&P to be considered as investment
23 grade is?

24 A. BBB minus.

25 Q. And just so we are clear, BBB, those are

1 all capital Bs; is that correct?

2 A. Correct.

3 Q. And currently what is the credit rating
4 for Duke Energy Ohio under the S&P?

5 A. A minus, senior unsecured.

6 Q. And is it true that that credit rating is
7 currently three investment grades above the lowest
8 S&P investment grade?

9 A. That is correct.

10 Q. And what is the lowest credit rating by
11 Moody's to be considered investment grade?

12 A. Baa3.

13 Q. And just so the record is clear, that's
14 capital B and lower case A in that instance?

15 A. Correct.

16 Q. And what is Duke Energy Ohio's current
17 credit rating by Moody's?

18 A. Baa1, senior unsecured.

19 Q. And is it true that Duke Energy Ohio's
20 credit rating is currently two investment grades
21 above the lowest Moody's investment grade?

22 A. Yes.

23 Q. What is your understanding of the meaning
24 of the assigned positive outlook for Duke Energy Ohio
25 by Moody's?

1 A. The positive outlook occurred in August
2 of 2017. That positive outlook is the result of
3 Moody's observation that other Ohio utilities had
4 received constructive regulatory outcomes in their
5 rate proceedings and the expectation that Duke Energy
6 Ohio would receive consistent treatment.

7 Q. Thank you.

8 A. It also predated tax reform and -- I'll
9 leave it at that. It also pre-- I'll say it predated
10 tax reform where Moody's performed a comprehensive
11 view on all utilities and placed a negative outlook
12 on the utility sector due to the consequences of tax
13 reform.

14 Q. Thank you for that.

15 Does a positive outlook mean that the
16 rating agency, in this case Moody's, is likely to
17 consider upgrading the credit of Duke Energy Ohio?

18 A. The positive outlook is accompanied by
19 statements where the rating agency indicates what
20 could influence a positive rating action.

21 Q. Does this credit rating given to Duke
22 Energy Ohio account for both Duke Energy Ohio's gas
23 and electric services?

24 A. Yes.

25 Q. And does this credit rating account for

1 both Duke Energy Ohio's distribution and transmission
2 services?

3 A. Yes.

4 Q. And does this credit rating account for
5 any services conducted in the state of Kentucky?

6 A. Yes.

7 Q. And is it possible that those services
8 conducted in the state of Kentucky could receive
9 negative regulatory treatment for the Kentucky Public
10 Utilities Commission?

11 A. Is it possible that Kentucky could
12 receive negative regulatory treatment?

13 Q. Correct.

14 A. I guess that is possible.

15 Q. And that negative regulatory treatment
16 would affect Duke Energy Ohio's credit rating,
17 correct?

18 A. It has the potential to on a small basis.
19 Duke Energy Kentucky relative to the consolidated
20 Duke Energy Ohio is relatively small component.

21 Q. But it is a component, correct?

22 A. It is a component.

23 Q. And it is a factor of the many factors
24 they use to determine the credit rating of Duke
25 Energy Ohio, correct?

1 A. Correct.

2 Q. If we could look at your Supplemental
3 Attachment JSL-1 on page 2. And I am looking at the
4 two factors under factors that -- yeah, two factors
5 under "Factors that Could Lead to a Downgrade." Are
6 you with me?

7 A. Yes.

8 Q. Those two factors do not mention any
9 costs associated with the OVEC contracts, correct?

10 A. OVEC is mentioned in several places
11 throughout this document, but not specifically in
12 those two bullets.

13 MR. WOLTZ: And, your Honor, I move to
14 strike that answer as unresponsive. I was simply
15 asking if it was mentioned in those two bullets. I
16 am not concerned whether it's associated in any other
17 part of this document at this time, and if Counsel
18 would like to address that on redirect, Counsel can
19 feel free to do so, but at this time that was not my
20 question.

21 EXAMINER WALSTRA: Denied.

22 Q. (By Mr. Woltz) So just so the record is
23 clear that it may be addressed in other areas; it is
24 not under these two factors that can lead to a
25 downgrade, correct?

1 A. I can't agree with that statement because
2 the importance of the credit metric in Bullet No. 2
3 and the consistency mentioned in Bullet No. 1, OVEC
4 is a -- OVEC recovery, in my opinion, is a part of
5 both of those statements. While the acronym "OVEC"
6 is not specifically written there, the implication is
7 that it is -- it is part of those two outcomes that
8 could lead to a downgrade.

9 Q. Okay. Just so we can make the record
10 clear then, those two factors listed there do not
11 list any component that is proposed in the settlement
12 as a potential to lead to a downgrade at this time,
13 correct?

14 A. I can't agree with that either.

15 Q. And is that for the same reasons you
16 couldn't agree to the previous question?

17 A. The settlement includes so many things
18 that ultimately could lead to concerns of -- the
19 settlement includes so many things that are important
20 to a credit rating agency's view on whether or not
21 the outcome of a rate case could lead to a downgrade
22 which ultimately weaves into both of these downgrade
23 factor statements you keep referencing.

24 Q. So would it be your opinion that the
25 outcome of this rate case and any other rate case

1 that involves Duke Energy Ohio would be the sole
2 bearing on its credit rating?

3 A. The exhibit that you are asking me to
4 refer to has Moody's methodology for ascribing credit
5 ratings and 50 percent of how they ascribe credit
6 ratings relate to the regulatory framework of a
7 utility including the consistency and predictability
8 of regulation as well as the ability to recover costs
9 and earn returns in a timely and sufficient manner.

10 Q. In looking back at page 2 of the same
11 attachment we are still on and the other factors that
12 could lead to a downgrade, it says "If the outcome of
13 future base rate cases is less favorable such that
14 CFO pre-working to debt falls below 19 percent on a
15 sustained basis"; is that correct?

16 A. That is correct.

17 Q. And does Duke Energy Ohio closely monitor
18 its ratio of CFO pre-working capital to debt?

19 A. It does.

20 Q. And are there factors that impact this
21 ratio that Duke Energy Ohio has direct control over?

22 A. There are some things Duke Energy
23 management has control over, but there are plenty
24 more that it does not have direct control over and
25 looks to the outcome of rate cases as the primary

1 driver for those credit metrics.

2 Q. And what are some of those things that
3 Duke Energy Ohio has direct control over?

4 A. I would say the most Duke Energy
5 management has the most control over how the utility
6 is capitalized. The CFO, the cash flow from
7 operations, is more the outcome of regulatory
8 proceedings such as this. The denominator of debt is
9 directed more by the company's means for capitalizing
10 the company.

11 And in that same rating methodology that
12 we spoke of previously, you'll see that the
13 capitalization I mention, that management has more
14 control over, scores the highest among all of the
15 criteria that Moody's looks at in evaluating the
16 credit quality of Duke Energy Ohio.

17 And I would also point out that Duke
18 Energy Ohio has always maintained a healthy cap
19 structure within not only the regulated parameters
20 for ratemaking, but in some cases even more
21 equitized. That's why it's enjoyed BBB plus, A
22 minus, credit ratings for the last 20 years.

23 Q. So would you say it's true that Duke
24 Energy Ohio has control over executive compensations
25 then?

1 A. I am not a compensation expert. If
2 you're asking about Duke Energy management's ability
3 to control costs, the answer would be yes. And it's
4 made a concerted effort to maintain or reduce its
5 costs. That's a core objective of Duke Energy Corp.
6 and is a meaningful initiative across all of its
7 regulated utilities.

8 Q. And executive compensation packages would
9 affect the CFO pre-working capital to debt ratio,
10 would it not?

11 A. I can't answer that question. You're
12 asking me to try to allocate executive compensation
13 down to the cost structure of a regulated utility.
14 That is not an area of my expertise.

15 Q. Let me clarify my question then because
16 that's not the intention of my question. My question
17 is more is it a factor that would play a role. Are
18 executive compensation packages a factor that play a
19 role in the CFO pre-working capital to debt?

20 A. Since the basis of cash flow from
21 operations starts with net income, there could be
22 some component of labor costs involved in that. But
23 I cannot speak of executive compensation directly. I
24 can just say that net income is a derivative of
25 general labor costs.

1 Q. Would you agree that executive
2 compensation is a part of net -- a part of labor
3 costs?

4 A. I presume some component of executive
5 compensation would be labor costs as it applies to a
6 regulated utility, but I am sure there are many
7 components of executive compensation that is beyond
8 my purview.

9 Q. And do you believe lobbying expenses
10 would play a role in calculating a CFO pre-working
11 capital to debt ratio?

12 A. I do not know.

13 Q. And if we could look now at page 10 of
14 your supplemental testimony. And I'm looking at the
15 table that follows just after line 15. And just so
16 the record is clear, this table addresses the credit
17 rating of Duke Energy Corporation, not Duke Energy
18 Ohio; is that correct?

19 A. That's correct.

20 Q. And can you tell me where Duke Energy
21 Corporation is located?

22 A. Charlotte.

23 Q. And do you know if Duke Energy
24 Corporation directly participates in providing
25 electrical services to customers in Ohio?

1 A. Can you rephrase the question?

2 Q. Yes.

3 Is it -- to your knowledge does Duke
4 Energy Corporation provide services to Ohio customers
5 directly?

6 A. Duke Energy Corp.'s -- has a -- Duke
7 Energy Business Services provides resources to all of
8 its regulated utilities of which Duke Energy Ohio
9 will be ascribed an allocated portion.

10 Q. And is Duke -- you said it was Duke
11 Business Services, correct?

12 A. Duke Energy Business Services.

13 Q. Duke Energy Business Services, is that a
14 subsidiary of Duke Energy Corporation?

15 A. I believe so.

16 Q. So Duke Energy Corporation is not
17 directly involved as the parent company.

18 MS. PASHOS: Objection. Mischaracterizes
19 his response.

20 MR. WOLTZ: I disagree. His response was
21 that Duke Energy Corporation, through Duke Energy
22 Business Services, operates within Ohio. But the
23 original question was Duke Energy Corp -- does Duke
24 Energy Corporation operate within Ohio, not one of
25 its subsidiaries.

1 A. Yeah, "operate" is the word I'm
2 struggling with. I believe your question might be
3 are there parts of Duke Energy Corporation that
4 provide services to the benefit of Duke Energy Ohio,
5 the answer would be yes. As an example of that --

6 MR. WOLTZ: I am going to move to strike
7 that, your Honor. My question was directly does Duke
8 Energy Corporation directly provide services to Ohio
9 customers. Not through subsidiaries, but the parent
10 company itself.

11 EXAMINER WALSTRA: I'm going to deny the
12 motion to strike. I think he is trying to answer the
13 best he could, but if you can narrow it down so he
14 can answer the question.

15 Q. (By Mr. Woltz) So as part of the
16 structure, Duke Energy Corporation provides
17 assistance to its -- Duke Energy Corporation through
18 its subsidiaries -- subsidiaries operates within
19 Ohio; is that correct? I'll rephrase.

20 Has Duke Energy Corporation ever come
21 before the Public Utilities Commission of Ohio to
22 your knowledge?

23 A. I don't know.

24 Q. Is there any reason that Duke Energy
25 Corporation would come before the Public Utilities

1 Commission of Ohio?

2 A. I'm a member of Duke Energy Business
3 Services. And on behalf of Duke Energy Corporation,
4 that provides assistance to Duke Energy Ohio in
5 matters of capital raising and credit quality, I am
6 here before the Public Utilities Commission of Ohio.

7 Q. But Duke Energy Corporation would never
8 come before the PUCO seeking rates, to establish
9 rates; is that correct? Directly as the parent
10 company, would Duke Energy Corporation come before
11 the Ohio Public Utilities Commission seeking to
12 establish rates?

13 MS. PASHOS: Objection. I think we are
14 getting into ratemaking and jurisdiction. We are
15 getting very far afield of Mr. Sullivan's testimony,
16 the scope of his testimony.

17 EXAMINER WALSTRA: He can answer if he
18 knows.

19 A. Can you repeat the question?

20 Q. I am okay with moving on actually.

21 Is it your understanding of Duke Energy
22 Corporation's outlook that it takes into account all
23 of its subsidiaries?

24 A. When the credit rating agencies view Duke
25 Energy Corp. on a consolidated basis, they will

1 evaluate the creditworthiness of all of its regulated
2 utilities.

3 Q. So just so the record is clear, Duke
4 Energy Corporation's credit outlook is dependent on
5 more than just Duke Energy Ohio?

6 A. Correct.

7 Q. Could there be a situation where the PUCO
8 approves the settlement here, and a different Duke
9 Energy -- Energy subsidiary, such as Duke Energy
10 Florida, were to receive negative regulatory
11 treatment?

12 A. Yes.

13 Q. And would that have an affect on Duke's
14 energy credit -- Duke Energy Corporation's credit
15 outlook?

16 A. It could.

17 Q. And could it lead it to decrease?

18 A. It could.

19 Q. And just so the record is clear, under
20 that hypothetical it could be replaced with any of
21 the subsidiaries, not just Duke Florida?

22 A. Correct.

23 Q. And if we could look at your Attachment
24 JLS-2 on page 5.

25 MS. PASHOS: I'm sorry, what page?

1 MR. WOLTZ: 5.

2 Q. And I am looking at the report, Exhibit 5
3 there.

4 A. Yes.

5 Q. Is it fair to say that Duke Energy Ohio
6 holds one of the smallest portions of debt of Duke
7 Energy Corporation?

8 A. Yes.

9 Q. And is it your understanding that that
10 portion of debt held by Duke Energy Ohio accounts for
11 both its electric and gas operations?

12 A. Yes.

13 Q. And would that also be true for its
14 distribution and transmission operations?

15 A. Yes.

16 Q. And if we could look at page 1 of the
17 same exhibit, under the summary, would it be fair to
18 say that the two main factors of Duke Energy
19 Corporation's negative outlook are its high level of
20 parent company debt and additional pressure on the
21 credit cash flow metrics?

22 A. The credit ratings on Duke Energy
23 Corporation are predicated on many of the -- on
24 virtually all of the same factors that we covered
25 with respect to Duke Energy Ohio. Credit metrics are

1 one of many things the rating agencies will look at.

2 Q. In looking at the middle of this
3 paragraph here, the sentence starting "The negative
4 outlook...." The sentence -- this portion reads:
5 "The negative outlook recognizes consolidated cash
6 flow credit metrics that are currently weak, partly
7 due to the high level of parent company debt, and our
8 view that notwithstanding the company's newly
9 announced balance sheet strengthening plans, the
10 recently enacted tax reform policy will put
11 additional downward pressure on these metrics,"
12 correct?

13 A. That sentence is as you read it.

14 Q. And also just to clarify the record, you
15 had said these reports were performed before the tax
16 reform. Was that -- were you referring only to the
17 Duke Energy Ohio report or both reports?

18 A. I was referring to the August 2017 Duke
19 Energy Ohio report. This negative outlook on Duke
20 Energy Corp. came after Moody's had a month and a
21 half to react to the Tax Reform Act that was passed
22 at the end of 2017.

23 Q. And if we can now look at page 2 of the
24 same attachment. And I'm looking at report,
25 Exhibit 2, and I'm looking down at the bottom of the

1 debt to capitalization percentage for September 2017
2 is 48 percent, correct?

3 A. Correct.

4 Q. And do you have any reason to believe
5 that has substantially changed since then?

6 A. No.

7 Q. And if we can look at your Attachment 1
8 which is JLS-1, I believe, page 2, and we are looking
9 at the report, Exhibit 2, on that page.

10 A. Yes.

11 Q. And there I am looking at the debt to
12 capitalization as it was 6-30-2017. That stands at
13 33 percent, correct?

14 A. Correct.

15 Q. And do you have any reason to believe
16 that has substantially changed since then?

17 A. No.

18 MR. WOLTZ: And if I could have just a
19 minute, your Honor. Nothing further, your Honor.

20 EXAMINER WALSTRA: Thank you.

21 Mr. Whitt.

22 MR. WHITT: I do have a few questions,
23 your Honor.

24 - - -

25

CROSS-EXAMINATION

By Mr. Whitt:

Q. Good morning, Mr. Sullivan. My name is Mark Whitt. I represent Retail Energy Supply Association. I want to start by just closing the loop on the topic OCC had raised about Duke Energy Corp. The holding company, Duke Energy Corp., is not a public utility, correct?

A. Correct. It is a holding company for several regulated utilities.

Q. And Duke --

MS. PASHOS: I'm sorry, can you use your microphone please, Mr. Whitt. Thank you.

Q. Duke Energy Corp. does not have a tariff in Ohio or other states, correct?

A. Correct.

Q. And Duke Energy Corp. does not itself have rates for utility services, correct?

A. Correct.

Q. Is Duke's continued -- Duke Energy Ohio's continued ownership interest in OVEC dependent on whether it obtains cost recovery?

A. I do not know.

Q. What will Duke do if the Commission denies cost recovery that is being sought in this

1 proceeding?

2 A. I would need to refer to someone else in
3 the Duke Energy Ohio management team for that
4 question.

5 Q. You haven't been involved in any
6 discussions that even mentioned that possibility?

7 A. No.

8 Q. If you will turn to attachment JLS-1 in
9 your testimony on page 3, are you there, sir?

10 A. Yes.

11 Q. If we go down to the second paragraph
12 under the heading "Some uncertainty regarding OVEC
13 recovery." Do you see that?

14 A. I do.

15 Q. Now, Moody's, in the report that you've
16 attached, notes that a placeholder rider was approved
17 relative to OVEC, but that cost recovery was denied,
18 correct?

