

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 :
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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 Monday, July
16, 2018.

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Monday Morning Session,
July 16, 2018.

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EXAMINER WALSTRA: We'll go on the
record.

We are back for Day 6 of In Re: Duke
Energy Ohio, Incorporated, global stipulation. Duke
has wrapped up their case. We are on to intervenors,
opposing parties. I believe IGS, would you like to
call your witness.

MR. OLIKER: Thank you, your Honor.
Interstate Gas Supply Inc. and the Retail Energy
Supply Association would call J. Edward Hess.

(Witness sworn.)

MR. OLIKER: And, your Honor, we would
mark as RESA-IGS Exhibit 1 as the direct testimony of
Mr. Hess. And at this time we would also seek to
mark the objections to the Staff Report submitted by
RESA and IGS which are two separate documents. If I
may approach?

EXAMINER WALSTRA: You may and so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER WALSTRA: Is that 2 and 3?

MR. OLIKER: We will mark as RESA-IGS
Exhibit 2 will be the RESA objections to the Staff

1 Report, and Exhibit 3 will be the IGS objections to
2 the Staff Report.

3 EXAMINER WALSTRA: So marked.

4 (EXHIBITS MARKED FOR IDENTIFICATION.)

5 - - -

6 J. EDWARD HESS

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

9 DIRECT EXAMINATION

10 By Mr. Oliker:

11 Q. Good morning, Mr. Hess.

12 A. Good morning, Mr. Oliker.

13 Q. And could you please state for the record
14 your name.

15 A. My name is J. Edward Hess.

16 Q. And did you draft testimony in this
17 proceeding?

18 A. Yes, I did.

19 Q. And is that testimony marked as RESA-IGS
20 Exhibit 1?

21 A. Yes. I assume it is.

22 Q. And understanding your document may not
23 have the No. 1 on it.

24 A. Yeah. There is nothing written on the
25 front of it. There was a copy of this testimony, my

1 testimony on the desk, if that's RESA Exhibit 1, then
2 that's what it is.

3 Q. And was this testimony drafted by you or
4 under your direction?

5 A. Yes.

6 Q. And if you were asked the same questions
7 today that are contained in your prefiled testimony,
8 would your answers be the same?

9 A. Yes, they would.

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

12 A. I do not.

13 Q. And turning to RESA-IGS Exhibits 2 and 3,
14 could you take a look at those documents which
15 contain the objections to the Staff Report from RESA
16 and IGS.

17 A. Which is which? Can you tell me that?

18 Q. RESA-IGS Exhibit 2 contains RESA's
19 objections to the Staff Report. Do you see that
20 document, Mr. Hess?

21 A. Yes.

22 Q. And am I correct that your testimony
23 relates to objections contained in this document?

24 A. I believe so, yes, that's correct.

25 Q. Likewise, turning to RESA-IGS Exhibit 3.

1 A. I have that.

2 Q. I'm correct that your testimony also
3 relates to the objections contained in this document?

4 A. Yes.

5 Q. And specifically you filed testimony in
6 support of these objections, correct?

7 A. That's correct.

8 MR. OLIKER: Okay. With that, your
9 Honor, I would tender the witness for
10 cross-examination.

11 EXAMINER WALSTRA: Thank you.

12 OEG.

13 MS. COHN: No questions, your Honor.

14 EXAMINER WALSTRA: I believe the next
15 would be Duke.

16 MR. HEALEY: Are we skipping? I'm just
17 asking.

18 EXAMINER WALSTRA: Yes.

19 MR. MILLER: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Miller:

23 Q. Good morning, Mr. Hess. My name is Chris
24 Miller, and I am one of the lawyers for Duke Energy
25 in this proceeding. How are you this morning?

1 A. I'm very good. Thank you. I'm hot.

2 Q. Hopefully it will cool down a little bit.
3 Give it some time.

4 You're self-employed as a consultant; is
5 that correct?

6 A. That's correct.

7 Q. And what types of matters do you consult
8 on?

9 A. Utility matters.

10 Q. Any other types?

11 A. No.

12 Q. You're appearing here today as an expert
13 for both Interstate Gas Supply and Retail Energy
14 Supply Association; is that correct?

15 A. That's correct.

16 Q. Do you happen to know who the members are
17 that make up RESA?

18 A. Get my glasses, I'm sorry. Individually,
19 no, I don't. I know IGS is a member.

20 Q. Okay. And you were not deposed in this
21 proceeding, were you?

22 A. I'm sorry?

23 Q. You were not deposed in this proceeding,
24 were you?

25 A. I was not. It was canceled.

1 Q. Have you testified in matters in front of
2 the Commission before?

3 A. Yes.

4 Q. And have you testified in matters in
5 front of the Commission on behalf of IGS?

6 A. No.

7 Q. On behalf of RESA?

8 A. No.

9 Q. What other entities have you provided
10 testimony for in front of the Commission?

11 A. McNees Wallace, the IU, the Staff of the
12 Commission.

13 Q. And is that it, just your recollection?
14 Is that it to your remembrance, your recollection,
15 those three parties?