19 A. I can only state back you to what this
20 report says. It doesn't say what you just said.

21 Q. And I was generalizing and maybe I'll --
22 let me just quote the second sentence of the
23 paragraph I was referencing --

24 A. Okay.

25 Q. -- I was referencing, which reads: "The

1 PUCO however denied the company's request to begin
2 specific rider recovery at that time."

3 A. Correct.

4 Q. And despite the denial of cost recovery,
5 Moody's nonetheless characterizes Ohio's regulatory
6 environment as supportive, correct?

7 A. Yes.

8 Q. And Duke Energy Ohio's current credit
9 rating reflects the fact that OVEC cost recovery has
10 not been approved, correct?

11 A. The report states that "Given the
12 precedent set for OVEC cost recovery in the state,
13 our positive outlook incorporates a view that
14 recovery of Duke Ohio's OVEC related costs will
15 ultimately be approved."

16 Q. Well, it does say that, but does it also
17 not say and in fact devote several paragraphs to
18 Ohio's supportive regulatory environment, and that
19 characterization is made notwithstanding the fact
20 that the Commission denied cost recovery when it
21 approved the OVEC rider, correct?

22 A. I agree with the statement you made
23 reciting what was written in the report.

24 Q. And denial of cost recovery, if we talk
25 about regulatory or consistency in regulatory

1 treatment, consistency would dictate that cost
2 recovery be denied in this proceeding as well,
3 wouldn't it?

4 A. I can't tell you what Moody's -- I can't
5 speak for Moody's. But my interpretation of this
6 report is a strong signal that their expectation is
7 that Duke Energy's OVEC related costs will ultimately
8 be recovered.

9 MR. MENDOZA: Your Honor, I would like to
10 renew my motion to strike the exhibits. The witness
11 just said he can't speak for Moody's, which is
12 correct, and I think -- I would like to ask your
13 Honor to reconsider the motion to strike. We've got
14 this problem where they have a document where nobody
15 can speak for.

16 EXAMINER WALSTRA: Understood. I am
17 going to deny the motion and the Commission will give
18 it the proper weight.

19 MR. MENDOZA: Thank you, your Honor.

20 Q. (By Mr. Whitt) Sitting in the hearing
21 room today, the Commission has not approved a cost
22 recovery of -- related to OVEC, correct?

23 A. Not for Duke Energy Ohio.

24 Q. And notwithstanding the lack of a cost
25 recovery mechanism, Duke Energy Ohio today has an

1 investment-grade credit rating, correct?

2 A. It does.

3 Q. Since Duke Energy Ohio has a Moody's
4 credit rating, Duke Energy Ohio could access capital
5 markets directly, couldn't it?

6 A. I believe Duke Energy Ohio, as of now,
7 has access to the capital markets.

8 Q. And not just the parent company, correct?

9 A. Correct.

10 Q. So if Duke Energy Corporation's credit
11 metrics deteriorated and Duke Energy Ohio could
12 borrow more cheaply from the markets than it could
13 from its parents -- from its parent, that option
14 would be available to Duke Energy Ohio, correct?

15 A. Correct.

16 Q. Would -- if the Commission were inclined
17 to grant Duke's request for OVEC cost recovery, would
18 it be appropriate to condition the recovery of OVEC
19 costs on Duke Energy Ohio maintaining its current
20 credit rating?

21 MS. PASHOS: Objection to the extent it
22 is going beyond Mr. Sullivan's expertise in terms of
23 credit quality and financing of capital and gets into
24 regulatory policy and ratemaking.

25 EXAMINER WALSTRA: Overruled.

1 MR. WHITT: Could you read the question?

2 (Record read.)

3 A. I would say that question would need to
4 be responded by a collection of Duke Energy Ohio
5 management, but my personal belief is that the goal
6 of Duke Energy's finance team is to maintain
7 investment-grade credit ratings at all of its
8 utilities and the parent company; and, furthermore,
9 not look at the weakest investment-grade credit
10 rating as any desirable outcome, but, rather, be
11 several notches above that.

12 Q. And presently Duke Energy Ohio enjoys a
13 higher credit rating than Duke Energy Corporation,
14 correct?

15 A. That is not correct.

16 Q. Is --

17 A. Duke Energy Corp. is rated Baa1. Duke
18 Energy Ohio is rated Baa1.

19 Q. I stand corrected. In terms of outlooks?

20 A. That is correct.

21 Q. Duke Energy Corp., the outlook is
22 negative, correct?

23 A. That is correct.

24 Q. And the outlook for Duke Energy Ohio is
25 positive, correct?

1 A. That is correct.

2 MR. WHITT: I have no further questions.

3 EXAMINER WALSTRA: Thank you.

4 Redirect?

5 MS. PASHOS: Yes, just a few.

6 - - -

7 REDIRECT EXAMINATION

8 By Ms. Pashos:

9 Q. First, do you recall discussions about
10 the Moody's credit rating reports and I suppose
11 whether they are relevant or not. Who -- who relies
12 on -- who reads and relies on Moody's credit rating
13 reports?

14 A. Duke Energy investors rely heavily on it,
15 both equity and debt investors, as well as all of the
16 banks that provide liquidity to Duke Energy and its
17 subsidiaries.

18 Q. And based on your recent discussion with
19 Mr. Whitt, why is it important for Duke Energy Ohio
20 to be above and maybe even a couple of notches above
21 investment grade credit rating?

22 A. We believe that strong investment grade
23 credit ratings, better position the utility to access
24 capital in the most cost-effective way and mitigating
25 situations where there is no access to capital when

1 it is needed.

2 Q. And so, you also earlier on in
3 cross-examination, someone was asking you if you had
4 done kind of a quantitative analysis of movement of
5 credit ratings and what that would mean. But you
6 just mentioned there kind of access. Can you expand
7 on kind of the quantitative side versus access?

8 A. Yes. A weak investment grade or
9 non-investment grade company when needing to access
10 the capital markets may find in certain economic
11 periods that there is simply no interest from the
12 investment community to invest in such company.

13 MS. FLEISHER: Your Honor, I move to
14 strike the question and answer. That was at best an
15 extremely remote question -- or, connection to the --
16 the question on cross about quantitative analysis.
17 Quantitative -- he was asked about whether he had
18 done a quantitative analysis of the impact of certain
19 events on the credit rating. That has nothing to do
20 with the totally separate question, access to credit
21 markets. The only connection is they have to do with
22 credit. If that's the standard, then he could be
23 asked absolutely anything on redirect.

24 MS. PASHOS: And my question went to
25 asking him is there more to an analysis of credit

1 ratings than purely the quantitative side.

2 MS. FLEISHER: And, again, he was not
3 asked broadly about analysis of credit ratings. He
4 was asked about the quantitative -- the impact of a
5 particular quantitative -- the quantitative impacts
6 on the credit rating of particular financial
7 scenarios. That's the point, your Honor.

8 MR. MENDOZA: Your Honor, if I may, I
9 would just add that Duke could have addressed that
10 issue in their testimony if they like, and it
11 certainly had nothing to do with Ms. Fleisher's
12 question about whether he performed mathematical
13 quantitative -- excuse me -- calculations for his
14 testimony.

15 EXAMINER WALSTRA: I'll allow it.

16 MS. PASHOS: Thank you.

17 Q. (By Ms. Pashos) One thing that did come
18 up on your cross was I think a hypothetical about
19 Duke Energy Ohio retaining, instead of -- or, selling
20 its generating assets and then retaining it and
21 different kind of scenarios that come out of that.
22 And you had started to respond in reality what Duke
23 Energy Ohio did when it sold the generation, and
24 could you please finish your answer to that -- to
25 that question.

1 A. Sure. I was simply referring to Duke
2 Energy Ohio being among the early movers in selling
3 its nonregulated power generation to third parties.
4 And subsequent to that, Duke Energy Ohio's credit
5 quality did improve.

6 Q. Looking at your attachment to your
7 supplemental testimony, JLS-1, you were asked a
8 number of questions about that, and I think at one
9 point you referred to the description of Moody's
10 rating methodology and I just wanted you to point out
11 what page you were referring to on that attachment.

12 A. Page 5 of 7 of Attachment JLS-1.

13 Q. And then, finally, when the counsel for
14 the OCC was asking you some questions, I think it
15 was -- I think it was still this JLS-1 and the
16 factors that could lead to a downgrade on page 2, and
17 I think he asked you if, you know, OVEC was
18 explicitly mentioned in that section. Do you recall
19 that discussion?

20 A. Yes.

21 Q. Is OVEC specifically in that situation
22 called out in the report generally?

23 A. Yes. It was mentioned numerous times.

24 MS. PASHOS: Could I have one minute,
25 please?

1 Q. Just one final question, I think this has
2 to do with JLS-2 if we -- or actually just let's go
3 to your supplemental testimony where you describe the
4 current credit ratings and outlooks for Duke Energy
5 Ohio. And I think you had a discussion with several
6 other cross-examiners about the fact that the Moody's
7 rating has a positive rating outlook. And can you
8 explain in your understanding why that is a positive
9 outlook at this point in time?

10 A. Yeah. At that point in time, August 2017
11 to be precise, there had been a few precedent rate
12 cases with other utility companies in Ohio that in
13 the eyes of Moody's had received constructive
14 regulatory outcomes and, in the report, that provided
15 a positive outlook on Duke Energy Ohio, they
16 referenced the expectation that Duke Energy Ohio will
17 receive consistent ratemaking in their upcoming rate
18 case.

19 I also mentioned that this report
20 predated some of the head winds that are now
21 presented to utilities with respect to the passage of
22 the tax reform and had Moody's known the consequences
23 of tax reform and some of the challenges they do
24 present to utilities in working through that, I
25 question whether or not Moody's would have received a

1 positive -- Duke Energy Ohio would have received a
2 positive outlook. I'm sure that it is probably an
3 area of interest by Moody's and S&P as they evaluate
4 Duke Energy Ohio going forward.

5 MR. MENDOZA: Your Honor, I move to
6 strike the last half of that answer that purported to
7 reflect what Moody's and S&P were thinking. We've
8 already established that this witness can't speak on
9 behalf of those credit rating companies. We are
10 allowing in the document.

11 EXAMINER WALSTRA: I'll grant it.

12 MR. MENDOZA: Okay. Thank you.

13 EXAMINER WALSTRA: The last sentence
14 starting with "I'm sure."

15 Q. (By Ms. Pashos) Just to follow-up, you
16 mentioned in discussing, in this last answer and
17 elsewhere, constructive regulatory and consistent
18 regulatory treatment, can you be more specific about
19 what -- what consistency in regulatory treatment you
20 believe credit rating agencies are focused on and
21 looking for?

22 MR. MENDOZA: Same objection. It calls
23 for hearsay.

24 MR. WHITT: I'll additionally object in
25 that it calls for speculation.

1 MS. PASHOS: Yeah, just based on what's
2 in the report. The report is in evidence. I am not
3 asking him to speak for Moody's. I am asking him his
4 understanding, as a credit rating expert who deals
5 with the credit rating agencies and is sponsoring
6 these reports, what they are focused on with regard
7 to Duke Energy Ohio.

8 MR. WHITT: Respectfully, your Honor, the
9 witness is being asked to opine on what Moody's or
10 the drafters of these reports meant. And there was
11 an objection during my examination to questions where
12 the witness purportedly could not speak on behalf of
13 Moody's. So it seems like there is an attempt here
14 to have it both ways. If the reports are coming in,
15 they ought to be allowed to speak for themselves and
16 leave it at that.

17 EXAMINER WALSTRA: I'll sustain the
18 objection.

19 MS. PASHOS: Thank you. Nothing further.

20 EXAMINER WALSTRA: Any recross?

21 MR. MENDOZA: No, thank you, your Honor.

22 MS. FLEISHER: I just have two questions.

23 - - -
24
25

1 RECROSS-EXAMINATION

2 By Ms. Fleisher:

3 Q. So Mr. Sullivan, are you -- so Counsel
4 asked you about sort of intervening events since that
5 August 2017 credit rating report, correct?

6 A. Correct.

7 Q. You recall that? Okay. And also since
8 that time are you aware of a decision regarding
9 Duke's North Carolina subsidiary where that
10 subsidiary was fined \$30 million relating to coal ash
11 pollution?12 A. I'm aware of the general outcomes of the
13 Duke Energy Carolina's rate case.14 Q. And can you confirm that that was part of
15 that outcome, that \$30 million fine?16 A. Yeah. You -- you explain the fine to be
17 coal ash pollution. It's my understanding that it
18 was a disallowance and a penalty for mismanagement.19 Q. And could that affect Duke's credit
20 rating in the future?21 MS. PASHOS: Objection. Vague. What
22 Duke are you referring to?

23 Q. Sorry. The Duke holding company.

24 A. The outcome of all rate cases for all of
25 Duke Energy's utility companies can have influence on

1 the holding company's credit ratings.

2 Q. And does that mean your answer is yes?

3 A. It -- it could.

4 Q. Thank you. I'll take that.

5 And then moving to a separate topic, your
6 counsel asked you a question about sort of what Duke
7 had done with its generation in the past. Do you
8 recall that?

9 A. Yes.

10 Q. Okay. And do you know whether in that
11 same time frame since deregulation in around 2003
12 whether Duke Energy Ohio has earned any profit on its
13 interest in OVEC?

14 A. I cannot speak to the profitability of
15 OVEC.

16 Q. And if Duke Energy Ohio had earned profit
17 on OVEC since 2003, would that have helped their
18 credit -- helped that company's credit rating?

19 A. I believe we've discussed this before and
20 my answer was if profitability leads to an increase
21 in consolidated cash flow for the rated entity, it
22 would -- it would be supportive of their credit
23 metrics, which is one of many factors a rating agency
24 is evaluating.

25 MS. FLEISHER: Thank you. That's all,

1 your Honor.

2 EXAMINER WALSTRA: Thank you.

3 Mr. Whitt?

4 MR. WHITT: No questions.

5 EXAMINER WALSTRA: IGS?

6 MR. NUGENT: No questions.

7 EXAMINER WALSTRA: OCC?

8 MR. WOLTZ: No questions.

9 EXAMINER WALSTRA: Thank you.

10 THE WITNESS: Thank you.

11 EXAMINER WALSTRA: Go off the record

12 briefly.

13 (Discussion off the record.)

14 EXAMINER WALSTRA: We can go back on the
15 record.

16 Would you like to move your motions --
17 move your exhibits?

18 MS. PASHOS: Yes. We would ask the
19 Commission to admit into evidence Duke Energy Ohio's
20 Exhibits 19 and 20.

21 EXAMINER WALSTRA: Subject to the
22 previous motions to strike, any objections?

23 They will be admitted

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 MS. PASHOS: Thank you, your Honor.

1 EXAMINER WALSTRA: We'll take a 12-minute
2 recess. Come back at 10 till.

3 (Recess taken.)

4 EXAMINER WALSTRA: We will go back on the
5 record.

6 If Duke would like to call their next
7 witness.

8 MS. PASHOS: Yes. Our next witness is
9 Dr. Roger A. Morin.

10 (Witness sworn.)

11 EXAMINER WALSTRA: Thank you. Please
12 take a seat.

13 MS. PASHOS: And we would ask that
14 Dr. Morin's direct testimony be marked as Duke Energy
15 Ohio Exhibit 21.

16 EXAMINER WALSTRA: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 - - -

19 ROGER A. MORIN, Ph.D.

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

22 DIRECT EXAMINATION

23 By Ms. Pashos:

24 Q. And could you state your name and title
25 for the record, please.

1 A. Yes. My name is Roger Morin. My title
2 is Emeritus Professor of Finance for Robinson College
3 of Business, Georgia State University; and
4 Distinguished Professor of Finance for Regulated
5 Industry at the Center for the Study of Regulated
6 Industry, also located at the Robinson College of
7 Business in Atlanta, Georgia.

8 Q. And what is your business address?

9 A. University Plaza, Atlanta, Georgia,
10 30303.

11 Q. And did you prepare direct testimony for
12 the Duke -- Duke Energy Ohio distribution rate case?

13 A. Yes, I did.

14 Q. And do you have before you what's been
15 marked as Duke Energy Ohio Exhibit 21?

16 A. I do.

17 Q. And is that the prefiled testimony you
18 prepared for that rate case?

19 A. Yes, it is.

20 Q. Do you have any changes, corrections or
21 updates to that Exhibit 21?

22 A. If you go to page 60.

23 Q. Page 60?

24 A. 60, 6-0. This -- this testimony and
25 these estimates were prepared quite a while ago. A

1 year and a half ago, your Honor. So there's a
2 potential staleness in the data here. So I was
3 curious to see if I was to update the data if my
4 recommendation would still be compatible with the
5 settlement.

6 And if you look on the table on page 60,
7 the results from the various techniques, if I were to
8 update this data with current data, the average would
9 be 9.9, the median would be 9.9, the truncated
10 average would be 9.9, and the midpoint of the results
11 would be 9.9, and that compares with the settlement
12 figure of 9.84. So, in other words, my updated
13 recommendation would still be quite compatible with
14 the settlement number of 9.84 percent and also
15 compatible with currently-authorized returns in the
16 country.

17 MR. WOLTZ: And, your Honor, I would
18 object to that changing. I would move to strike that
19 changing. Mr. Morin had the opportunity to file
20 supplemental testimony in this case if he so chose to
21 update it. The settlement has been filed for a long
22 time. He had plenty of time to update his
23 calculations. He chose not to.

24 In addition, OCC is going to move to
25 strike the entire testimony in its whole as it is not

1 compatible with the settlement. Per your previous
2 ruling, this settlement seeks to justify an ROE
3 that's not the proposed ROE, that's not within the
4 range of the Staff Report for the proposed ROE, is no
5 longer compatible.

6 When he speaks of justifying the ROE, he
7 speaks of the calculations he made to justify his own
8 ROE that is no longer compatible with this. And yet
9 again, this is just another example of Duke
10 attempting to both litigate the proposed settlement
11 and underlying case in this matter.

12 MS. PASHOS: May I respond?

13 MR. OLIKER: Your Honor --

14 EXAMINER WALSTRA: Still arguing so.

15 MR. OLIKER: Your Honor, I would like to
16 believe it sets a dangerous precedent for undue
17 surprise for entities that are seeking to oppose the
18 stipulation. We had no idea he was going to seek to
19 update his testimony with lots of new complicated
20 analysis that we have not seen.

21 MS. PASHOS: Let me first discuss the
22 update. First, he's not updated it with new
23 complicated analysis. He's updated it so he could
24 swear that what he is saying today is the truth.
25 This case started a long time ago and so he simply

1 made a minor update to his testimony to explain.

2 It's still in the same range. And again, if we are
3 going to ask him to swear to the testimony, I think
4 we need to let him update it so that he can
5 truthfully swear to it.

6 Secondly, as far as the whole testimony
7 and the argument that it's somehow incompatible with
8 the settlement, Dr. Morin's range then and now, the
9 settlement ROE is in that range. You know, the
10 settling parties have a burden to support the ROE and
11 every other part of the settlement. This testimony
12 supports that ROE, it's in the range. It also shows,
13 again, where we started and that the settlement ROE
14 is the product of serious negotiation and compromise.

15 MR. WOLTZ: And, your Honor, I would just
16 like to clarify that the proposed settlement ROE is
17 9.84, and Mr. Morin offers a settlement range -- a
18 range of 10.1 to 10.9 and his ROE was at 10.4, so
19 therefore the proposed settlement is not within the
20 range proposed here. And I think it really
21 discredits the complexity of rate issues to say these
22 numbers are easily calculable, that we should have no
23 opportunity to review them at this time or review any
24 calculations he made, especially given the fact that
25 he had plenty of time to update them as settlement

1 negotiations went along and he had plenty of time to
2 file supplemental testimony in this case to justify
3 these updates and give parties an opportunity to
4 review those and rebut them if necessary.

5 I know personally, sitting here today
6 during cross-examination, I would not even be able to
7 do these calculations with a calculator, if I had it,
8 to confirm that his calculations are correct and that
9 they are justifiable.

10 MS. PASHOS: And just to clarify, on
11 page 60 of his testimony where we've been focused,
12 Dr. Morin states that the results range from 9.5 to
13 10.7. The 9.84 settlement ROE is within that range.

14 MR. WOLTZ: And if I can direct your
15 Honor to page 60 where he is talking about line 4,
16 his original range is 10.1 to 10.7. It is not within
17 the range of the ROE.

18 MS. PASHOS: That's the upper half of
19 Dr. Morin's range.

20 MR. WOLTZ: And if I could finish there.
21 He states that he uses the upper half of his range as
22 his recommended ROE.

23 MS. PASHOS: If I would add just one
24 thing. I practice mostly in Indiana, I don't know
25 the Ohio procedure as well, but, you know,

1 settlements happen in all sorts of states. I can
2 hardly imagine that you would settle on a number and
3 then you can get an expert to somehow come in and
4 say, yes, I came up with 9.84. Dr. Morin's testimony
5 is supportive of up to the ROE agreed to in the
6 settlement and it is probative for those reasons.

7 EXAMINER WALSTRA: I am going to deny
8 both motions to strike. I think that the calculation
9 testimony is relevant to this proceeding. I think
10 obviously it would be ideal if the updated numbers
11 were provided beforehand, but those can be subject to
12 cross-examination now.

13 MS. BOJKO: Your Honor, could we have
14 those numbers read again?

15 EXAMINER WALSTRA: Yes.

16 Dr. Morin if you could repeat the
17 numbers.

18 THE WITNESS: Page 60. If you look at
19 the Table 6 and if you replicate the exact same
20 procedures, exact same procedures based on current
21 data, the first number, the Combination Utilities
22 Value Line Growth is 10.0; it's the same. The
23 Combination Utilities Analysts Growth forecast, it's
24 now 9.2; it's come down. The CAPM number of 9.5 has
25 dropped a little bit to 9.3. The Empirical CAPM

1 similarly is brought from 10 to 9.8. Historical Risk
2 Premium stays the same at 10.7. And the Allowed Risk
3 Premium goes down to 10.5.

4 The important thing is the next couple of
5 lines. The average estimate is 9.9, the median is
6 9.9, the truncated mean is 9.9. The results range
7 from 9.7 to 10.7, with a midpoint of 9.9. So I felt
8 that the updated results are quite consistent with
9 the settlement. I mean, 9.9 is awfully close to
10 9.84.

11 MS. BOJKO: I am sorry. Did you update
12 numbers on line 4, the end numbers?

13 THE WITNESS: Yes. Let's start with
14 line 2, again, to make sure we are all clear.

15 The average estimate is 9.9. The median
16 result is 9.9. The truncated mean is 9.9. The
17 results range from 9.7 to 10.7, with a midpoint of
18 9.9. So, in other words, all I'm saying is these
19 numbers are consistent or compatible with the 9.84
20 ROE settlement.

21 MR. WOLTZ: And, your Honor, if I may ask
22 for clarification. Does that mean the witness is
23 also changing his testimony in the previous sections
24 where he describes how he comes to these calculations
25 and how they're made, since the previous section

1 calculations are no longer compatible with the
2 numbers he gives us today?

3 MS. PASHOS: He said he's using the exact
4 same methodology.

5 MR. WOLTZ: Well, using the exact same
6 methodology, you would still have to input a
7 different number to reach a different number.

8 THE WITNESS: Yeah.

9 MR. WOLTZ: And given the parties have
10 not seen those numbers, I still think it is
11 inappropriate to ask us to cross him on them at this
12 time.

13 Q. (By Ms. Pashos) Dr. Morin, if I could ask
14 you just to clarify. On line 3, the results range,
15 should that first number be 9.7 or should it be 9 --

16 A. 9.3. Excuse me. 9.2.

17 Q. 9.2.

18 A. Yeah.

19 Q. Thank you.

20 A. I should put my glasses on. I was
21 actually going to. Yes, 9.2 to 10.7.

22 EXAMINER WALSTRA: The motion is still
23 denied.

24 Q. I think I have one more introductory
25 question to ask. With that explanation as to the

1 updates, if I asked you your -- the questions that
2 are contained in Exhibit 21 today, would your answers
3 be the same with those updates?

4 A. Yes, they would.

5 MS. PASHOS: With that, Dr. Morin is
6 available for cross-examination.

7 EXAMINER WALSTRA: Thank you.

8 Anyone from this corner? No?

9 IGS?

10 MR. OLIKER: No, thank you, your Honor.

11 EXAMINER WALSTRA: You're up.

12 MR. WOLTZ: I apologize.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Woltz:

16 Q. Good afternoon, Mr. Morin. How are you
17 today?

18 A. I'm fine. How are you?

19 Q. I'm doing pretty good.

20 And just so we are clear, this exhibit
21 that you put forth today is your direct testimony in
22 this case, correct?

23 A. Yes.

24 Q. And you did not file testimony in support
25 of the proposed settlement; is that correct?

1 A. That is correct.

2 Q. And in your direct testimony did you
3 address the Tax Cuts and Job Act of 2017?

4 A. No, I did not, but for the simple reason
5 that the impact of the new tax reform is already
6 reflected in the stock prices and in the bond ratings
7 and, therefore, it's innate or intrinsic in the stock
8 prices which I use in my testimony.

9 Q. So that we're clear, in your original
10 calculations in your direct testimony, though, you
11 did not include --

12 A. No.

13 Q. -- those effects?

14 A. Excuse me. No, because tax reform had
15 not been an event yet, because the original testimony
16 was based on data a year and a half ago, prior to the
17 Tax Reform Act.

18 Q. Thank you.

19 A. But the current numbers do reflect.

20 Q. And those are the current numbers you
21 updated today?

22 A. Yes.

23 Q. And is it --

24 A. They are not all that different really.

25 Q. But looking at those numbers that you

1 updated today, would it be consistent to say that
2 your updated numbers and your previous testimony, how
3 you calculated those numbers would have some minor
4 differences if not major differences?

5 A. No differences.

6 Q. So the input numbers would not be
7 different in the calculations?

8 A. Well, for example, the interest rate
9 forecast that I use in the original testimony was 4.4
10 and the one I use in the update is 4.3. That's the
11 current forecast. In other words, I use exactly the
12 same sources of interest rate forecast, Value Line,
13 IHS Global Insight, and many others, and the average
14 forecast is now 4.3 percent instead of 4.4, so I
15 would have used that lower number.

16 Q. But those numbers themselves have changed
17 since your original.

18 A. Slightly, slightly. But, you know, the
19 average was 10.1, now we are at 9.9, so it's fairly
20 close. I'm just trying to give the Commission the
21 latest information so they can make a decision and
22 see whether the settlement is sort of compatible with
23 the updated data. That's all I am trying to do here.

24 Q. I understand your intent, Mr. Morin.
25 Thank you.

1 Have you done any calculations to assess
2 the effects of the approval of any of the various
3 components that are proposed in the settlement of
4 Duke Energy Ohio's CFO pre-working capital and debt
5 ratio?

6 A. No, I did not, because, again, it's
7 already reflected in the stock prices and bond rating
8 data.

9 Q. But you, yourself, have not done any
10 calculations.

11 A. No, sir.

12 Q. And have you done any calculations to
13 assess the effects if the PUCO was to reject any
14 portion of the settlement on Duke Energy Ohio's CFO
15 pre-working capital and debt ratio?

16 A. Rephrase that, please.

17 Q. Have you done any calculations that will
18 assess the effects if the PUCO were to reject any
19 portion of the settlement?

20 A. It would endanger the company's bond
21 rating and it would send a negative signal. It would
22 enhance regulatory risk which is something that
23 investors really, really cherish, and I don't think
24 we should expect any kind of increase in regulatory
25 risk, and we hear a lot of talk this morning about

1 consistency in regulation, predictability, and I
2 wouldn't want to see anything tarnish that.

3 MR. WOLTZ: Your Honor, I move to strike
4 that entire answer as unresponsive. My question was
5 has Dr. -- Mr. Morin done any calculations to assess
6 the effects and he stated things that are not
7 responsive to that at all and he went on talking
8 about the credit support of Duke Energy Ohio and that
9 was not the question, and I believe he would not be
10 the answer -- the witness for that question anyway.

11 EXAMINER WALSTRA: I'll grant the motion.

12 MR. WOLTZ: Thank you, your Honor.

13 Q. (By Mr. Woltz) So, Mr. Morin, asking
14 again, have you done any calculations to assess any
15 effects that would happen as a rejection of this
16 settlement?

17 A. No.

18 Q. And if I was to say "CAPM," would you
19 understand that to be the capital asset pricing
20 model?

21 A. Yes.

22 Q. Is it correct that you use the CAPM and
23 empirical CAPM, among other methods, in estimating
24 the ROE of Duke Energy Ohio?

25 A. It's one of several methods that I use.

1 Q. And is your CAPM analysis that you used
2 based on the U.S. Treasury Bonds forecasted yields of
3 30 years as the risk-free rate estimate?

4 A. Yes, sir.

5 Q. And do you also use a market risk premium
6 of 7 percent in your CAPM analysis?

7 A. Yes, sir, I do.

8 Q. And the 7 percent market risk premium was
9 based on the results of historical studies of
10 long-term market risk premium; is that correct?

11 A. That is correct.

12 Q. And did you base this market risk premium
13 used in your analysis on either forecasted or
14 projected long-term market risk premium?

15 A. No, I did not because if you look at the
16 historical risk premium from 1926 until today, it's a
17 random watch. There's no history. There's no
18 pattern. So the best estimate of a future variable
19 is obviously the average of the past when there's no
20 pattern.

21 Q. And in your CAPM analysis, you use a beta
22 of 0.7; is that correct?

23 A. Yes, sir.

24 Q. Is the 0.7 beta estimated by the Value
25 Line?

1 A. Yes, it is.

2 Q. And can you briefly explain what the beta
3 tries to measure?

4 A. Beta tries to measure the volatility of a
5 stock relative to that of the market. And utilities
6 typically have betas around .7. That means they're
7 70 percent as volatile as the market. So the Dow
8 Jones goes up 10 percent, utilities' stock will go up
9 7 percent. So it's a measure of relative volatility
10 and, for somebody that's diversified as most
11 investors are, that's the only relevant measure of
12 risk.

13 Q. Is it accurate to say when estimating the
14 beta, Value Line uses the actual or historic stock
15 prices over a certain period such as 6 or 12 months?

16 A. They use -- Value Line betas are
17 estimated over a five-year period because there has
18 to be enough degrees of freedom in the data to
19 produce a meaningful estimate of beta. So they go
20 back five years and they use weekly returns and they
21 correlate let's say Duke Energy's returns the last
22 five years to the S&P 500 and they establish a
23 connection between the stock and the market, and it's
24 about .64 as you say.

25 Q. So would it be fair to say that Value

1 Line does not use any forecasted or projected stock
2 prices in estimating the beta?

3 A. No. They use historical data, and they
4 don't -- they're not in the business of forecasting
5 stock prices.

6 Q. Thank you.

7 And if we could look at your testimony
8 for a minute at page 8.

9 A. Yes. I have it.

10 Q. And here you pose the question "What
11 fundamental principles underlie the determination of
12 a fair and reasonable ROE"; is that correct?

13 A. Yes.

14 Q. And in answering the questions, you
15 reviewed a number of Supreme Court cases; is that
16 correct?

17 A. Yes, sir.

18 Q. Is it your understanding that those cases
19 also say that a utility is not guaranteed a profit?

20 A. That is correct. It's an expected
21 return, not a guaranteed return. As long as the
22 utility is given an opportunity to earn that return,
23 we're okay. But they don't guarantee the return
24 because the demand forecast can be different. The
25 cost forecast could be different. Interest rates

1 might change in the future. Inflation might change.
2 So as long as you have an opportunity to render a
3 return, you're okay. But, you're right, it's not a
4 guaranteed return.

5 Q. Could that opportunity also be based on
6 the management of the company itself?

7 A. Yes, it could.

8 Q. And the management of the company would
9 include such things as operate -- labor management
10 and other aspects, correct?

11 A. Yes, it would, prudence of investments,
12 prudence of costs, making sure the utility
13 ratepayers -- the ratepayers are compensated, are
14 charged for what I call inescapable costs, so you're
15 right, yeah, I agree with you on that one.

16 MR. WOLTZ: And if I could have just a
17 minute, your Honor.

18 Q. And you have reviewed the proposed
19 settlement in this case, correct?

20 A. Yes.

21 Q. And are you familiar with the three-part
22 test the PUCO uses when evaluating a settlement?

23 A. No.

24 Q. You are not?

25 A. No, I am not.

1 Q. Are you aware?

2 A. No.

3 Q. So is it fair to say your testimony today
4 offers no evaluation of that?

5 A. It merely confirms the reasonableness of
6 the settlement in my view. It's quite consistent.

7 Q. But you are not testifying as to whether
8 there was serious bargaining among parties?

9 A. No, I'm not. I'm not privy to those
10 kinds of back-and-forth discussions.

11 Q. I wasn't there for them either. No
12 worries.

13 A. I think I'm glad I wasn't there.

14 Q. And you're not testifying that the
15 settlement as a package benefits -- offers benefits
16 to customers or the public there?

17 A. Oh, I think it does. Why would everybody
18 agree to most portions of it? Not all of it but some
19 of it.

20 Q. It is not the intent of your testimony to
21 do so?

22 A. No, not at all.

23 Q. And it is not the intent of your
24 testimony to describe any important regulatory
25 principles or practices --

1 A. No, it's not.

2 Q. -- violated by the settlement?

3 A. No, not at all. That's outside the scope
4 of my writings here.

5 MR. WOLTZ: Thank you. Insomuch, your
6 Honor, I would like to renew my motion to strike
7 because the witness has just admitted that this
8 testimony has nothing to do with the settlement,
9 nothing to do with the stipulation. He is not
10 testifying, your Honor, that it is serious
11 bargaining, that it benefits customers or the public
12 interest, or that it violates any principles or
13 regulatory principles and, therefore, is not
14 compatible with the settlement.

15 MS. PASHOS: If I may make two points.
16 No. 1, he testified and it's clear that his testimony
17 supports one important aspect of the stipulation;
18 No. 2, it is what it is. It shows the serious
19 bargaining, whether he was involved in bargaining or
20 not, it shows the starting point for the rate case,
21 and the settlement shows the ending point.

22 MR. WOLTZ: And if I may, your Honor, I
23 appreciate Counsel's insight into this matter, but I
24 would like to reiterate that the PUCO does use a
25 standard when evaluating settlements. The company

1 and other parties have proposed a settlement, some of
2 which nonopposing parties have already expressed
3 irritation that the company is trying to address its
4 underlying rate case in this as well, and the fact is
5 that Mr. Morin is not testifying to that settlement.
6 He is not offering anything relevant to that
7 settlement; so, therefore, his testimony should not
8 be admitted into the record.

9 EXAMINER WALSTRA: The motion is denied.
10 I think his testimony is going towards the
11 calculation of an ROE. It doesn't necessarily have
12 to go towards a specific aspect that's to be argued
13 in brief. Denied.