16 A. Yes.

17 Q. I assume for McNees you mean you were
18 doing it for their clients.

19 A. That's correct.

20 Q. You prepared your testimony that you
21 submitted on June 25 in this proceeding. Did you --
22 did you receive any assistance or guidance from
23 anybody else in preparing that testimony?

24 MR. OLKER: Your Honor, I believe he can
25 answer this question, but I would object to the

1 extent he seeks privileged information; but, with
2 that caveat, the witness can answer.

3 EXAMINER WALSTRA: Thank you.

4 A. You know, what I was sought on, it was
5 last November, Mr. Olikier called me and asked me if I
6 would help him with an issue. He described the issue
7 to me and we began discussing it.

8 Q. So that was the extent of it? You did
9 everything else yourself?

10 A. Yes, pretty much.

11 Q. Can you --

12 A. Well, no, not everything. The
13 interrogatories had already been put in and data
14 requests had been done, so I was working with
15 matters -- there were a couple of technical people at
16 IGS that I consulted with and talked to. There were
17 other members of RESA that I talked to about some of
18 the costs and issues that they have, they've
19 incurred.

20 Q. Okay. Can you tell me, are you appearing
21 today as an expert on the economics of utility
22 matters?

23 MR. OLIER: Objection to the extent the
24 question is vague. If the witness understands the
25 question.

1 A. Yeah. I don't know what you mean by the
2 "economics of."

3 Q. All right. Are you an expert in public
4 utility matters?

5 A. Yes.

6 Q. Are you an expert in economics?

7 A. I have a general understanding of
8 economics.

9 Q. In your mind, do those two streams cross
10 in your testimony?

11 A. Do --

12 Q. In other words, do you provide testimony
13 in public utility matters that relate to economic
14 issues?

15 A. Well, the impact of a lot of my
16 recommendations have impacts on economics and I've
17 had to consider what the economics of those are.

18 Q. And in this testimony would that apply?

19 A. Sure, absolutely.

20 Q. Do you have any experience in legislative
21 or statutory analysis?

22 A. Legislative and statutory analysis, yes,
23 I helped develop Senate Bill 3 and reviewed -- helped
24 to some extent on Senate Bill 221, just a little.

25 Q. And that was a long time ago, correct?

1 A. Senate Bill 3 was in 1999; 221 was in '07
2 or '08.

3 Q. And with your long history in the
4 Commission performing work around the public utility
5 matters in Ohio, do you have any experience with
6 utility cases here at the Commission that were
7 resolved through stipulated agreements?

8 A. Yes.

9 Q. Can you give me an idea of what you may
10 have been involved with in some of those?

11 A. In the stipulations?

12 Q. Well, in -- in the cases, let's start
13 with the cases. What cases might you have been
14 involved in that were settled by stipulation?

15 A. It's fair to say that I was involved in
16 almost every base rate case during the 1980s through
17 the 1990s. Distribution, AIR cases, I helped resolve
18 the ESP case -- ETP cases, I'm sorry, that were filed
19 in 1999. I helped resolve the RS, rate stabilization
20 plan cases that were filed in 2003 and 2004.

21 Numerous other cases. That's -- that was probably
22 the brunt. That was the majority of them. I was
23 also involved in the -- I'm sure it was settled --
24 are we talking about settlements?

25 Q. Stipulations.

1 A. Stipulations. The AEP ESP case that was
2 filed in '09. I'm sorry, it was filed in '08,
3 resolved in '09.

4 Q. Now, prior to preparing your testimony
5 today, you submitted it for this proceeding June 25.
6 Can you tell me what you reviewed before compiling
7 that testimony and filing it?

8 A. The Standard Service Offer application
9 and testimonies of the last Duke case, the
10 application in this case, and supporting testimonies,
11 I reviewed some testimonies that had been filed
12 before the legislature on OVEC issues. I reviewed --
13 I went back and reviewed 4928, the statute. I
14 reviewed the ETP case that had been filed by Duke in
15 1999, I think it was, and several of the testimonies
16 involved in that. That's all that comes to mind
17 right now.

18 Q. And so maybe I can break those down a
19 little bit and ask you some questions about specific
20 information and maybe you can tell me whether you had
21 an opportunity to look at those.

22 A. Okay.

23 Q. Did you review the company's applications
24 filed in the underlying cases comprising this
25 proceeding, all the applications the company made for

1 the various cases?

2 A. All the applications --

3 Q. When they filed their application for
4 each individual cases being resolved here today.

5 A. No.

6 Q. Did you review the initial testimony of
7 the company's witnesses filed in any of those
8 underlying cases?

9 A. Again, in 17-32 and in the Standard
10 Service Offer case.

11 Q. Okay. And you reviewed that before you
12 filed your testimony?

13 A. Oh, yes.

14 Q. Have you reviewed the stipulation and
15 recommendation filed by the parties on April 13,
16 2018, in this case?

17 A. Yes.

18 Q. Did you review it in its entirety?

19 A. Yes.

20 Q. Do you have any sense about how much time
21 you spent reviewing that stipulation document?

22 A. Not off the top of my head, no, I don't.

23 Q. Have you reviewed the testimony
24 supporting the stipulation that was filed by the
25 company's witnesses?

1 A. Yes.

2 Q. Do you know which ones? All of them?

3 A. Speeler.

4 Q. That would be Spiller.

5 A. Spiller, I'm sorry, yes. If you can give
6 me a list of them, I can tell you the ones I did
7 review. Off the top of my head, Wathen, I reviewed
8 Wathen. Off the top of my head I don't remember any
9 of the others.

10 Q. Is it fair to say you didn't review every
11 one of them but several of them?

12 A. I'm not sure that that's correct. I
13 think I did page through them to see if there was
14 anything related to my issue in my testimony.

15 Q. And along the same lines of questioning,
16 have you reviewed the testimony supporting the
17 stipulation that was filed by any of the intervening
18 parties?

19 A. I'm sorry, let me go back to Rose was
20 another, of course.

21 Q. Rose, Mr. Judah Rose?

22 A. Judah Rose, yes. And the question was?

23 Q. Same question just regarding the
24 testimony that was supporting the stipulation that
25 may have been filed by some of the intervening

1 parties. Have you reviewed any of that?

2 A. Yes.

3 Q. And, again, all of it or some of it?

4 A. I again paged through as much as I could
5 to see if there were any issues that related to any
6 of the issue -- anything I was testifying to.

7 Q. And have you reviewed the testimony
8 opposing the stipulation filed by the other
9 intervening parties?

10 A. Yes.

11 Q. And, again, same question, do you
12 remember whom?

13 A. Again, Wilson was one related to an issue
14 that I was testifying to.

15 Q. Can I direct you -- you have your
16 testimony, correct?

17 A. I do.

18 Q. Can I direct you to your testimony to
19 page 4, line 5.

20 A. I have that.

21 Q. And you refer to "ICAP." And I am just
22 curious, do you mean ICPA, Inter-Company Power
23 Agreement?

24 A. Yes.

25 Q. Okay. Thank you.

1111

1 Then can we turn to your Exhibit JEH-1.

2 A. I have that.

3 Q. And can you tell me, did you personally
4 perform all the calculations in arriving at the
5 various values tabulated or were you provided
6 assistance by others?

7 A. No, I did the calculations. I put a
8 spreadsheet together.

9 Q. Okay. Then on page 4, lines 21 and 22,
10 if you can go back to 4 for me.

11 A. I have that.

12 Q. You are on 21 and 22, sir?

13 A. Page 4, Lines 21 and 22?

14 Q. Correct.

15 A. I have that, yes.

16 Q. Thank you.

17 You state in your testimony, at 21 and
18 22, that the Commission has a longstanding practice
19 of appropriately allocating costs to cost causers.
20 Is that true?

21 A. Yes.

22 Q. And can you tell me what you mean by
23 "allocating costs to cost causers"?

24 A. It's -- in the establishment of base
25 rates, you always want to make sure that the rate is

1112

1 appropriately charged to the customer that causes the
2 cost. So either a direct allocation to that rate or
3 an allocation of a general cost to that rate.

4 Q. So is it fair to say that just in very
5 general terms if someone causes a cost, an entity
6 causes a cost, the expectation or your expectation
7 would be that the Commission would assign a value to
8 whomever caused that cost and have them effectively
9 make any other party whose cost, you know, that was
10 incurred for, whole? In other words, if -- if
11 someone causes a cost, you would assume they would be
12 made whole by someone else.

13 MR. WHITT: I would object to the form of
14 the question.

15 MR. OLIKER: I was about to say the same
16 thing.

17 Q. In the general term, when you say
18 "allocating costs to cause causers," I think you
19 referred in your answer to rates. Can you give me
20 your understanding of what you would mean by that if
21 I didn't involve rates? For example, if -- if I
22 caused you to expend some amount of money, and would
23 it be your expectation I would make you whole?

24 A. Let me try to answer the question as an
25 example. The president of a company -- the president

1 of this company is responsible for the -- for
2 providing a Standard Service Offer that's safe,
3 reliable, and -- give me a second. I'm sorry.

4 Q. Sure.

5 A. Safe, reliable -- service quality is safe
6 and reliable. The president of the company, to the
7 extent that a customer was taking service on that
8 Standard Service Offer, a portion of the president's
9 salary should be allocated to that customer who's
10 taking service from the Standard Service Offer.

11 MR. HEALEY: Your Honor, I am going to
12 move to strike the response. It was compound and
13 vague as it is, and the response had nothing to do
14 with the hypothetical the attorney asked.

15 MR. MILLER: Your Honor --

16 MR. OLIKER: Your Honor -- first you can
17 go and then I'll go. We both are entitled to a
18 response.

19 MR. MILLER: Your Honor, he said I would
20 try to answer the question. I think he did. I have
21 yet to work through what the answer is, but I think
22 he did answer it.