14 MR. WOLTZ: Thank you.

15 Your Honor, no further questions at this
16 time.

17 EXAMINER WALSTRA: Any redirect?

18 MS. PASHOS: If I could have one minute.

19 EXAMINER WALSTRA: Sure.

20 MS. PASHOS: No. We have no redirect.

21 EXAMINER WALSTRA: Thank you, Dr. Morin.

22 THE WITNESS: Thank you, your Honor.

23 EXAMINER WALSTRA: Would you like to move
24 your exhibit?

25 MS. PASHOS: Yes. We would like to move

1 into evidence Duke Energy Ohio's Exhibit 21.

2 EXAMINER WALSTRA: Subject to the motions
3 to strike, are there any objections?

4 MR. WOLTZ: Subject to the motions, no,
5 your Honor.

6 EXAMINER WALSTRA: It will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MR. WOLTZ: Your Honors, will OCC have an
9 opportunity to file any rebuttal testimony after
10 reviewing the calculations and ensuring --
11 guaranteeing that they were properly done since we
12 had not had prior time to do so?

13 EXAMINER WALSTRA: I think that's fair.

14 MR. WOLTZ: Thank you, your Honor.

15 MR. OLKER: Your Honor, just to bring
16 this up, and I don't expect to have the full
17 conversation now, but parties will, at some point,
18 want to discuss rebuttal after the company's case if
19 we so choose. I am not sure we have any opinion
20 either way whether we want rebuttal, but I believe
21 there will be a conversation at some point.

22 EXAMINER WALSTRA: I expected as much.

23 MR. OLKER: Thank you, your Honor.

24 EXAMINER WALSTRA: We'll go off the
25 record.

1 (Discussion off the record.)

2 (Thereupon, at 11:24 a.m., a lunch recess
3 was taken.)

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1 Thursday Afternoon Session,
2 July 12, 2018.

3 - - -

4 EXAMINER WALSTRA: We'll go on the
5 record.

6 MR. HEALEY: Your Honor, thank you. Just
7 a follow-up from the discussion we had this morning
8 regarding Mr. Morin's testimony. OCC would request,
9 given that Mr. Morin was permitted to update some
10 numbers in his testimony here on the day of the
11 hearing, that Duke be required to produce any
12 workpapers that support those numbers so that OCC can
13 adequately rebut his testimony as your Honor signaled
14 that OCC would have an opportunity to do.

15 EXAMINER WALSTRA: Any objections?

16 MS. PASHOS: No. We will provide
17 Dr. Morin's workpapers if and when requested.

18 EXAMINER WALSTRA: Thank you.

19 MR. HEALEY: I request them right now.
20 Thank you.

21 MS. PASHOS: Understood.

22 EXAMINER CATHCART: Duke, would you like
23 to call your next witness, please.

24 MR. MILLER: We would. The company calls
25 Steven M. Fetter. And, your Honors, I would like to

1 mark Mr. Fetter's prefiled direct testimony in
2 support of the stipulation as Duke Exhibit No. 22.
3 May we approach?

4 EXAMINER CATHCART: You may.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 (Witness sworn.)

7 EXAMINER CATHCART: You may be seated.

8 - - -

9 STEVEN M. FETTER

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

12 DIRECT EXAMINATION

13 By Mr. Miller:

14 Q. Good morning, Mr. Fetter, or afternoon.
15 We're after lunch, aren't we?

16 A. Good afternoon.

17 Q. Please state and spell your name for the
18 record.

19 A. Steven, with a "v," M. Fetter. F, as in
20 Frank, e-t-t-e-r.

21 Q. And who are you employed by?

22 A. I have my own energy advisory firm called
23 Regulation UnFettered, and I made myself the
24 president.

25 Q. Did you prefile direct testimony in this

1 case?

2 A. I did.

3 Q. And do you have the document in front of
4 you marked Duke Exhibit 22, also known as your
5 testimony?

6 A. Yes.

7 Q. Did you prepare that testimony that was
8 filed on June 6, 2018?

9 A. I did.

10 Q. Do you have any corrections, additions,
11 or changes you would like to discuss or make
12 regarding that testimony?

13 A. Not at this time.

14 Q. And if I were to ask you those questions
15 that are in your testimony, would your answers be the
16 same today?

17 A. Yes, they would.

18 Q. And is your testimony true and accurate
19 to the best of your knowledge?

20 A. Yes.

21 MR. MILLER: Your Honors, I proffer him
22 for cross.

23 EXAMINER CATHCART: Thank you.

24 MR. MENDOZA: Your Honor, would you
25 entertain a motion to strike?

1 EXAMINER CATHCART: I would.

2 MR. MENDOZA: At the risk of beating a
3 dying horse, I would like to move to strike all the
4 statements in Mr. Fetter's testimony that purport to
5 quote Moody's or S&P credit reports. They're
6 hearsay.

7 MR. HEALEY: Your Honor, I would join in
8 that objection as well, and I think this is a
9 slightly different situation than the previous
10 witness. The previous witness was attaching, to the
11 extent those were allowed, which obviously OCC did
12 not support in the first place, those exhibits were
13 attached under -- on the grounds that the expert
14 witness was relying on them for his opinion. Here,
15 we don't even have an attachment. We don't have the
16 documents. We just have him providing block quotes
17 and relying on them as his own testimony. That's a
18 different situation than attaching supporting
19 documents of an expert witness. He is effectively
20 adopting this hearsay as text within his testimony.

21 And so I would distinguish the situation
22 here from the prior one, and argue that while your
23 Honor did not strike the exhibits to the previous
24 witness's testimony, there would still be grounds to
25 strike these portions of his testimony. And I will

1 point out, at least for my purposes, it's page 9,
2 line 18, through page 10, line 12, and then page 11,
3 line 8, through page 13, line 12. Thank you.

4 MR. MILLER: Your Honor, Mr. Fetter is an
5 expert. And if you look at his CV, you'll note that
6 he was employed for a number of years by Fitch, a
7 rating agency. He is an expert in ratings.

8 And I believe in regards to the Moody's
9 issues, he hasn't attached any specific information.
10 He is using his general opinion as an expert, which
11 is why he has been brought into this case.

12 I would also note, for example, OCC
13 attaches Moody's commentary to filings by Mr. Duann
14 in this case. So it's certainly not uncommon and
15 it's something that's certainly done by individuals
16 and in groups in this proceeding. He's here as an
17 expert. They can cross-examine him on those issues
18 and they can feel free to do so.

19 MR. DOVE: Your Honor, I understand that
20 he's an expert and he is relying on it, but the
21 documents aren't attached; and while they are cited,
22 I don't believe there is a cite such as a
23 publicly-available document or anything that would
24 allow us to access these. I could be wrong, but I
25 think without at least that information and the

1 ability to review the documents he is citing to, this
2 should be struck as hearsay.

3 MR. MILLER: Your Honors, if I may, we
4 are more than happy to dig those up and attach them
5 if they want them to be there as supporting.

6 EXAMINER CATHCART: I am going to deny
7 the motions to strike, but we would like the full
8 documents to be provided.

9 MR. DOVE: Your Honor, if they provide
10 the documents will we have time to review them and
11 potentially cross him on any inconsistencies since he
12 has dropped in quotes as opposed to the entire
13 document, so we don't know if he is cherry picking or
14 not.

15 MR. MILLER: Your Honor, this testimony
16 has been out there for a while. If they would have
17 sought copies, we would have provided them before.
18 And I would assume that most of this information is
19 readily available. I don't know if a Google search
20 would have worked, but it might have been a way to
21 approach this.

22 EXAMINER CATHCART: We are going to go
23 forward with cross-examination now, and if there are
24 any issues that arise, they can be addressed in
25 briefing.

1 MR. DOVE: Thank you, your Honor.

2 EXAMINER CATHCART: Thank you.

3 Any cross-examination?

4 MR. DOVE: I believe we are going to
5 start with Mr. Healey.

6 MR. HEALEY: All right then.

7 EXAMINER CATHCART: Mr. Healey.

8 MR. OLIKER: You can go first, Chris.

9 MR. HEALEY: I didn't ask to, but sure.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Healey:

13 Q. You have a law degree, correct?

14 A. I do.

15 Q. You're not barred in the State of Ohio
16 though, correct?

17 A. I am not a member of the bar of Ohio.

18 Q. And you are not testifying in this case
19 in your capacity as an attorney; is that right?

20 A. I am not.

21 Q. Let's turn to page 8 of your testimony,
22 please.

23 A. I'm there.

24 Q. And the top of that the first sentence
25 you note that a utility with strong credit ratings

1 can access capital markets and is able to share the
2 benefit from those attractive interest rate levels
3 with customers since cost of capital is factored into
4 customer rates. Do you see that?

5 A. Yes.

6 Q. When you say "factored into customer
7 rates," are you referring to the rate of return in
8 Duke's base rates?

9 A. It would be rate of return as litigated
10 within our rate case.

11 Q. And so for customers to benefit from a
12 reduction in the cost of capital, the utility would,
13 in fact, have to file such a rate case, correct?

14 A. Unless -- some states have other
15 processes, but in most cases it would be as a result
16 of a rate case.

17 Q. So to the extent a utility like Duke
18 refinances its debt and obtains a lower interest
19 rate, in the interim, between the point at which they
20 refinance and the point at which they have new rates
21 in effect under a rate case, it would be the utility
22 that benefits from that reduction, correct?

23 A. Well, lower or higher, it would go in
24 either direction.

25 Q. Sure, but here in your testimony you're

1 talking about the benefits of attractive interest
2 rates which I assume you mean to be lower interest
3 rates, correct?

4 A. Well, it was in the context of a sentence
5 that involved strong credit ratings, so I was
6 advocating the benefit of strong credit ratings.

7 Q. And you believe that one of those
8 benefits is lower interest rates, not higher interest
9 rates, correct?

10 A. Lower interest rates and also greater
11 access to the capital markets.

12 Q. Let's look at page 6 of your testimony,
13 please.

14 A. I'm there.

15 Q. And at line 5 you note that credit
16 ratings analysis involves both quantitative and
17 qualitative factors, correct?

18 A. Yes.

19 Q. And so with respect to the qualitative
20 factors, there's necessarily an element of human
21 judgment, correct?

22 A. Yes.

23 Q. Let's look at page 15 of your testimony,
24 please.

25 A. I'm there.

1 Q. And near the bottom of that page you
2 comment that if Duke's credit ratings were to be
3 downgraded --

4 A. Could you tell me what line, please?

5 Q. Yes, sir. I'm talking about line 20
6 where you note that the weakening of the company's
7 current credit ratings would likely lead to higher
8 borrowing costs. Do you see that?

9 A. Yes.

10 Q. And you did not, in your testimony,
11 quantify how much higher the borrowing costs would be
12 if Duke's credit rating were to go down, correct?

13 A. I did not.

14 Q. And you believe --

15 MR. OLIKER: I'm sorry. Can I have his
16 answer read back again and his question. I didn't
17 mean to cut you off, Chris.

18 (Record read.)

19 MR. OLIKER: Thank you.

20 Q. Mr. Fetter, part of your testimony is if
21 Rider PSR is approved as proposed in the stipulation,
22 it could positively impact Duke's credit rating,
23 correct?

24 A. I believe I said if the entire
25 settlement, proposed settlement agreement, which

1 includes PSR, and then factoring in the Tax Reform
2 Act changes with mitigation, then it would be
3 supportive of Duke's credit rating.

4 Q. And so, you have no opinion on whether
5 Rider PSR alone would have any impact on Duke's
6 credit rating?

7 A. I have not offered an opinion on PSR
8 alone.

9 Q. And when we talk about credit ratings in
10 this context of your testimony, are you talking about
11 Duke Energy Ohio's specifically?

12 A. Yes.

13 Q. Let's look at page 16 of your testimony,
14 please.

15 A. I'm there.

16 Q. On line 7 you note that utility
17 commissions are there to provide power at the lowest
18 possible cost. Do you see that? I'm sorry.

19 A. That's exactly the opposite of what I
20 said.

21 Q. I'm sorry. I realize what I did there.
22 I was not trying to trick you.

23 You note on line 7 that you believe that
24 commissions are there to provide reliable power at
25 the lowest reasonable cost, correct?

1 A. Yes.

2 Q. And you would agree that whether Rider
3 PSR is approved or not, would not have any impact on
4 Duke's reliability metrics, correct?

5 A. Say that again, please.

6 Q. You would agree that approval of Rider
7 PSR would have no impact on Duke's reliability
8 metrics, correct?

9 A. I haven't offered an opinion on that
10 point.

11 Q. When you use the word "reliable" in this
12 sentence, are you referring to the reliability
13 metrics like SAIFI and CAIDI specifically?

14 A. Among others, I think people have a --
15 you know, in addition to those two measurements, I
16 think regulators and the regulated have a sense of
17 what "reliability" means beyond just metrics.

18 Q. On line 5 of the same page, you say that
19 you think the most frequent statement you've had to
20 correct is that "utility commissions are there to
21 provide power at the lowest possible cost." Who is
22 making these statements to you?

23 A. Mostly cocktail party talk.

24 MR. HEALEY: Your Honor, I would move to
25 strike page 16, lines 5 through 7, starting with "I

1 think" and ending at the words "lowest reasonable
2 cost" given that they are based on hearsay at
3 cocktail parties.

4 MR. MILLER: I guess it would depend who
5 is at the cocktail party. Your Honors, he's offering
6 his opinion here. He is an expert. He is the former
7 Chair of a Commission. He's a ratings expert. I
8 would assume that the crowd, and I don't know because
9 I don't have the opportunity to go to cocktail
10 parties with Mr. Fetter, but I assume the crowd he
11 associates with is a pretty sophisticated one who is
12 involved in regulatory interests, and I would suggest
13 to you those folks he's talking to very likely are
14 folks who would know those things.

15 MR. HEALEY: Your Honor, I would point
16 out there is no "I'm a former utility commissioner"
17 exception to the hearsay rules, so that's irrelevant.

18 MR. MENDOZA: And, your Honor, I would
19 point out there is no factual basis for the other
20 commentary by Mr. Miller.

21 MR. MILLER: He is not offering it for
22 the truth of the statement asserted, so.

23 EXAMINER CATHCART: We'll strike the
24 beginning with -- the beginning of the statement
25 starting with "During" and ending at "cost."

1 MS. BOJKO: I'm sorry, your Honor. We
2 can't hear you.

3 MS. WHITFIELD: Could you give us the
4 specific citation?

5 EXAMINER CATHCART: Yes. So it's page
6 16, line 4, through the end of the sentence at 6.
7 We'll strike that.

8 MR. HEALEY: But not the sentence after
9 that? My motion to strike included that next
10 sentence as well. It's an out-of-court statement.

11 EXAMINER CATHCART: Overruled. We are
12 going to keep the second sentence.

13 Q. (By Mr. Healey) Let's turn back to
14 page 14 of your testimony, please.

15 A. I'm there.

16 Q. And at the top of this page, generally
17 speaking you're talking about the history of OVEC and
18 its obligations to the Atomic Energy Commission,
19 correct?

20 A. Yes.

21 Q. And you're aware that the Atomic Energy
22 Commission no longer exists; is that right?

23 A. I'm aware.

24 Q. At line 5, you note that -- you state
25 "...it is this commitment to purchase power that is

1 at issue in this proceeding and leads the Company to
2 request approval to continue to sell its OVEC
3 entitlement into the wholesale markets." What do you
4 mean by "this commitment"?

5 A. The agreement that flowed out of that
6 1952 activity, with various zigs and zags along the
7 way, but in my mind it relates -- basically my view
8 is that had the OVEC agreement in 1952-'53 not been
9 set up, we wouldn't be here today litigating these
10 issues.

11 Q. So is it your position then that to the
12 extent anything that happens today is dependent on
13 the past, all conceivable past events are irrelevant
14 for purposes of this proceeding?

15 A. No. I think -- I think the Chairman of
16 the Commission, in his concurring opinion in the AEP
17 OVEC case, talked about that he viewed OVEC as
18 different than the kind of normal run-of-the-mill
19 generation plant, and I'm in accord with the
20 Chairman's concurring thoughts.

21 MR. HEALEY: Your Honor, I move to
22 strike. My question was much more general and was
23 not focused on OVEC. And while we all respect the
24 Commissioners' views and their orders, they are,
25 likewise, as we discussed before, hearsay because

1 they are statements made outside of this courtroom,
2 and the Chairman is not here for cross-examination.

3 MR. MILLER: Your Honor, the Chairman is
4 on the record, and I believe the question was all --
5 I'm sorry -- is dependent upon the past, all
6 conceivable past events. I would suggest to you
7 that's the past and that certainly was a conceivable
8 past event.

9 MR. MENDOZA: Your Honor, whether that's
10 true or not, the Commissioners' statements are in a
11 filed order of this Commission. Duke can cite to it
12 if they would like to, but it's clearly a hearsay
13 statement that speaks for itself.

14 MR. MILLER: He is asking the witness for
15 his opinion and his comments, and he got them;
16 unfortunately, they are not exactly what he wanted.

17 EXAMINER CATHCART: Overruled. You may
18 clarify your question.

19 MR. HEALEY: I'll move on, your Honor.

20 Q. (By Mr. Healey) Mr. Fetter, you are aware
21 that Company Witness Rose projects charges of about
22 \$94 million to customers under Rider PSR over the
23 term of the ESP, correct?

24 A. I know that Witness Rose has put in
25 financial data. I can't confirm the numbers you just

1 said to me. His testimony speaks for itself.

2 Q. And are you aware that Mr. Rose projects
3 an expected loss under Rider PSR for each year of the
4 ESP?

5 A. My same answer. His testimony is on the
6 record. He has been cross-examined. It speaks for
7 itself.

8 Q. I agree that his testimony may speak for
9 itself, but I was asking if you were aware that
10 Mr. Rose has testified that the expected value --

11 MR. MILLER: Asked and answered, your
12 Honor.

13 MR. HEALEY: Your Honor, if I could
14 finish my question, please.

15 EXAMINER CATHCART: You may finish your
16 question.

17 Q. My question for you, Mr. Fetter, is: Are
18 you aware that Mr. Rose has testified that each --
19 during each year of the ESP, the expected value of
20 the Rider PSR is negative? Are you aware of that or
21 not?