23 MR. OLIKER: Yeah. And your Honor, I
24 would agree that the question was about cost
25 causation. He identified an individual's

1 responsibility and the nexus of cost causation that
2 he viewed to the Standard Service Offer.

3 EXAMINER WALSTRA: Overruled.

4 Q. (By Mr. Miller) And, Mr. Hess, let me
5 ask, I think you indicated that a portion of the
6 president's salary should be allocated to the
7 customer who's taking service?

8 A. Taking the Standard Service Offer, yes.

9 Q. Okay. Can we -- can we turn to page 4,
10 lines 22, and it runs over to page 5, line 1. I
11 think you state that the Commission also has a
12 longstanding practice of eliminating barriers for
13 customers to leave the SSO and shop for a competitive
14 retail supplier and appropriately allocating costs to
15 cost causers. So looking at that language, it says
16 "...eliminating barriers for customers to leave the
17 SSO and shop for a competitive retail supplier."
18 What do you mean by that? What does that mean?

19 A. The price of it, the price of the
20 Standard Service Offer would be a barrier to leave.

21 Q. Is that the only barrier to leaving?

22 A. Well, that's what I am referring to.

23 Q. So it's just you are solely relying on
24 price period.

25 A. Yes.

1115

1 Q. Okay. On page 3, lines 20 through 22, if
2 you turn there for me. And this runs through page 4,
3 line 1, I believe. You're proposing that the
4 Commission unbundle certain distribution costs
5 required to process and administer the SSO and
6 allocate those costs to SSO customers directly rather
7 than allocating those costs to all customers; is that
8 correct?

9 A. That's correct.

10 Q. Can you tell me, have any other electric
11 distribution utilities, to your knowledge, proposed
12 the recovery of similar costs in a similar manner to
13 what has been proposed here in any other proceedings
14 before the Commission?

15 A. I am not aware of any. Any other utility
16 companies?

17 Q. The EDUs.

18 A. No, I am not aware of any.

19 Q. Has the Commission, in any of its past
20 cases, established a credit rider that includes
21 specific costs and collects them as you suggested?

22 MR. OLIKER: Your Honor, I object. The
23 question is vague, but if the witness understands, go
24 ahead.

25 EXAMINER WALSTRA: Overruled.

1 A. Off the top of my head, none that I know
2 of.

3 Q. And to the best of your recollection, has
4 the Commission, in any of its past cases, established
5 an avoidable rider that includes specific costs and
6 collects them as you suggested here? I believe you
7 suggested that; is that correct?

8 A. That's correct. Not to my knowledge.

9 Q. And on page 5, if you turn there for me,
10 please, lines 5 through 7, I believe. You state that
11 the SSO is a statutory requirement that the electric
12 distribution utility must provide its customers a
13 firm supply of electric generation service when there
14 is a failure of a supplier to provide retail electric
15 service -- generation service. Is that true?

16 A. Yes.

17 Q. Does the EDU have an obligation to
18 provide service under circumstances, other
19 circumstances than just when there is a failure of a
20 supplier to provide retail electric generation
21 service?

22 A. I think that language is right out of the
23 statute.

24 Q. So you're suggesting that the only time
25 an EDU has the obligation to provide service is only

1 when there is a failure of a supplier to provide?

2 A. Again, I think that language is right out
3 of the statute, 4928.141, I think.

4 Q. So you are familiar with 4938 --
5 4928.141.

6 A. Yes.

7 Q. Very familiar, I guess?

8 A. Well, it was a survivor of Senate Bill 3.
9 It's the only language in 4928.14 that survived after
10 221 came in.

11 Q. I can tell with your emphasis that it was
12 quite an experience.

13 A. Yes.

14 Q. In your opinion then, 4928.141 applies to
15 CRES providers?

16 A. 4928.141 --

17 Q. Which I think we just talked about,
18 correct? So 4928.141 which is just what we talked
19 about?

20 A. Yeah, I don't have a copy of it up here
21 with me. It doesn't apply -- I'm sorry. It refers
22 to, yes, the Standard Service Offer must be made
23 available when CRES providers don't provide service.
24 That's the reference to the CRES provider. It
25 actually defines when -- why the Standard Service

1 Offer needs to be made. Needs to be offered.

2 Q. But the CRES provider is not required to
3 provide that Standard Service Offer.

4 A. No, no.

5 Q. That falls to the --

6 A. That's absolutely correct. That's the
7 distribution company's responsibility.

8 Q. Does an EDU have a statutory obligation
9 to guarantee the standby availability of firm supply
10 for each and every customer in its service territory?

11 A. Again, based upon the qualifications in
12 141, yes.

13 Q. Would you agree with me if I said that an
14 EDU must always have access to capacity and energy to
15 be prepared to serve any customer who for whatever
16 reason chooses to not shop?

17 A. Yes.

18 Q. And would you agree with me if I said the
19 same thing, but it was to procure and hold that
20 access to capacity and energy for any customer that
21 chooses to shop also? Do they have to be prepared to
22 serve the shopping customer?

23 A. Yes.

24 Q. And looking at page 5, lines 10 and 11, I
25 think you state that an "SSO was intended to simply

1 be a back-up service for customers that hadn't
2 decided on a retail competitive offer or were between
3 competitive service provides"; is that correct?

4 MR. HEALEY: Your Honor, at this point I
5 am going to move to strike this portion of Mr. Hess's
6 testimony on page 5, lines 9 to 11. Here he is
7 purporting to know the intent of a statute that was
8 passed by the Ohio General Assembly. He was not a
9 member of the Ohio General Assembly. He can't know
10 what their intent was. To the extent he is claiming
11 to know the intent based on the plain language of the
12 statute, he is not an attorney. This is pure
13 speculation and this goes well beyond his regulatory
14 experience in reading a statute. Now he is getting
15 into the minds of the General Assembly.

16 MR. OLIKER: Your Honor, as the witness
17 already testified, he was actually involved, on
18 behalf of the Commission, in the crafting of this
19 legislation as well as the implementation of this
20 legislation and was, I believe, the lead of the staff
21 around the time the Commission was adopting its
22 policy regarding competitive retail electric service.
23 So if there is anybody that can talk about the intent
24 of this, I believe Mr. Hess is well situated to do so
25 and it is only his opinion.

1 MR. WHITT: And I would add, your Honor,
2 if one --

3 EXAMINER WALSTRA: First of all, if you
4 guys are going to jointly present a witness, I am
5 going to need one representative to be the attorney
6 for the witness. So just going forward with other
7 witnesses. But I will deny the motion to strike and
8 the Commission will give it the proper weight going
9 forward. You can explore that in cross as well.

10 MR. OLIKER: Thank you, your Honor.

11 Q. (By Mr. Miller) Mr. Hess, is it your
12 belief that the General Assembly or your opinion that
13 the General Assembly, through your involvement in
14 working with it at the time, through the passage of
15 Senate Bill 3 and Senate Bill 221, had intended that
16 all customers of an EDU would make the decision to
17 choose a competitive supplier?

18 A. That all customers would make the
19 decision?

20 Q. Let me rephrase that.

21 A. Or not. Or not to choose a competitive
22 supplier, yes.

23 Q. Was it your understanding, through those
24 discussions, that the expectation might be that
25 everyone would simply -- could simply choose a

1 competitive supplier?

2 A. Yes.

3 Q. Was there an expectation that some
4 customers would never choose a competitive supplier?

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

6 Q. Would you agree with me that any
7 customer, shopping or nonshopping, can choose to take
8 generation service from a CRES or simply take the SSO
9 offered by the company?

10 A. Yes.

11 Q. Can you tell me who certifies CRES
12 suppliers to provide service in Ohio?

13 A. I believe the PUCO.

14 Q. And can you tell me, is a CRES provider,
15 after it's certified, is it obligated to serve every
16 customer who requests service from it?

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

18 Q. Can you tell me, can a CRES provider
19 refuse to serve any customer it chooses, to deny
20 service to?

21 MR. OLIKER: Your Honor, I would object.
22 It calls for a legal conclusion. I think it's also
23 asked and answered.

24 MR. MILLER: I don't think I've asked the
25 question and --

1 EXAMINER WALSTRA: Overruled.

2 MR. MILLER: Thank you.

3 Q. Is a CRES provider, subsequent to
4 certification by the Commission, is it required to
5 serve a minimum number of customers in Ohio to be in
6 good standing? Do you know?

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

8 Q. Can a CRES provider be certified to
9 provide service in Ohio and not serve any customers
10 at all?

11 A. I believe so, yes.

12 Q. Do they ever have to serve anybody? Do
13 you know?

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

15 Q. Can you tell me what the term "POLR,"
16 P-O-L-R, means?

17 A. Provider of last resort.

18 Q. What are the duties, if you know, of a
19 POLR provider in regards to the customers in its
20 service territory?

21 A. Well, to be the provider of last resort.
22 If they don't choose any other supplier to -- to
23 provide the generation service.

24 Q. Would it be fair to say they're the
25 default provider for those folks who don't choose

1 other service?

2 A. Well, as I stated, they are the provider
3 that provides the service if they don't choose
4 another service provider.

5 Q. Are they the provider that provides the
6 service if someone is shopping and stops shopping?

7 A. Yes.

8 Q. On pages 5 through 8, I think -- I am not
9 going to ask you about specific lines. Just
10 generally you reference a number of overhead and
11 administrative costs that the company incurs to
12 provide SSO service; is that correct? Is that fair?

13 A. I'm sorry, say that again.

14 Q. On --

15 A. I'm on page 8.

16 Q. Pages 5 through 8 you reference in your
17 discussion of your testimony a number of overhead and
18 administrative costs and you talk about the fact that
19 the company incurs certain costs to provide SSO
20 service, is that correct, just in general?

21 A. It -- 5 through 8 is more of a discussion
22 of services provided, rather than costs.

23 Q. Okay. So you reference the services that
24 would need to be provided from the company to serve
25 its obligations?