22 A. I know that Mr. Rose has put his views on
23 the record. I know that what you've just said, I
24 can't say that -- that I heard that specific sentence
25 that you just said, but I listened when he was

1 cross-examined, so I have a sense of what he said,
2 but I could not specifically state what he said.

3 Q. Let's turn back to page 16 of your
4 testimony, please.

5 A. I'm there.

6 Q. And I would direct you to the sentence
7 that starts on line 11 which says "At the same time,
8 its approval would respect the altruistic intent
9 underlying entry into the OVEC commitment, along with
10 respect for recent Commission policymaking." Do you
11 see that?

12 A. Yes, sir.

13 Q. And the word "its" there is referring to
14 Rider PSR, correct?

15 A. Could you say that question again?

16 Q. Sure.

17 Just clarifying, it says "its approval."
18 "Its" is referring back to Rider PSR, correct?

19 A. Yes.

20 Q. Mr. Fetter, I brought a dictionary with
21 me today to help with one quick thing. According to
22 the dictionary, I have the word "altruism" means
23 "Unselfish concern for the welfare of others, or
24 selflessness." Would you agree with that definition?

25 A. Could you read that again?

1 Q. Sure.

2 This says "Altruism" is "Unselfish
3 concern for the welfare of others, or selflessness."
4 Do you agree with that definition?

5 A. Are there any other definitions?

6 Q. The second one is a definition which
7 refers to ethics and it's "The doctrine that the
8 general welfare of society is the proper goal of an
9 individual's actions" and it refers to it as the
10 opposite of egoism.

11 A. That sound like a good one.

12 Q. Is that the definition you had in mind
13 when you used the word "altruistic" here on page 16,
14 line 11?

15 A. It was along those lines that the OVEC
16 sponsors and participants in 1952-'53 did something
17 that was out of the ordinary and I think it was to
18 support national security. That was my use of the
19 word "altruistic."

20 Q. Do you believe it would be altruistic of
21 Duke to charge \$4 million under Rider PSR?

22 A. I think that based on the origins of the
23 OVEC commitment and its zigs and zags along the way,
24 and my understanding, and you can ask Witness Wathen
25 I guess tomorrow, he shared with me the difficulty

1 of -- of Duke or prior predecessor companies getting
2 out of the commitment was -- would be extremely
3 difficult. So I'm supportive of OVEC recovery
4 because I think it would be consistent with
5 policymaking by this Commission. It would be
6 expected by the financial community, after the
7 decisions relating to AEP, and Dayton Power & Light,
8 and the altruism that began the commitment almost 70
9 years ago, I think sets apart the zigs and zags of
10 the contract up until today, and so I'm supportive of
11 OVEC recovery just as I was supportive of OVEC
12 recovery in the AEP Ohio case.

13 MR. HEALEY: Your Honor, I will spare you
14 the hassle of moving to strike that entire answer and
15 just move to strike a small piece, the part where he
16 said that Mr. Wathen told him something about how
17 difficult it was to get out of a contract. That's
18 clearly hearsay and Mr. Wathen can testify to that to
19 the extent that's true.

20 So there is a part where he said
21 "Mr. Wathen said to me" and then he finishes his
22 sentence there, I believe, describing the difficulty
23 of getting out of the OVEC contract. I'd move to
24 strike that clause, please.

25 MR. MENDOZA: And, your Honor, Mr. Healey

1 is correct. I would just add it's also a legal
2 conclusion, whether they can get out of the contract
3 or not, and there's no point in a nonlawyer offering
4 that testimony on that issue.

5 MR. MILLER: Your Honor, before I answer,
6 could we have that answer read back in its entirety
7 so everyone in the room can be clear what we are
8 objecting to.

9 EXAMINER WALSTRA: Thank you, Karen.

10 EXAMINER CATHCART: Thank you.

11 (Record read.)

12 MR. MILLER: And for clarification, what
13 exactly do you want struck?

14 MR. HEALEY: I would like struck the --
15 from when he said -- I don't have the transcript in
16 front of me like you do, but he said something along
17 the lines of "Mr. Wathen said" or "Mr. Wathen told
18 me" and then whatever the end of that sentence is;
19 from that point to the end of that sentence.

20 MR. MILLER: To the end of the sentence
21 or to the end of the reference of Mr. Wathen?

22 MR. HEALEY: I would have to see it. To
23 the end of the sentence in which he was describing
24 the difficulty of getting out of the OVEC contract.

25 MR. MILLER: Depending on what is being

1 asked to be struck here, there is part of that we
2 certainly agree to and don't have a problem with it.
3 And if we want to go through that motion, we can do
4 it, and try to get the right things out, but we are
5 happy to strike some of that.

6 EXAMINER WALSTRA: The way it is
7 currently in the transcript that ends with a period,
8 it says "You can ask Witness Wathen I guess tomorrow,
9 he shared with me the difficulty of Duke or prior
10 predecessor companies getting out of the commitment
11 would be extremely difficult."

12 MR. MILLER: Up until "You can ask
13 Witness Wathen tomorrow," everything after that, to
14 the end of that period, is fine.

15 EXAMINER WALSTRA: Okay.

16 MR. HEALEY: Thank you.

17 MR. MENDOZA: Your Honor, could we get an
18 instruction that their fact witnesses stop attempting
19 to offer a legal opinion on how one might get out of
20 the OVEC contract? This keeps coming up with their
21 witnesses and I think we've struck it every time, but
22 there is no reason for a nonbarred Ohio lawyer to
23 offer theories on that.

24 MR. MILLER: Your Honors, Mr. Fetter is
25 not being presented as a legal witness. He is not

1 offering his legal opinion. Mr. Fetter simply
2 answered the question.

3 EXAMINER WALSTRA: I think everyone has
4 seen the rulings that came out so far and they are
5 speaking to their understanding.

6 MR. MENDOZA: Could I amend my request to
7 say that lawyers with pro hac vice in Ohio should
8 also be allowed to offer opinions, but I accept
9 your --

10 MR. MILLER: I was on the cusp of making
11 a motion about that, but.

12 Q. (By Mr. Healey) Mr. Fetter, you are aware
13 the current version of the -- I guess let me take a
14 step back.

15 You are familiar with the ICPA, correct?
16 the OVEC agreement?

17 A. I've reviewed it not in great detail, but
18 I've skimmed it.

19 Q. And do you recall that it was signed in
20 2011?

21 A. I'll take --

22 Q. I'm sorry. 2010 actually.

23 A. I guess I will not take your word that it
24 was signed in 2011. Subject to check.

25 Q. And you're not testifying that Duke was

1 somehow forced to sign that agreement, are you?

2 A. No. And I am not offering anything as to
3 the legality of that document.

4 Q. Let's turn to page 14 of your testimony,
5 please.

6 A. 14, I'm there.

7 Q. At line 10 you state that the OVEC
8 contract will provide a long-term hedge, correct?

9 A. Yes.

10 Q. Did you, yourself, do any analysis of the
11 hedge that the OVEC contract might provide?

12 A. What kind of analysis?

13 MR. HEALEY: Your Honor, I would like an
14 answer to my question if he has an answer.

15 MR. MILLER: I think he was asking for
16 clarification. Can you revise the form of your
17 question?

18 Q. Do you understand what the word
19 "analysis" means?

20 A. Well, you have a dictionary, but I'll
21 take a stab at saying I understand what "analysis"
22 means.

23 Q. And so did you perform any type of
24 analysis on whether the OVEC contract will provide
25 hedge value?

1 A. You're talking -- am I allowed to
2 clarify? You're saying financial analysis?

3 Q. I'm saying any conceivable analysis of
4 whether the OVEC contract will provide hedge value.
5 If that's financial, great. If it's something else,
6 then it's all possible types of analysis.

7 A. Okay. I analyzed that it would be
8 approximately a seven-year hedge and so I offered the
9 opinion in that same sentence that providing a
10 long-term hedge of a type not normally accessible
11 within the traditional financial markets, so I did
12 that analysis.

13 Q. And did you attempt to quantify the value
14 of this purported hedge?

15 A. I did not.

16 Q. Would you agree that if Rider PSR were
17 approved as proposed in the settlement, Duke would
18 bear zero risk under the ICPA?

19 A. I believe there were some conditions set
20 that could affect Duke. I didn't look at those
21 conditions in great detail, but I saw that there were
22 some conditions.

23 Q. On line 15 -- I'm sorry -- on line 14 of
24 page 14 which I think you are already on, you begin
25 discussing a case involving AEP Ohio, correct?

1 A. Yes.

2 Q. And you believe that in this case, AEP's
3 request was similar to Duke's Rider PSR request,
4 correct?

5 A. Could you say that question again?

6 Q. Sure.

7 You are citing this AEP Ohio case because
8 you believe that AEP's request in that case was
9 similar to Duke's request for Rider PSR in this case,
10 correct?

11 A. Yeah, I would say similar.

12 Q. And so, is it fair to say you believe
13 that the PUCO should rely on the AEP case as legal
14 precedent in this case?

15 A. No. I think it's important for a
16 Commission to be consistent, and the fact that they
17 approved an OVEC-type mechanism for AEP Ohio which
18 has a higher credit rating and credit profile than
19 Duke Energy Ohio, and they approved an OVEC-recovery
20 mechanism for Dayton Power & Light which is
21 substantially weaker than Duke Energy Ohio; based on
22 my background as Chairman of a regulatory commission,
23 I think regulatory consistency would lead me to
24 approve OVEC recovery for Duke Energy Ohio as part of
25 the overall proposed settlement.

1 MS. FLEISHER: Your Honor, I'm sorry, may
2 I move to strike? I'm going -- the part after he
3 described that AEP and DP&L cases with reference to
4 regulatory consistency, that's all describing what he
5 believes the Commission should decide as a legal
6 matter. It's a legal opinion. You know, he, at one
7 point was a commissioner who could issue legal
8 opinions, and with all due deference to that, in this
9 case he is an expert witness offering fact testimony,
10 and so that's not appropriate for the record.

11 MR. DOVE: Additionally, your Honor, the
12 DP&L decision I don't believe has come down yet.
13 It's a stipulation has been offered, but I don't know
14 that there's --

15 MR. OLIKER: It's subject to rehearing or
16 more litigation.

17 MR. MILLER: Your Honor, I believe the
18 question was, and they asked this of a former
19 Chairman of a regulatory commission, "Do you believe
20 the Commission should follow" and then they -- the
21 question was legal precedent. I think he gave a fair
22 answer to that. He didn't answer in a capacity as a
23 lawyer, but he certainly answered in the capacity of
24 the regulatory understanding of the former Chairman
25 of the Michigan Commission. We think it's an

1 appropriate answer.

2 EXAMINER CATHCART: I am going to deny
3 the motion to strike. I think the answer -- the
4 witness answered the question.

5 MR. HEALEY: Your Honor, I would make a
6 separate motion to strike particularly with reference
7 to his claims about AEP's and DP&L's credit ratings.
8 Those are not in the record in this case and the
9 witness should not be permitted to speculate as to
10 what their credit ratings are now or were in the
11 past. No one has testified to that and I think it's
12 inappropriate for him to compare credit ratings of
13 multiple utilities in answer to a question that was
14 not about credit ratings.

15 MR. MILLER: Your Honor, in the question
16 before the question we just discussed he was
17 specifically asked about his involvement in the AEP
18 case.

19 MR. HEALEY: And that was the question
20 before, not this question.

21 MR. MILLER: And he gave his answer, and
22 he is here and we are putting him on as someone who
23 is an expert in regulatory proceedings and someone
24 who is an expert in ratings.

25 MR. HEALEY: I'm sorry to belabor the

1 point, your Honor. Whether he is an expert or not
2 doesn't change the fact that AEP's credit ratings,
3 either at the time that its rider may or may not have
4 been approved or now, nor DP&L's at some time in the
5 past or now, are in the record. If we were to try to
6 establish their current credit ratings, it would have
7 to be based on documents that actually show what
8 those credit ratings are; not this witness's
9 unverified statement as to how they compared to
10 Duke's credit ratings.

11 MS. FLEISHER: And, your Honor, if I may,
12 I believe at least with respect to AEP in that even
13 in that case I don't believe there is any record
14 evidence submitted about AEP's credit ratings at that
15 time. That was not an element of that case. So
16 regardless of his involvement in that case, he
17 wouldn't necessarily know anything about that that's
18 relevant.

19 MR. MILLER: Your Honors, I believe he
20 talks about AEP in his testimony also. It's not a
21 novel concept.

22 EXAMINER CATHCART: I am going to deny
23 that motion to strike. I think the witness was
24 answering his understanding of Commission precedent
25 and how his may be similar or different.

1 Q. (By Mr. Healey) Mr. Fetter, do you
2 believe that Rider PSR alone will provide net value
3 to customers over the term of the ESP?

4 A. I didn't offer an opinion on that.

5 Q. I'm asking you if you know the answer to
6 the question; I didn't ask if it was in your
7 testimony or not.

8 A. Can you tell -- state the question again.

9 MR. HEALEY: Can I have that reread,
10 please.

11 (Record read.)

12 A. I indicated why I think Rider PSE -- PSR
13 should be approved; regulatory consistency. And I
14 also offer an opinion that in the context of the
15 entire proposed settlement, that it should be
16 approved. So if I were Chairman, as -- as my friend
17 at the end of the aisle indicated I used to be, for
18 regulatory consistency I would approve Rider PSR on
19 its own, but I'm just offering opinion here in the
20 context of the entire proposed settlement, I view
21 that that PSR and the other aspects of the settlement
22 would be appropriately approved in this proceeding.

23 Q. Thank you, Mr. Fetter, for not answering
24 my question which was limited to whether you think
25 there will be a net benefit to customers from Rider

1 PSR alone. Can you please answer that question?

2 MR. MILLER: I object. I don't believe
3 that was the question that was originally asked. If
4 he wants to reask the question, that's fine, but that
5 was not the direct question that was asked. I don't
6 think "net benefit" was included.

7 MR. HEALEY: Can I have the question
8 reread again, the previous one? I think I said "net
9 value." So if you quibble over "value" versus
10 "benefit," I will agree it was not.

11 MR. MILLER: Would you like to reask your
12 question?

13 Q. (By Mr. Healey) Mr. Fetter?

14 A. Yes, Counsel.

15 Q. Do you believe that Rider PSR alone will
16 provide net value to customers over the term of the
17 ESP?

18 A. So there are aspects of that question
19 which relate to financial analysis, as you noted from
20 Mr. Rose, and also credit rating testimony from
21 Mr. Sullivan and myself. And so, there are
22 detriments and benefits within that analysis and I
23 have -- I have not done a total analysis of Rider PSR
24 by itself. My opinion here and in my testimony and
25 on cross is that in the context of the entire

1 proposed settlement, I believe it meets the
2 three-part standard for settlement approval.

3 Q. And I will just try one more time to
4 clarify. So your testimony, you referred in your
5 answer just now to detriments and benefits. You
6 haven't quantified whether the benefits outweigh the
7 detriments, correct?

8 A. And as we spoke -- as Mr. Sullivan spoke
9 earlier today and as noted in my testimony, on the
10 beneficial side of credit ratings and credit profile
11 strength, it's not just a numerical exercise. It's
12 also an access exercise. So it's not easily
13 comparable between quantitative and qualitative
14 aspects of what Rider PSR provides.

15 Q. You testified earlier that you believe
16 that the Commission should approve the settlement
17 which includes Rider PSR, in part, for consistency
18 with the AEP Ohio decision, correct?

19 A. Could you say that question again?

20 Q. Sure.

21 You testified earlier today that you
22 believe the Commission should approve the settlement
23 in this case which includes Rider PSR, at least in
24 part, to be consistent with the AEP Ohio case that
25 you reference in your testimony, correct?

1 A. Yes, but I think I noted the comparison
2 to AEP Ohio primarily in the context of if I were
3 Chairman, I would approve Rider PSR on its own,
4 because of the consistency with AEP Ohio, and Dayton
5 Power & Light. That's that aspect.

6 In the context of it being within the
7 proposed settlement which I'm testifying that I
8 support approval of the entire proposed settlement.

9 Q. So would you agree then that if the AEP
10 and DP&L decisions approving their similar riders
11 were ultimately overturned, that the Commission
12 should not approve Rider PSR in this case, to
13 maintain the regulatory consistency that you so
14 cherish?

15 A. I think if that were to happen, I would
16 get a copy of the legal opinion and I would probably
17 call an Ohio-barred lawyer to help explain it to me.

18 MR. HEALEY: That's all I have, your
19 Honor.

20 EXAMINER CATHCART: Thank you.

21 Any additional cross?

22 MR. MENDOZA: We'll go in reverse.

23 - - -

CROSS-EXAMINATION

By Mr. Oliker:

Q. Good afternoon, Mr. Fetter.

A. Good afternoon.

Q. My name is Joe Oliker and I'm with IGS Energy.

A. Nice to see you.

Q. It's good to see you again. Just a few questions for you.

A. Okay.

Q. Turning to page 1 of your testimony. Am I correct that you were last a regulator in 1993?

A. Yes.

Q. And in your last position you were the Chairman of the Michigan Public Service Commission, correct?

A. Yes.

Q. And at the time, the retail electric market in Michigan was fully regulated, correct?

A. Yes, I know, and not many people know this, but the first Retail Wheeling proceeding to consider that policy started in Michigan. And it was not approved during -- by the time I left in October of '93.