1 A. Well, service that would need to be
2 provided to make a comparable service, yes.

3 Q. Okay. And what do you mean by
4 "comparable service"?

5 A. Comparable to the services that are
6 required by the Commission for the CRES providers;
7 apply to CRES suppliers.

8 Q. Can you tell me how an EDU procures the
9 energy and capacity needed to meet their standard
10 service obligations?

11 A. It's very generally. I believe it's
12 called a declining clock auction.

13 Q. Do you have any experience with those?

14 A. Yes. We actually talked to the people
15 from Charles Rivers in about 2004 in an attempt to
16 try to figure out how to set the Standard Service
17 Offer other than the way it had been set during the
18 market development period and rate stabilization
19 plans.

20 Q. And what happened -- you talked to the
21 Charles Rivers folks.

22 A. We talked to Charles Rivers. We
23 developed the issue from there. I think the first
24 time that the declining clock auction was used was in
25 FirstEnergy's ESP case, and I wasn't involved in the

1 actual implementation of it, but we -- I helped
2 support the development of it.

3 Q. And when you say "we," I'm just --

4 A. Staff of the Commission.

5 Q. Staff of the Commission. So you did that
6 on behalf of the Commission.

7 A. I'm sorry. I have to be very clear when
8 I am talking about when and where I was.

9 Q. So would you agree that there are certain
10 costs that are incurred to conduct such an auction?

11 A. Yes.

12 Q. And in your opinion would it cost more or
13 less or about the same if you had to conduct an
14 auction if that auction were for, for example, 10
15 percent of total load versus some higher number?

16 A. Well, what type of costs are you talking
17 about? Actually implementing the auction, the
18 regulatory process to get it approved?

19 Q. All the above.

20 A. Probably about the same.

21 Q. And so if you did an auction for 10
22 percent of the total EDU load, you're testifying it
23 would be the same if you did an auction and just for
24 reference purposes that was 50 percent of the load?

25 A. The cost of --

1 Q. The cost of --

2 A. Of the auction and the process to go
3 through to get it approved?

4 Q. Uh-huh.

5 A. Very possible, yes.

6 Q. Would your answer be the same if we
7 limited it to the cost of just the auction and not
8 the regulatory approval?

9 THE WITNESS: Could I have the question
10 repeated, please.

11 (Record read.)

12 A. Probably, yes.

13 Q. And would it be the same if we were
14 talking just about the regulatory approval and not
15 the auction?

16 A. Yeah. I don't really know the answer to
17 that. I don't know how difficult it would be to get
18 50 percent of it approved as compared to 100 percent
19 or 10 percent of it.

20 Q. Assume for the moment, based on your
21 understanding of SB 3 and 221, assuming we have a
22 circumstance where all the customers of an EDU have
23 switched or are shopping. In your opinion, based on
24 your understanding of the statute, does the EDU still
25 have to have a Standard Service Offer available?

1 A. Yes.

2 Q. So if there is one customer or no
3 customers, they still have to proffer that offer?

4 A. That's correct.

5 Q. Would you agree there are still costs to
6 have that standard offer available even if everybody
7 switched off? In other words, the company would be
8 incurring costs for the auction, et cetera?

9 A. Yes. And in my methodology it would be a
10 distribution company charge to recover the costs.

11 Q. Let's look at additionally on pages 5 and
12 8, I think you referenced a number of administrative
13 and processing costs that CRES providers incur to
14 provide generation to customers; is that true?

15 A. Yes.

16 Q. Do CRES providers have to incur costs
17 that the EDUs do not in providing generation service?

18 A. Yes.

19 Q. Do the EDUs incur costs that the CRES
20 providers do not in providing their generation
21 service?

22 A. Ask me that again.

23 THE WITNESS: Can I have the question
24 repeated?

25 (Record read.)

1 A. There would be the cost of the auction
2 and regulatory process to have the Standard Service
3 Offer approved. The EDU would not have -- the CRES
4 provider does not have to go through that.

5 Q. I think it's your testimony that the CRES
6 providers are -- tell me if I'm missing this, but
7 CRES providers are subsidizing EDU costs of providing
8 the generation service?

9 MR. OLIKER: Can I have that question
10 reread.

11 (Record read.)

12 MR. OLIKER: I think there might be a
13 misstatement in the question, and if not, I object
14 because it's vague.

15 EXAMINER WALSTRA: The witness can
16 clarify.

17 A. The CRES customers are subsidizing. I
18 didn't say the CRES providers were subsidizing.

19 Q. So you're suggesting that the CRES
20 providers are passing those costs on to their
21 customers?

22 A. The CRES providers -- the CRES providers
23 are passing what costs on to the customers?

24 Q. Well, I think you said the CRES customers
25 were subsidizing costs for --

1 A. Standard Service Offer customers, through
2 the distribution rates, the processing and
3 administrative costs that it takes to process and
4 administrate \$300 million or so of the Standard
5 Service Offer revenues; in addition to that, the
6 several hundred thousand customers that are taking
7 that service. The processing and administrative
8 costs for those, for that service, is being
9 socialized in the distribution rate. And, therefore,
10 the CRES customer, through its distribution rate, is
11 being required to pay that cost.

12 Q. Do you know if the EDUs are incurring
13 costs to ensure that CRES providers can supply
14 generation service to their customers and those costs
15 aren't covered or credited back by the CRES providers
16 to the EDUs?

17 A. Could you give me an example?

18 Q. Let me ask the question differently, I
19 guess.

20 We talked about the EDUs incurring
21 certain costs, correct?

22 A. Okay.

23 Q. And we talked about the fact that CRES
24 providers have other costs to provide service to
25 customers, correct?

1 A. Correct. Promotional costs, costs like
2 that.

3 Q. Do you know if there are costs that CRES
4 providers pay back or expenses or cost centers that
5 are shifted back to the EDUs by the CRES providers?

6 A. Costs that are shifted back?

7 Q. Do the CRES providers pay the EDUs
8 anything?

9 A. Yes. I have a portion of my testimony
10 where the CRES providers are paying for. Page 8,
11 Question 21, the response to that. Those are costs
12 that a CRES provider are having to pay to the
13 distribution utilities for services provided by the
14 distribution utility.

15 Q. I think on page 12, lines 7 through 24,
16 you have a list of cost types that you say are
17 required to support the SSO load, the EDU service; is
18 that correct?

19 A. Yes.

20 Q. Let's take a look just for example at the
21 first one. I think your -- you are aware, are you
22 not, that the company has a 24/7/365 call center to
23 address customer concerns and issues?

24 A. Yes.

25 Q. Is it your opinion that Duke

1 Energy's call center representatives only handle
2 calls related to SSO service?

3 A. No. It will also handle calls related to
4 distribution service. From what I understand, too,
5 they'll get calls about CRES suppliers which should
6 be referred to then the CRES supplier. The same
7 thing happens on the CRES side. They'll get calls
8 about the distribution service and they refer those
9 back to the -- to the EDU.

10 Q. And in regards to that information,
11 how -- how do you know that?

12 A. The -- I talked to people at IGS and
13 other RESA employees -- or members.

14 Q. Did you speak to anybody at the company
15 about their call center?

16 A. No. We talked to the staff of the
17 Commission, who monitors some of those calls.

18 Q. Do you have any idea how many calls?

19 A. No.

20 Q. Do you have any idea of what the
21 percentage of calls the company might receive that
22 are related to CRES?

23 A. No.

24 Q. And by contra position, do you have any
25 idea what percentage of the calls the CRES receives

1 relating to the EDU?

2 A. No. I allocated based upon number of
3 customers.

4 Q. So, but you would be willing to accept
5 that the company receives calls about CRESSs?

6 A. Sure, and then referred those calls to
7 the CRES.

8 Q. Do you know how the company responds to
9 those calls? Do you have any idea what maybe the
10 menu in regards to the response would be at the call
11 center?

12 A. No.

13 Q. And you talked about referring them back,
14 but do you know if the company routes or transfers
15 those calls to CRES providers directly?

16 A. I don't know the answer to that. They
17 should. I believe they do.

18 Q. And do you know, is there a charge to the
19 CRES provider for the company handling or managing
20 possibly transferring those calls?

21 A. I don't believe so.

22 Q. And since you're advocating that all
23 charges be cost based, would it be fair to say maybe
24 you would agree that the company's call center should
25 perhaps invoice the CRES providers for the calls they

1 handle?

2 A. But they're not handling the CRES calls.
3 They are referring those too; the CRES customer. In
4 addition to that, then on the other side, trying to
5 make it a comparable service, on the other side of
6 it, when the CRES call center gets calls about the
7 distribution service, they refer those back. I don't
8 think there's -- it's not a part of my recommendation
9 that any of it be invoiced back and forth.

10 It's a comparable service. It's, you
11 know, there is going to be confusion, and to the
12 extent there are calls to the CRES about the
13 distribution service, those are referred to the EDU.
14 To the extent there are calls about the CRES service,
15 those are referred to the CRES supplier.

16 Q. But, again, you don't know how many calls
17 each get.

18 A. No.

19 Q. And you don't know what percentage of the
20 calls they take are related to the other party.

21 A. No.

22 Q. But you did testify that you think the
23 costs should be attributable to the cost causer,
24 correct?

25 A. Well, that's an awful -- I mean, that's

1 an awful difficult thing to do, but I'm suggesting
2 that it be allocated, an allocation methodology. I
3 am not sure we are going to be able to correctly
4 assign any costs in a lot of these issues. A lot of
5 the services that are provided aren't going -- we are
6 not going to be able to specifically identify the
7 costs. There has to be an allocation methodology.

8 What I am suggesting is that the
9 allocation methodology that's generally accepted for
10 FERC Account 903 be used to allocate that cost;
11 which, in effect, does assign the cost to the cost
12 causer. It's just practical that if there is a
13 percentage of customers that take CRES service, that
14 that same percentage is going to be similar to what
15 the -- what the calls are.