Q. And, in fact, at the time while you were

1 at the Michigan Commission, you and other
2 commissioners concluded that retail wheeling would
3 cause more problems than it would provide solutions;
4 as a result, you never moved forward with
5 restructuring on retail wheeling, correct?

6 A. At that time that was the view that was
7 held.

8 Q. Okay. And after the -- after 1993 you
9 went to Fitch, correct?

10 A. I did.

11 Q. And you were there from 1993 to 2002.

12 A. 8-1/2 years.

13 Q. Okay. And turning to page 3 of your
14 testimony, line 8.

15 A. Line 8, you said?

16 Q. Yes. There is a reference and it starts
17 after the en dash where you say "in jurisdictions
18 involved in restructuring activity as well as those
19 still following a traditional regulated path..., "
20 you're referring to your experience was limited to,
21 as a regulator, only regulatory decisions, right?
22 Which I think was what your testimony was a few
23 seconds ago.

24 A. I'm sorry. I was looking down. What was
25 the question again?

1 Q. Just so I can understand your answer
2 here. After the en dash --

3 A. I think I can answer. The language after
4 the dash relates to the second half of the first
5 sentence.

6 Q. So it relates to your experience at
7 Fitch, correct?

8 A. At Fitch and then -- and then thereafter.
9 I have been on my own since 2002.

10 Q. Okay. Thank you.

11 And while you were at Fitch, you
12 evaluated the impact of regulatory decisions on
13 utilities to determine the impact on credit ratings,
14 correct?

15 A. Yes. Along with ending up heading up the
16 entire group.

17 Q. And during that time when you were at
18 Fitch, many states underwent restructuring, correct?

19 A. Yes.

20 Q. And by "restructuring" I am referring to
21 the retail electric market. Do you understand that?

22 A. Yeah, there were many forms within the
23 various states.

24 Q. And you would agree that a large concern
25 during restructuring from the credit rating agencies

1 was that utilities would not be able to recover their
2 generation-related sunk costs.

3 A. Yes. Stranded costs as they were known
4 back then.

5 Q. And with respect to stranded costs, you
6 mean expenditures that were originally made and found
7 to be prudent at the time of the investment and now
8 with the movement toward electric restructuring or
9 competition were no longer competitive with a
10 potential market?

11 A. Yeah, I think that's a good summary.

12 Q. And that was your testimony in the AEP
13 case as well, was it not?

14 A. I'm very proud that I am being
15 consistent.

16 Q. Before you drafted your testimony that
17 was prefiled, which documents did you review?

18 A. I'm trying to think because I've worked
19 on a few cases at the same time. While I reviewed
20 credit rating materials, I reviewed the write-up on
21 OVEC that was attached to my discovery responses.
22 I -- I went back and looked at AEP case materials. I
23 looked at some of the decisions, the multiple
24 decisions that flowed out of the AEP case, and then I
25 looked at language relating to DP&L. I saw the

1 language about the chairman's concurring opinion when
2 I looked at the old AEP Ohio case documents. I
3 skimmed some of -- I think I skimmed the ICPAs, if
4 those are the right initials, the Inter-Company P-A
5 --

6 Q. I'm sorry, are you done with your answer?

7 A. I probably could go on.

8 Q. Go ahead. I don't mean to interrupt.

9 A. No, I mean, it's hard to remember
10 everything I looked at, but that gives a sense of
11 what I've already been through.

12 Q. And starting with the last document how,
13 many -- did you only review one Inter-Company Power
14 Agreement?

15 A. I believe -- I believe so.

16 Q. Was that document dated from
17 approximately 2011?

18 A. I'm not sure. I note that coming out of
19 the AEP case, I felt I had a firm-enough handle on
20 how the OVEC commitment was treated and then recovery
21 so, you know, it would have been a very spare review
22 of the ICPA.

23 Q. And I believe you said this to Mr. Healey
24 but I just wanted to be clear: Before you filed your
25 testimony in this proceeding, you did not review any

1 of Mr. Rose's projections of the impact of PSR on
2 customers?

3 A. No, not that I recall.

4 Q. And you also did not review any of the
5 specific cost information provided by OVEC to
6 Mr. Rose?

7 A. No, no.

8 Q. And on page 9 and the pages following, as
9 you were discussing credit rating impacts in this
10 case, am I correct that for purposes of your
11 testimony you are most concerned with ensuring that
12 Duke is permitted to recover costs associated with
13 the OVEC entitlement?

14 A. You're saying with regard to credit
15 ratings?

16 Q. And your testimony in general.

17 A. Well, I note that one reason why I say
18 the approval of the entire proposed settlement is in
19 addition to Rider PSR financial aspects, there's also
20 regulatory consistency that is prized by the
21 credit-rating agencies.

22 With my biographical information in my
23 testimony, my focus at the Michigan Commission was
24 deciding cases on a timely basis. And so, I think
25 from a regulatory point of view and also from a

1 financial community point of view, being able to
2 conclude the number of cases that go into this
3 proposed settlement would be a very positive thing
4 for the Commission and its stakeholders.

5 Q. But again, with relation to the
6 consistency you just referenced and the financial
7 impacts, you are focused on the Commission granting
8 Duke cost recovery associated with all that, correct?

9 A. I've lost you there. I'm looking at the
10 proposed settlement that includes a rate reduction,
11 Rider PSR, several other riders that I read about,
12 but I wouldn't hold myself up here as an expert to
13 explain them, and concluding cases that appear to
14 have been around for a very long period of time,
15 which as I said, as a former regulator and a former
16 member of the financial community, that would carry
17 great weight within those regards.

18 Q. Am I correct that you are deferring
19 largely to Judah Rose regarding the history of OVEC?

20 A. Either him or Witness Wathen. I think
21 it's easier to question Witness Wathen since Judah
22 Rose is far away now.

23 Q. Am I correct that -- can you point me to
24 a reference in your testimony where you identify
25 Mr. Wathen as the other witness you would defer to

1 over OVEC history?

2 A. Well, as I mentioned, since I arrived in
3 Columbus, you know, just across the table in idle
4 chatter, you know, I've heard some things about OVEC
5 and so that's why I cited that he might be someone
6 who could be questioned on some of these issues. But
7 I learned enough about OVEC on my own either in the
8 AEP proceeding or in preparing for this case in order
9 to put my testimony together.

10 Q. But to answer my question: On page 13,
11 line 18, do you not say "Yes, as more fully explained
12 by Company witness Judah Rose, who notes the unique
13 history of OVEC...." Just could you please clarify,
14 there are no other statements in your testimony
15 regarding other witnesses, are there?

16 A. I think when -- when the company was
17 proposing to hire me, we had conference calls to
18 discuss things and, you know, I told them I have
19 background on OVEC from my AEP proceeding, but, you
20 know, they shouldn't hold me up as an expert with
21 regard to the historical perspective. And they
22 mentioned that, you know, I wouldn't have to worry
23 about that; Judah Rose would.

24 And so, I then, on my own accord, did
25 enough historical review to feel comfortable filing

1 this testimony. And I mentioned Judah Rose because
2 they indicated he had extensive involvement in
3 tracing the history.

4 Q. Okay. Thank you. And --

5 MR. HEALEY: Your Honor, I am going to
6 make a motion to strike at this time. Beginning on
7 page 13, the entire section on "Historical Origins of
8 OVEC," the witness just testified he was not hired as
9 an expert on the history of OVEC and, therefore, is
10 unqualified to say anything about its history.

11 MR. MILLER: I don't think that's what
12 the witness said. I think the witness said several
13 times he had done a significant amount of research of
14 OVEC on his own, and has a history in being involved
15 in other cases being in front of this body regarding
16 OVEC issues.

17 MR. OLIKER: My understanding is that the
18 transcript will reflect that he indicated he should
19 not be held out as an expert on the history of OVEC,
20 but the transcript will speak for itself, and I
21 understand that the Bench will give it its due
22 weight.

23 MR. MENDOZA: Your Honors, if I may? I
24 believe the witness said he did not review a prior
25 version of the Inter-Company Power Agreement, and I

1 think that would be a necessary document to review if
2 you were going to offer testimony on the origins of
3 OVEC. If he wants to -- well, I'll leave it at that.

4 MR. MILLER: Your Honors, if we go back
5 in the transcript, I think he said he scanned or
6 skimmed several versions. So he did certainly review
7 versions of the ICPA. I believe that's what he said.

8 MR. OLIKER: That is a
9 mischaracterization, your Honor.

10 EXAMINER CATHCART: I am going to deny
11 the motion to strike. The witness did say that he
12 did review some other documents and in his testimony
13 he is giving his personal view. The Commission can
14 give it the appropriate weight.

15 Q. (By Mr. Oliker) Mr. Fetter, am I correct
16 you have not evaluated any of the capital investments
17 in OVEC for any period of time?

18 A. That's correct.

19 Q. Therefore, you would not be able to opine
20 whether those investments occurred prior to
21 restructuring or after restructuring?

22 A. That's correct.

23 Q. And do you have any knowledge of how Duke
24 treated the OVEC assets from 2000 to 2009?

25 A. What do you mean by how they treat them?

1 Q. Do you know whether Duke made
2 market-based sales with OVEC from 2000 to 2009?

3 A. I am not sure of that.

4 Q. So, likewise, you would not know whether
5 Duke made profits with the OVEC assets from 2000 to
6 2009?

7 A. I don't know.

8 Q. You also wouldn't know whether they
9 shared those profits with customers?

10 A. I don't know.

11 MR. OLIKER: Can I have one minute, your
12 Honor?

13 EXAMINER CATHCART: You may.

14 Q. Mr. Fetter, just one or two more
15 questions, hopefully.

16 Are you aware of whether the
17 Inter-Company Power Agreement has been amended from
18 time to time?

19 A. I believe it was.

20 Q. Can you identify any other amendment date
21 other than the 2011 contract?

22 A. No.

23 MR. OLIKER: No more questions, your
24 Honor.

25 Thank you, Mr. Fetter.

1 THE WITNESS: Thank you.

2 EXAMINER CATHCART: Thank you.

3 Mr. Whitt?

4 MR. WHITT: Yes, thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Whitt:

8 Q. Good afternoon, Mr. Fetter. My name is
9 Mark Whitt. I represent the Retail Energy Supply
10 Association.

11 A. Good afternoon.

12 Q. Let me start by following up on one of
13 Mr. Oliker's questions. If OVEC, in fact, made
14 market-based sales from 2000 to 2009 and if profits
15 were realized from those sales, would that be a
16 factor that the Commission should also take into
17 consideration in deliberating Rider PSR?

18 A. I guess I would need more background
19 before having an opinion on that.

20 Q. You're aware that generation is a
21 competitive service in Ohio?

22 A. Yes.

23 Q. And OVEC owns generating assets, correct?

24 A. Yes. I think they cross the border but,
25 yes.

1 Q. And Duke owns 9 percent of OVEC, correct?

2 A. 9 percent entitlement.

3 Q. And OVEC is not a public utility,
4 correct?

5 A. I believe it's not, but.

6 Q. Okay. Which means that it would not
7 provide a public utility service, correct?

8 A. You're getting into legal questions that
9 I've been told I'm not eligible to answer.

10 Q. Would you agree that whatever risk is
11 associated with Duke Energy Ohio's ownership interest
12 in OVEC or contractual entitlement, whatever that
13 risk is, ought to be constrained to Duke Energy Ohio?

14 A. I'm not sure what the question means.

15 Q. Well, you're familiar with the concept of
16 ring-fencing, aren't you?

17 A. Yes.

18 Q. And when we talk about ring-fencing, that
19 encompasses the idea of keeping the assets and
20 liabilities of separate corporations within a holding
21 company structure separate.

22 A. Yes.

23 Q. So it would be fair to say, and you would
24 agree, wouldn't you, that any risk associated with
25 Duke Energy Ohio's contractual entitlement to output

1 from OVEC ought to be constrained to Duke Energy
2 Ohio?

3 A. You mean consistent with its 9 percent
4 entitlement share?

5 Q. Well, as a hypothetical, whatever risk
6 Duke Energy Ohio has with regard to its OVEC
7 interest, should not negatively or positively affect
8 consumers in Duke's North Carolina service territory?

9 MR. MILLER: Your Honors, I am going to
10 object. Maybe he can reformulate the question. When
11 you say "risk," what do you mean by that?

12 Q. Do you understand what I mean by "risk"?

13 A. I was going to ask what you meant by
14 "risk" before Counsel jumped in, so. I am not sure
15 what you mean by risk related to the OVEC 9 percent
16 entitlement.

17 Q. Such as the risk of purchasing -- or, the
18 output of OVEC exceeding market-based generation
19 prices would be a risk, wouldn't it?

20 A. Is this a new question? The question is
21 whether the 9 percent entitlement, the cost of that
22 9 percent entitlement might be higher than the
23 wholesale market rate and that would be a risk?

24 Q. We can start there.

25 A. Okay. I think it would be a fact, so I

1 guess it could be a risk.

2 Q. Okay. And there's numerous financial and
3 business risks associated with Duke Energy Ohio's
4 entitlement, isn't there, just in general?

5 A. You mean with the operation of OVEC?

6 Q. Yes.

7 A. I guess there are things -- I guess
8 that's the clean way of saying it -- things happen.

9 Q. And you would agree that the risks of a
10 regulated utility's operations should be kept
11 separate from a utility's unregulated operations,
12 correct?

13 A. Okay. I am just going to recap. The
14 question was the risks of a regulated utility's
15 operations should be kept separate from the risks of
16 an unregulated?

17 Q. Yes.

18 A. Then we get to what you mean by "risks"
19 again.

20 Q. But you wrote an article, didn't you,
21 about utility ring-fencing for public utilities
22 for --

23 A. Yeah, a long time ago. I was a young
24 man.

25 Q. Okay.

1 A. And so, the question is -- well, I think
2 what you are asking is in many ways a legal question
3 depending upon the jurisdiction. But for the most
4 part I think it's -- I think in that article I did
5 talk about the potential benefits of -- of being able
6 to, like, have knowledge from the unregulated side be
7 tapped to help the operation of the regulated side.

8 And so, I think the theme of that article
9 was that there shouldn't be hard-and-fast rules that
10 would prevent unregulated and regulated from
11 assisting each other in beneficial ways. But you
12 have the article in front of you. I haven't read it
13 in at least a decade.

14 Q. Oh, well, I brought a copy for you.

15 A. I carry it on my phone. That's okay.

16 MR. WHITT: If I may approach?

17 EXAMINER CATHCART: You may.

18 MR. WHITT: I would like to have marked
19 for identification a document, we'll mark it RESA
20 Exhibit 1. It's an article titled "Don't Fence Me
21 Out." And which I think the witness will be able to
22 authenticate it for us.

23 THE WITNESS: Thank you.

24 EXAMINER CATHCART: For the record, this
25 is RESA Exhibit 1.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Whitt) Sir, can you identify the
3 document we've marked as RESA Exhibit 1 as a copy of
4 an article entitled "Don't Fence Me Out," published
5 in Public Utilities Fortnightly, October 2004?

6 A. I recognize the article, but I don't
7 recognize the young man who wrote it.

8 Q. Glasses don't look any thicker to me. If
9 you'll turn to -- this is a two-sided document. If
10 you turn to the back that says page 22 at the bottom.
11 And I'm looking at the last paragraph in the far left
12 column which begins "That's not to say." Do you see
13 that paragraph?

14 A. It was which column?

15 Q. The left column, far left.

16 A. Okay. The left column, okay.

17 Q. At the bottom.

18 A. Okay. I'm there.

19 Q. And you're talking about the concept of
20 ring-fencing and you observed that "Separate
21 accounting for regulated revenues and expenses
22 clearly makes sense, as does providing regulators
23 with the access to books and records necessary to
24 carry out their oversight role of the regulated
25 utility," et cetera.

1 A. Yes.

2 Q. And if we can focus our attention now to
3 the far right column with the second paragraph
4 beginning with the word "Finally." Do you see that?

5 A. Yes.

6 Q. And I am going to start with the second
7 sentence of that paragraph where you say "I believe
8 regulators have an appropriate oversight role with
9 regard to the use of regulated assets to stand behind
10 riskier transactions at an unregulated affiliate.
11 Such unregulated activities should not be permitted
12 to jeopardize the financial health of the regulated
13 utility and certainly should never threaten to place
14 that entity into bankruptcy." Again, I'm assuming
15 that view hasn't changed since 2004, has it?

16 A. It has not. Just with regard to the
17 first sentence you read in the left-hand column,
18 there's a follow-up sentence that I think relates to
19 that first sentence, and that second sentence says
20 "The corollary to that rule, however, is that
21 regulators, within their role as consumer protectors,
22 should not be permitted to prospect through the books
23 and records underlying the proprietary activities of
24 the unregulated holding company or other subsidiary."

25 Q. Unless the utility is seeking a rider for

1 those activities, correct?

2 A. I don't see that on my copy.

3 Q. Okay. Should the Commission authorize
4 the recovery of whatever costs are necessary to keep
5 OVEC running forever?

6 A. As opposed to the stated term of -- in
7 this proceeding which I think goes through, is it
8 May 31st of 2025?

9 Q. That sounds about right. But if we're
10 back in here in 2026, any reason not to allow
11 continued cost recovery for OVEC?

12 A. Well, I wouldn't decide that case today,
13 but today I am comfortable with the rider that goes
14 out until May 31 of '25.

15 Q. Would it be prudent for Duke to explore
16 options to dispose of its interest in OVEC?

17 A. I think if they could in reasonable
18 fashion, that would be a good thing for them to look
19 into.

20 Q. Based on what you know about OVEC, would
21 you invest your own money into that enterprise?

22 A. I'm not a big investor.

23 Q. You've testified about the effect of the
24 OVEC cost recovery on the credit rating of Duke
25 Energy Ohio as a -- as something the Commission ought

1 to take into consideration, correct?

2 A. Yes.

3 Q. And would you agree that it would also be
4 appropriate for the Commission to take into
5 consideration the financial impact to ratepayers of
6 Rider PSR?

7 A. Well, as I said earlier today, I
8 encourage the Commission to look at the entire
9 proposed settlement and make a determination and that
10 I would support approval of it.

11 Q. And you -- you've testified that your
12 opinion is based at least in part on the effect that
13 the approval would have on Duke's credit rating,
14 correct?

15 A. Credit ratings, regulatory consistency,
16 moving several aged cases off the docket. I think
17 there was several reasons why the proposed settlement
18 is attractive to consider by the Commission.

19 Q. And if the Commission wishes to give due
20 regard to all considerations, then those would
21 include the financial impact of the rider on
22 customers, wouldn't it?

23 A. I expect they'll consider that.

24 Q. And I'm assuming that you have -- are
25 aware of, if you haven't testified in, cases

1 involving utility fuel adjustment clauses?

2 A. I have testified in cases like that.

3 Q. And most fuel adjustment clause tariff
4 provisions have a mechanism for an audit or some type
5 of review, don't they?

6 A. Yes.

7 Q. And the purpose of those reviews is to
8 make sure that fuel or generation services being --
9 that prudent practices are being observed in those
10 purchases, correct?

11 A. Yes.

12 Q. If an audit revealed that a utility was
13 purchasing generation from an affiliate at higher
14 prices than prevailed on the market, as a regulator,
15 that would give you concern, wouldn't it?

16 A. Unless there was a reason why that was
17 happening.

18 Q. And you would want to know what the
19 reason was, correct?

20 A. Yes.

21 Q. I'm not sure if the -- what remained in
22 or out of the record in the discussion about some of
23 the history of OVEC, but I have just a very general
24 question. I think the testimony was that OVEC was
25 formed in the early 1950s, 1952.

1 A. We covered all that in full detail and
2 all the lawyers are fully comfortable with what they
3 heard.

4 Q. Okay. And it's probably fair -- well,
5 1952 is smack dab in the middle of the Korean War.
6 Would you agree with that subject to check?

7 A. Yes.

8 Q. Okay. And probably fair to say that some
9 of the folks who fought in the Korean War were
10 probably from Cincinnati or southwestern Ohio? Sound
11 reasonable?

12 A. I expect there were.

13 Q. And the soldiers and sailors who fought
14 in the Korean War, fair to say the government paid
15 them for their service, correct?

16 A. Yes.

17 Q. And when our boys were -- and women were
18 done fighting, they were sent home and not paid any
19 more; fair to say?

20 A. Well, I think they got access to college
21 education, some of them got certain health care. I
22 believe some would have earned pensions. So I think
23 it's not as simple answer.

24 Q. And many of them have probably died by
25 now, correct?

1 A. And some died even without coming home.

2 Q. That's right. And the point being, at
3 some point those who answered the call, none of them
4 were ever paid into perpetuity, correct?

5 A. Well, back then -- back when there were
6 pensions, unlike today, pensions did go on into
7 perpetuity, no matter how long someone lived, and the
8 Federal Government had an especially attractive
9 pension.

10 Q. And you know that how?

11 A. I was a federal employee and I left
12 before I was vested.

13 Q. Okay.

14 A. My father and mother were very sad about
15 that.

16 MR. WHITT: That's all I have. Thank
17 you, sir.

18 THE WITNESS: Thank you, sir.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Mendoza:

22 Q. Good afternoon, Mr. Fetter. Just a
23 couple more questions about OVEC.

24 A. Good afternoon, Mr. Mendoza.

25 Q. Nice to see you again.

1 A. Nice to see you.

2 Q. I've been waiting for my invitation to go
3 fishing with you and it hasn't arrived.

4 A. I thought you were going to call.

5 Q. I think we have to go back to OVEC
6 history a little bit. Did you review any information
7 on the payments that OVEC made to Duke's predecessors
8 during the Cold War under the contract?

9 A. No.

10 Q. So you don't have any opinion then on
11 whether Duke's predecessors received fair market
12 payments for OVEC power during the Cold War, right?

13 A. No.

14 MR. MENDOZA: Your Honor, I would move to
15 strike the statement on line -- or page 16, lines 11
16 through 12 that talk about this idea that there was
17 an altruistic purpose or something for OVEC's
18 participation in the contract. There's no evidence
19 in the record that supports that.

20 MR. MILLER: Your Honors, I think we have
21 been down this path a little bit. He is offering his
22 opinion and we did enjoy the dictionary and we got to
23 go through that and I think we've covered this
24 ground. And so, I'm not sure what the definition of
25 "altruistic" is at this point, I've heard several,

1 but I know that's in his testimony and I know he
2 believes that.

3 EXAMINER CATHCART: I am going to deny
4 the motion to strike.

5 MR. MENDOZA: Thank you, your Honor.

6 Q. (By Mr. Mendoza) Mr. Fetter, did you
7 review the original 1950s-era Inter-Company Power
8 Agreement?

9 A. Whether I -- whether I did in the AEP
10 proceeding, I might have, but I can't say for sure.

11 Q. As you've formulated your opinions in
12 this case, did you review the original 1950s
13 Inter-Company Power Agreement?

14 A. Not specifically.

15 Q. The answer was no?

16 A. Well, as I said, I might have reviewed it
17 in the AEP case and some of that knowledge might have
18 continued in my head, but I have not reviewed it
19 separately in this proceeding.

20 Q. And you've never saw a copy in your hand
21 as you were working on this case or on your computer,
22 right?

23 A. Of the original?

24 Q. Yes.

25 A. Not that I recall.

1 Q. Okay. And if you had seen it, Duke's
2 lawyers would have sent it to you, right?

3 A. Or the AEP lawyers, but I don't recall
4 it.

5 Q. I'm sorry, did you finish your answer?

6 A. Yes, I said I didn't recall if I had seen
7 it.

8 Q. Okay. And did you review any other
9 documents from the 1950s about OVEC as you formulated
10 your testimony --

11 A. I was just going to say my birth
12 certificate. No, I did not review any documents
13 dating to 1952.

14 MR. MENDOZA: Your Honor, I would renew
15 my motion on the altruistic intent. "Intent" implies
16 some knowledge of what was going on in the 1950s, and
17 I think it's pretty apparent this witness has no
18 factual basis for that testimony.

19 MR. MILLER: His testimony contains his
20 opinion. Your Honors have again been down this path
21 before. I would simply request you let the
22 Commission judge that.

23 EXAMINER CATHCART: I am going to deny
24 the motion to strike. I think in his testimony he is
25 speaking to his opinion.

1 MR. MENDOZA: Okay. Thank you.

2 Q. (By Mr. Mendoza) And how many
3 modifications to the Inter-Company Power Agreement
4 have there been, Mr. Fetter?

5 A. I don't know.

6 Q. Okay. And on September 29, 2000, the
7 Department of Energy gave OVEC notice of cancellation
8 of the DOE power agreement, right?

9 A. Yes.

10 MR. MENDOZA: Your Honor, I have no
11 further questions.

12 EXAMINER CATHCART: Thank you.

13 MS. LEPPLA: No questions.

14 EXAMINER CATHCART: Mr. Dove?

15 MR. DOVE: All my questions have been
16 essentially covered so far, so I don't want to
17 belabor the point any further. Thank you.

18 EXAMINER CATHCART: Thank you. Any
19 redirect?

20 MR. MILLER: Could you give us a moment,
21 maybe a 5-minute break?

22 EXAMINER CATHCART: Yes. We'll take a
23 15-minute break and go off the record.

24 (Recess taken.)

25 EXAMINER CATHCART: Let's go back on the

1 record.

2 MR. MILLER: Your Honor, we have nothing
3 further.

4 EXAMINER CATHCART: Thank you.

5 THE WITNESS: Thank you.

6 MR. MILLER: And I would like to move in
7 Duke Exhibit 22, Mr. Fetter's testimony.

8 EXAMINER CATHCART: Any objections?

9 MR. HEALEY: No objections, subject to
10 our motions to strike.

11 MR. MENDOZA: Subject to our motions to
12 strike, no.

13 EXAMINER CATHCART: Thank you. It will
14 be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER WALSTRA: Would RESA like to
17 move their exhibit?

18 MS. GLOVER: Oh, right. RESA would like
19 to move our Exhibit 1 into the record.

20 EXAMINER WALSTRA: Any objection?

21 EXAMINER CATHCART: Any objection?

22 MR. MILLER: The entire document?

23 MS. GLOVER: Yes.

24 MR. MILLER: No objections.

25 EXAMINER CATHCART: It will be admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER CATHCART: You may be excused.

3 THE WITNESS: Okay. Thank you.

4 EXAMINER CATHCART: Duke, you may call
5 your next witness when you are ready.

6 MS. KINGERY: Thank you, your Honor.
7 Duke Energy Ohio would call Sarah Lawler to the
8 stand.

9 (Witness sworn.)

10 EXAMINER CATHCART: You may be seated.

11 MS. KINGERY: Your Honor, I would ask
12 that we mark as Duke Energy Ohio Exhibit 23, the
13 direct testimony of Sarah E. Lawler, filed June 1,
14 2017.

15 EXAMINER CATHCART: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MS. KINGERY: Thank you.

18 May we approach?

19 EXAMINER CATHCART: You may.

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SARAH E. LAWLER

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

DIRECT EXAMINATION

By Ms. Kingery:

Q. Good afternoon, Ms. Lawler.

A. Good afternoon.

Q. Would you please state your name and
business address for the record.

A. Sarah E. Lawler. 139 East Fourth Street,
Cincinnati, Ohio.

Q. Thank you.

And what is your position with Duke
Energy?

A. I'm Director of Rates and Regulatory
Planning.

Q. Thank you.

And do you have before you what has just
been marked as Duke Energy Ohio Exhibit 23?

A. I do.

Q. And would you identify that document,
please.

A. The direct testimony of Sarah Lawler on
behalf of Duke Energy Ohio in Case No.
17-1263-EL-SSO.

1 Q. Thank you.

2 And that was prepared by you or under
3 your direction?

4 A. Yes, it was.

5 Q. Thank you.

6 And do you have any corrections or
7 changes to make to this testimony today?

8 A. I do.

9 Q. All right. Would you please go through
10 those.

11 A. Yes.

12 On page 1 starting on line 5, my title
13 has changed since I've written this testimony. I am
14 no longer Utility Strategy Director, Midwest. As I
15 just mentioned, I am Director of Rates and Regulatory
16 Planning.

17 Q. Great. Thank you.

18 And what is the next change?

19 A. On page 4, beginning on line 6, strike
20 the following: "As is currently the case, once the
21 balance exceeds \$5 million, as either a regulatory
22 debit or a regulatory credit," and then we'll start a
23 new sentence: "Beginning March 31, 2019, and
24 continuing annually thereafter," and then the
25 sentence continues as written, "the Company will

1 adjust Rider DSR to collect or refund the balance in
2 the regulatory account."

3 And then the last change is on page 12 --
4 I'm sorry -- line 12 of the same page. Change "6.2"
5 to "4.3."

6 Q. Thank you.

7 And those two changes were made in order
8 to be consistent with the stipulation, correct?

9 A. Yes, that's correct.

10 Q. And do you also have a change to your
11 Attachment SEL-1?

12 A. I do.

13 MS. KINGERY: Your Honor, we have, just
14 to assist everybody with making the changes, we have
15 written out Ms. Lawler's change to SEL-1 and we will
16 distribute it at this point.

17 EXAMINER CATHCART: Thank you.

18 Q. Ms. Lawler, you can go ahead and read
19 into the record what your changes are.

20 A. Yes.

21 So on Attachment SEL-1, in first section
22 of bullets, the third bullet will be deleted which
23 reads: Eliminate all impacts of revenue collected
24 attributable to prior period under earnings." And
25 then insert a bullet which reads: "Eliminate all

1 impacts of mark-to-market accounting."

2 Q. And those changes also were made -- I'm
3 sorry -- were made in order to make the testimony and
4 your Attachment B consistent with the stipulation,
5 correct?

6 A. Yes, that's correct.

7 Q. Thank you.

8 And if I were to ask you all of these
9 questions today, would your answers be the same?

10 A. Yes, they would.

11 MS. KINGERY: Thank you.

12 The witness is available for
13 cross-examination.

14 EXAMINER CATHCART: Any cross?

15 Mr. Michael.

16 MR. MICHAEL: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Michael:

20 Q. Hello, Ms. Lawler.

21 A. Hello.

22 Q. You read the stipulation in this case,
23 correct?

24 A. Yes.

25 Q. Okay. Could you please turn -- do you

1 have Joint Exhibit 1 up there on the stand with you,
2 Ms. Lawler, which is a copy of the stipulation?

3 A. This here? No, I don't. This is the
4 direct testimony of Steve Fetter.

5 MS. KINGERY: Just a moment. We can get
6 a copy.

7 MR. MICHAEL: Thank you, Ms. Kingery.

8 A. Okay. I have got the stipulation in
9 front of me.

10 Q. Thank you, Ms. Lawler. I would like to
11 draw your attention to page 24 of the stipulation and
12 specifically paragraph 17.

13 A. Okay. I'm there.

14 Q. And in the fourth line down, the
15 phrase -- the line beginning with "otherwise." Do
16 you see that?

17 A. I do.

18 Q. And after that it says "in accordance
19 with due process...." Do you see that?

20 A. I do.

21 Q. Do you know what that means when it says
22 "in accordance with due process"?

23 A. I would imagine that it means the process
24 that we go through to file -- to make the annual SEET
25 filings with the Commission.

1 Q. And by that, Ms. Lawler, is that
2 suggesting that in a SEET proceeding, giving notice
3 of an opportunity to be heard, the Commission can
4 analyze a SEET application in whatever methodology it
5 chooses to analyze that SEET application, correct?

6 A. I would imagine the Commission would
7 analyze the SEET filing as they have historically
8 done, yes.

9 Q. Okay. But in any individual SEET
10 proceeding, the Commission is able to analyze the
11 SEET application based on any methodology it so
12 chooses in that proceeding, correct?

13 A. Correct.

14 MS. KINGERY: I would just comment
15 Ms. Lawler is not an attorney.

16 MR. MICHAEL: I have no further
17 questions, Ms. Lawler. Thank you very much.

18 Thank you, your Honor.

19 EXAMINER CATHCART: Any additional
20 cross-examination?

21 Any redirect?

22 MS. KINGERY: No, your Honor. Thank you.

23 MS. BOJKO: Your Honor, I have a
24 question. Is this going to be marked as an exhibit
25 or is it a corrected Attachment SEL-1?

1 MS. KINGERY: We can do it however you
2 want. I mean, she corrected it on the stand just as
3 we would correct any testimony on the stand. If you
4 want it filed, we can file it. If you want it as an
5 exhibit, we can do that. It doesn't matter.
6 Whatever the Bench prefers.

7 EXAMINER CATHCART: We will just keep it
8 as a correction.

9 MS. KINGERY: Okay.

10 MS. BOJKO: Thank you.

11 EXAMINER CATHCART: Would you like to
12 move your exhibit?

13 MS. KINGERY: Yes, thank you. Duke
14 Energy Ohio moves for the admission of Duke Energy
15 Ohio Exhibit 23.

16 EXAMINER CATHCART: Any objection?
17 Hearing none, it shall be admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 MS. KINGERY: Thank you.

20 EXAMINER WALSTRA: We'll go off the
21 record.

22 (Discussion off the record.)

23 EXAMINER CATHCART: We can go back on the
24 record.

25 MS. WATTS: Your Honor, Duke Energy Ohio

1 calls Scott B. Nicholson.

2 (Witness sworn.)

3 EXAMINER CATHCART: You may be seated.

4 MS. WATTS: And may we have

5 Mr. Nicholson's testimony marked as Duke Energy Ohio
6 Exhibit 24?

7 EXAMINER CATHCART: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. WATTS: And may we approach?

10 EXAMINER CATHCART: You may.

11 - - -

12 SCOTT B. NICHOLSON

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

15 DIRECT TESTIMONY

16 By Ms. Watts:

17 Q. Mr. Nicholson, do you have before you
18 what's been marked just now as Duke Energy Ohio
19 Exhibit 24?

20 A. I do.

21 Q. And is that your testimony in Case No.
22 17-1263-EL-SSO?

23 A. It is.

24 Q. And is that testimony that you prepared?

25 A. It is.

1 Q. And do you have any additions or
2 corrections?

3 A. I do not.

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

7 A. They would.

8 Q. And are they true and accurate to the
9 best of your knowledge?

10 A. They are.

11 MS. WATTS: Thank you, sir.

12 Mr. Nicholson is available for
13 cross-examination.

14 MR. HEALEY: Your Honor, if I may make a
15 motion to strike at this time?

16 EXAMINER CATHCART: You may.

17 MS. WATTS: It wouldn't be fun without
18 it.

19 MR. HEALEY: Just one right now, your
20 Honor. I would move to strike the entirety of page 6
21 of Mr. Nicholson's testimony. There's two Q and As
22 on that page. Both of these Q and As refer to
23 modifications to improve CRES providers' access to
24 customer energy usage data. These make reference to
25 the Donald Schneider testimony and his AMI transition

1 plan. Yesterday, Mr. Schneider testified that
2 Exhibit F to the stipulation, which includes the CEUD
3 updates, is not what was included in his AMI
4 transition plan; and, therefore, Mr. Nicholson's
5 discussion of CEUD updates in the AMI transition plan
6 is not compatible with the stipulation. Attachment F
7 has replaced the old proposal for CEUD updates.

8 MS. WATTS: And, your Honor, I don't
9 actually recall that testimony. If that was, in
10 fact, what he said, I think he might have been in
11 error. In order to clarify that, we could ask
12 Mr. Nicholson the same question but -- so I think
13 there's some confusion about what's in the -- in
14 Attachment F and what isn't in Attachment F to the
15 stipulation and the record would benefit from further
16 clarifying that.

17 MR. HEALEY: If I may -- if I may
18 respond? If I may respond, your Honor. If
19 Mr. Schneider testified -- if Mr. Schneider testified
20 incorrectly during his testimony yesterday or the day
21 before, whenever it was, then Duke could have asked
22 him on recross -- or redirect to correct that.

23 I certainly don't think it's appropriate
24 for Duke to now rehabilitate a witness that has
25 gotten off the stand and is gone and never to be seen

1 again in this proceeding, to correct his testimony
2 now that I don't have an opportunity to ask
3 Mr. Schneider those same questions. So his testimony
4 is what it is. And if I ask Mr. Nicholson those
5 questions, he is welcome to answer, but if I don't,
6 then he certainly won't have an opportunity to do
7 that.

8 MS. WATTS: And, your Honor, I am not
9 seeking to rehabilitate Mr. Schneider's testimony.
10 It is what it is. There may have been an error there
11 of some sort, but Mr. Nicholson is a separate witness
12 and can respond accordingly based on questions from
13 Counsel.

14 EXAMINER CATHCART: We are going to go
15 forward with cross-examination and you can renew your
16 motion to strike at that time.

17 MR. HEALEY: That's all I have on motions
18 to strike, so I am happy to start down at the other
19 end of the line.

20 MR. DOVE: No questions, your Honor.

21 MR. MENDOZA: No questions, your Honor.

22 MS. FLEISHER: No questions, your Honor.

23 MS. GLOVER: No questions.

24 MR. OLIKER: Thank you, your Honor. Just
25 a few questions.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Oliker:

4 Q. Good afternoon, Mr. Nicholson.

5 A. Good afternoon.

6 Q. My name is Joe Oliker. It's good to see
7 you again.

8 A. Good seeing you.

9 Q. Just a few questions today. First, am I
10 correct you are sponsoring your electric security
11 plan testimony today?

12 A. Yes.

13 Q. But you also have filed testimony in the
14 distribution rate case, correct?

15 A. Yes.

16 Q. Just so I can keep them separate, you
17 discuss in your testimony on page 4 --

18 A. Which testimony?

19 Q. In your ESP case testimony. There are
20 three bullets on page 4 regarding things like the
21 pre-enrollment list, electric data interchange, and
22 the customer portal, correct?

23 A. That's correct.

24 Q. And I believe your testimony says this,
25 but I want to make it clear, the peak load

1 contribution information you reference on the
2 pre-enrollment list, this relates to peak load
3 contribution being based upon actual energy usage for
4 commercial/industrial customers, correct?

5 A. For all customers.

6 Q. Okay. Let's break that down.

7 Would you agree that for residential
8 customers -- let me take a step further.

9 What's the pre-enrollment list?

10 A. That -- the way I like to describe the
11 pre-enrollment list is if you would think of a great
12 big spreadsheet of all the customers of Duke Energy
13 Ohio that had various information, including their
14 name, address, and usage. It does not include their
15 account number and it does not include people that
16 have opted out of pre-enrollment.

17 Q. Okay. And some of the customers on that
18 enrollment list are residential customers, correct?

19 A. That is correct.

20 Q. And there is a value associated with
21 their peak load contribution, correct?

22 A. Correct.

23 Q. A peak load contribution is effectively
24 somebody's responsibility for capacity charges,
25 correct?

1 A. Yes.

2 Q. And the values for residential and small
3 commercial customers are not established based upon
4 their actual energy usage during the five highest
5 hours of consumption on the PJM grid, correct?

6 A. It would not represent their exact hours
7 of usage.

8 Q. And another way of saying that is you
9 profile their peak load contributions, correct?

10 A. That is correct.

11 Q. Okay. And that's why if you -- let's go
12 down to bullet two. Electronic data interchange.
13 When you mention in the last sentence "The interval
14 data that is available from EDI is only for those
15 customers, typically commercial customers, that have
16 an Interval Data Recorder meter." In that sentence,
17 "Interval Data Recorder meter" refers to a
18 traditional demand meter often for customers with kW
19 usage above 200?

20 A. That's correct.

21 Q. And so we're clear, when we're speaking
22 of interval data in 15-minute intervals in the second
23 bullet point, we're talking about metering a
24 customer's energy usage, correct?

25 A. I didn't hear. Metering?

1 Q. A customer's energy usage.

2 A. Yes, energy, yes.

3 Q. On a 15-minute basis.

4 A. Yes.

5 Q. Okay. And likewise, in bullet point two
6 for electric data interchange, you would agree that
7 for residential customers, Duke does not establish a
8 customer's hourly energy usage responsibility based
9 upon their actual usage in that each hour.

10 A. That would be correct.

11 Q. And once again, it's because it's
12 profiled, right?

13 A. Yes.

14 Q. And if I were to ask you all of those
15 same questions regarding the information that's
16 available in the portal, you would agree your answers
17 would be the same?

18 A. Yes. The only difference is in the
19 portal it's hourly intervals as opposed to 15-minute
20 intervals.

21 Q. Okay. And now we've talked about how
22 you're measuring a customer's hourly or
23 minute-by-minute usage. You would agree that once
24 Duke goes and takes that information and measures it,
25 if the customer is shopping with a CRES provider,

1 then it needs to report to PJM how we should be
2 billed as a CRES provider, correct?

3 A. Are you saying how PJM would bill you.

4 Q. Yes. Maybe I could restate my question.

5 A. Yeah.

6 Q. As the distribution utility, would you
7 agree that you're responsible for calculating the
8 hourly energy settlement statements that PJM uses to
9 bill CRES providers?

10 A. That's correct.

11 Q. And because Duke is not using a
12 customer's actual hourly energy usage to calculate
13 their bills, they likewise cannot do the same to
14 calculate the bills that PJM issues to CRES
15 providers?

16 A. That would be correct.

17 Q. Okay. And another topic in your
18 testimony relates to the certified supplier tariff,
19 correct?

20 A. Yes.

21 Q. And would you agree that the certified
22 supplier tariff contains charges to CRES providers?

23 A. That's correct.

24 Q. Such as switching fees?

25 A. Yes.

1 Q. Historical energy usage request fees?

2 A. Yes.

3 Q. And the switching fee, for example, is \$5
4 per switch, correct?

5 A. That is correct.

6 Q. And that is assessed when a customer
7 selects a retail electric service provider, correct?

8 A. Yes.

9 Q. It likewise is assessed when a customer
10 moves from one retail electric service provider to
11 another retail electric service provider, correct?

12 A. Yes.

13 Q. But it is not implemented when a customer
14 moves from a retail electric service provider to the
15 standard service offer, correct?

16 A. Correct.

17 Q. Okay. And the historical usage fee, that
18 can either be for -- let me rephrase that.

19 Would you agree the historical usage fee
20 for 12 months of interval data is \$32?

21 A. That sounds correct, yes.

22 Q. And other fees that are assessed to
23 retail electric service providers would include the
24 bill ready fee?

25 A. Yes.

1 Q. And that's a monthly fee for the
2 residential bill that a CRES provider issues using
3 the utility consolidated billing service, correct?

4 A. For bill ready billing, yes.

5 Q. Okay. And am I correct that you have
6 sponsored discovery responses in this case regarding
7 the fees that we've previously discussed?

8 A. Yes.

9 MR. OLIKER: Your Honor, may I please
10 approach?

11 EXAMINER CATHCART: You may.

12 MR. OLIKER: Thank you. I believe I'm on
13 IGS Exhibit 8.

14 EXAMINER CATHCART: Correct. So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Mr. Oliker) Mr. Nicholson, the group
17 of documents that have been placed in front of you,
18 would you agree it contains a series of discovery
19 responses, recognizing that you have not sponsored
20 all of them?

21 A. That's correct.

22 Q. And would you agree that what has been
23 placed in front of you and marked as IGS Exhibit 8
24 contains discovery responses from Duke Energy Ohio in
25 Case No. 17-0032 to IGS's First and Second Set of

1 Discovery?

2 A. Yes.

3 Q. And you authored certain discovery
4 responses that are provided here, correct?

5 A. It looks like there's two.

6 MR. HEALEY: Can we just get some clarity
7 on what these exhibits are? I didn't get a copy. Is
8 it the entirety of your first and second sets?

9 MR. OLIKER: You can have a copy, Chris.

10 Q. I think there's three. Specifically
11 could you turn your attention to IGS-INT-02-001.

12 A. I can see there's three now. I wasn't
13 looking at the back on the pages.

14 Q. And IGS-INT-01-016 and 017?

15 A. Yes.

16 Q. And to your knowledge, do these discovery
17 responses appear to be true and accurate and reflect
18 your prior response?

19 MS. WATTS: And, your Honor, just for the
20 record, is Counsel inquiring with respect to only the
21 ones Mr. Nicholson authored or the whole group that
22 you provided?

23 MR. OLIKER: I'm referring to the ones
24 that he provided, but if he can identify any of the
25 other ones, he is free to do so.

1 A. I will agree on the ones that I provided.

2 Q. Okay. And starting with the first one,
3 which is IGS Interrogatory 2-001, would you agree
4 that this identifies that in 2016, retail electric
5 service providers paid over half a million dollars in
6 historical usage fees to Duke Energy Ohio?

7 A. We paid half a million dollars, and then
8 I didn't hear you.

9 Q. In 2016, retail suppliers paid over half
10 a million dollars in historical usage fees to Duke
11 Energy Ohio?

12 A. That would be correct.

13 Q. And would you agree that Duke did not
14 provide a study to support these charges in the rate
15 case?

16 A. Yes.

17 Q. And Duke did not have a study of how much
18 labor was required to provide historical usage
19 information?

20 A. Correct.

21 Q. And this is all set forth in the
22 discovery response itself, is it not?

23 A. I believe so.

24 Q. Turning to the second response you
25 offered, which is IGS Interrogatory 1-16, am I

1 correct that in 2016 Duke collected \$469,000 in
2 switching fees?

3 A. That is correct.

4 Q. And turning to IGS Interrogatory 1-17,
5 does this discovery response list all of the bill
6 ready fees that Duke collected from CRES providers?

7 A. Yes.

8 Q. I won't make you add them up. Don't
9 worry.

10 A. Thank you.

11 MR. OLIKER: If I could have one minute,
12 your Honor.

13 EXAMINER CATHCART: You may.

14 MR. OLIKER: I believe those are all the
15 questions, your Honor.

16 Thank you, Mr. Nicholson.

17 EXAMINER CATHCART: Thank you.

18 THE WITNESS: Thank you.

19 MR. HEALEY: Your Honor, I would like to
20 mark OCC's next exhibit which would be Exhibit 4.
21 May I approach the witness, please?

22 EXAMINER CATHCART: You may.

23 For the record this is OCC Exhibit 4.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 - - -

CROSS-EXAMINATION

By Mr. Healey:

Q. Mr. Nicholson, you have what has now been marked as OCC Exhibit 4. This is Duke's response to OCC-INT-02-046 regarding the stipulation. If you turn to page 2, you'll see that you are identified as one of the respondents for subsection c; is that correct?

A. That is correct.

Q. And you, in fact, provided that response?

A. Yes.

Q. And this discovery request pertains to the stipulation Rider PF component two and Attachment F. You are familiar with the stipulation, correct?

A. I've reviewed it, yes.

Q. And you have reviewed this section regarding Rider PF?

A. Yes.

Q. And you're familiar with Attachment F which is the discussion of customer energy usage data access for CRES providers?

A. I remember reviewing that, yes.

Q. And the response to part c in the exhibit that you've just been handed, it states in the third bullet point "Phase III applies to all AMI meters in

1 MDM." Do you see that?

2 A. Yes.

3 Q. That would refer -- that would exclude
4 any residential customers with Echelon meters,
5 correct?

6 A. Yes.

7 Q. And the same would go for the fourth
8 bullet point regarding Phase IV that says it "applies
9 to all AMI meters in MDM (and includes all solid
10 state meters in EDMS)"; that would not include any
11 residential customers with Echelon meters, correct?

12 A. That is correct.

13 Q. Let's look at page 7 of your testimony,
14 please. And this page discusses the company's
15 Purchase of Accounts Receivable Program. You're
16 familiar with that program, I assume, given that it's
17 in your testimony?

18 A. Yes, I am.

19 Q. When Duke purchases receivables from a
20 CRES supplier, it then seeks to collect the
21 receivable from the underlying customers, correct?

22 A. Yes.

23 Q. And Duke incurs costs for this collection
24 practice?

25 A. I assume we do. I'm not familiar with

1 the costs.

2 Q. But you would understand there would
3 necessarily be some administrative costs at least in
4 calling customers or sending them letters, that type
5 of thing?

6 A. I'm not familiar with it.

7 Q. On page 7 also you note on line 11 that
8 "only two CRES providers eligible for participation
9 have not enrolled in the POR." Do you see that?

10 A. Yes.

11 Q. Is that number still the same today?

12 A. It is.

13 Q. And can you tell me who those two CRES
14 providers are?

15 A. One is Western Reserve, and the other is
16 Next -- it's escaping me right now.

17 Q. It's not IGS, I assume?

18 A. No, no.

19 MR. OLIKER: I would be objecting.

20 Q. The next sentence on line 12 says that
21 the Purchase of Accounts Receivable Program
22 "continues to be a program of interest and benefit to
23 CRES providers...." What is the benefit to CRES
24 providers of the Purchase of Accounts Receivable
25 Program?

1 A. They don't have to bear the risks of
2 customers not paying their bills.

3 Q. Does the Purchase of Accounts Receivable
4 Program thus save money for CRES providers?

5 A. I would assume so, but I can't really
6 answer.

7 Q. Now, we discussed that Duke seeks to
8 collect the underlying receivables from customers
9 once it purchases them from the CRES providers. Any
10 receivables that it's unable to collect are then
11 charged to customers through Rider UE-GEN, correct?

12 A. That is correct.

13 Q. And Duke's residential customers that are
14 on the Standard Service Offer pay Rider UE-GEN; is
15 that correct?

16 A. Yes. That's my understanding.

17 MR. HEALEY: That's all I have, your
18 Honor.

19 EXAMINER CATHCART: Thank you.

20 Any redirect?

21 MS. WATTS: No redirect, your Honor.

22 EXAMINER CATHCART: Thank you. You may
23 be excused.

24 THE WITNESS: Thank you.

25 MS. WATTS: Your Honor, Duke would move

1 for the admission of Duke Energy Ohio Exhibit 24.

2 EXAMINER CATHCART: Any objections?

3 MR. HEALEY: Not beyond the motions to
4 strike, no.

5 MR. OLIKER: Your Honor, IGS would also
6 move for the admission of Exhibit 8. There are, I
7 recognize, additional discovery responses that were
8 not referred to.

9 EXAMINER WALSTRA: We didn't admit this
10 one first.

11 MR. OLIKER: Oh, sure.

12 EXAMINER CATHCART: Sorry.

13 MR. OLIKER: My bad.

14 EXAMINER CATHCART: We are going to deny
15 the motion to strike and admit Duke Exhibit 24.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER CATHCART: IGS.

18 MR. OLIKER: Thank you, your Honor. I
19 would move to admit IGS Exhibit 8. At a minimum, we
20 would move to admit the interrogatories that I
21 referred to with the witness that he authored. I
22 plan to discuss the other interrogatories with other
23 witnesses in the proceeding, so I could hold off on
24 moving their admission, but they are discovery
25 responses from the company, so technically speaking

1 they are admissions. But for purposes of avoiding
2 conflict now, I will not move for the admission of
3 the rest of them, although I do reserve the right to
4 do so later.

5 MS. WATTS: Your Honor, we have no
6 objection to the three responses that Mr. Nicholson
7 authored. We would ask that IGS recreate this
8 document so it only has those three, and then we can
9 deal with the other ones with whoever the later
10 witnesses are.

11 MR. OLIKER: I can hold off. Tomorrow, I
12 think, is when the other ones are going to be
13 discussed.

14 MS. WATTS: Well, it would be more
15 efficient and clear if we just had the ones with
16 Mr. Nicholson in the transcript and then whatever you
17 do later.

18 MR. OLIKER: Yeah, I can do that and give
19 a revised Exhibit 8.

20 EXAMINER CATHCART: Great. Thank you. I
21 will admit that. Thank you.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER WALSTRA: Subject to revisions.

24 EXAMINER CATHCART: Yes.

25 MR. HEALEY: OCC moves for the admission

1 of OCC Exhibit 4. Thank you.

2 MS. WATTS: No objection.

3 EXAMINER CATHCART: That will be
4 admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER WALSTRA: We can go off the
7 record.

8 (Discussion off the record.)

9 (Thereupon, at 3:27 p.m., the hearing was
10 adjourned.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by us in this matter on Thursday, July 12, 2018, and
5 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-6579)

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Case No(s). 17-0032-EL-AIR, 17-0033-EL-ATA, 17-0034-EL-AAM, 17-0872-EL-RDR, 17-0873-EL-ATA, 1

Summary: Transcript in the matter of the Duke Energy Ohio, Inc. hearing held on 07/12/18 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.