16 Q. If you turn to page 8, lines 16 and 17.

17 A. I have that.

18 Q. I think you indicate there that CRES
19 providers pay Duke switching fees, interval data
20 fees; is that correct?

21 A. Yes.

22 Q. Do you happen to know what percentage of
23 those fees are paid by IGS?

24 A. No.

25 Q. And do you know the dollar amount

1 perhaps?

2 A. No.

3 MR. OLIKER: Object if he did, but is the
4 answer -- I'm sorry, was the answer no, he doesn't
5 know?

6 THE WITNESS: Yeah.

7 Q. Do you know what percentage of those fees
8 are paid by RESA members?

9 A. No.

10 Q. And, again, you don't know a specific
11 dollar amount what those numbers might be for RESA
12 members?

13 A. No.

14 Q. Is -- is the company responsible for
15 ensuring competitive generation supply to shopping
16 customers?

17 THE WITNESS: May I have the question
18 repeated, please.

19 (Record read.)

20 A. No.

21 Q. Is the company only responsible for
22 ensuring generation supply to nonshopping customers
23 then?

24 A. Yes.

25 Q. I think your testimony on page 10,

1 lines 1 and 2, is that -- are you there?

2 A. Yes.

3 Q. Okay. Thank you.

4 Is that SSO rates are artificially low,
5 and such artificially low rates may have a negative
6 effect on shopping including, among other things,
7 making customers less likely to shop; is that
8 correct?

9 A. Yes.

10 Q. And so on page 10, lines 3 and 4, I think
11 you indicate that 53 percent of Duke residential
12 customers receive service on the utility SSO rate,
13 correct?

14 A. Correct.

15 Q. And I'm just curious where did you get
16 that information?

17 A. PUCO website, I believe the reference is
18 below.

19 Q. And so that's from the PUCO summary of
20 switch rates from EDUs to CRES providers in terms of
21 customers in 2016; is that correct? Is that what
22 that reference is?

23 A. Yes, that's the number of customers.

24 Q. And, again, it's from that PUCO summary
25 of switch rates?

1 A. Yes.

2 Q. And I'm just curious, do you know what
3 those numbers might have been for commercial
4 customers?

5 A. They're considerably higher for
6 commercial and industrial customers. I am not sure I
7 have that number right here.

8 Q. And just to be clear, when you say
9 "higher," you mean that --

10 A. More customers were shopping.

11 Q. And industrials, do you know?

12 A. Again, it's considerably higher, I
13 believe.

14 Q. Is this for the entirety of '16? Do you
15 know? Or is this a --

16 A. That's a point in time. It's number of
17 customers.

18 Q. Would, subject to check --

19 A. I am going to assume it's 12-31-16.

20 Q. And do you know how often the Commission
21 tabulates and reports these numbers?

22 A. I think quarterly.

23 Q. So does -- is this a quarterly report
24 you're referring to?

25 A. It is a quarterly report; however, number

1 of customers is a point in time so it's not a
2 cumulative value.

3 Q. And you believe this compilation or
4 information to be accurate?

5 A. Do I believe the staff's compilation of
6 the information to be accurate? Yes.

7 Q. Yes. Is there a more current report
8 released than the one you referred to?

9 A. Yes.

10 Q. Was the first quarter of 2018 report out
11 when you drafted your testimony?

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

13 Q. There were reports in '17 though,
14 correct?

15 A. Yes.

16 Q. And I am just curious, why did you choose
17 to cite the '16 number?

18 A. I think it was just the one that was most
19 available.

20 Q. Well, I think they are all available on
21 the website, are they not? Subject to some time lag
22 of a month or two?

23 A. And I'm sorry, I don't remember the test
24 year in this case. I think it related a little
25 closer to what the test year was.

1 Q. So do you know what the most current
2 report shows for the percentage of Duke residential
3 customers receiving service on the SSO rate?

4 A. I don't have that, no.

5 MR. MILLER: Your Honor, may we approach?

6 EXAMINER WALSTRA: You may.

7 Q. I would like to give you the most current
8 report to take a look at. It's a copy of the 2018,
9 the March 2018 PUCO Summary of Switch Rates from EDUs
10 to CRES Providers.

11 MR. MILLER: And I think if this gets
12 marked that will be our Exhibit 31.

13 EXAMINER WALSTRA: That is correct. Are
14 you marking it?

15 MR. MILLER: 31.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. So Mr. Hess, now that you have it in
18 front of you, have you seen this before?

19 A. This particular one, no.

20 Q. But you have seen other ones in that
21 format?

22 A. Yes, absolutely.

23 Q. So can you refer to the portion of the
24 report that refers to Duke Energy. I think they are
25 all listed under provider. I think it's the second

1 column there, the second set of information.

2 A. I see that.

3 Q. Can you let me know what the -- based on
4 your review of it, the company's share of residential
5 customers is for the first quarter of '18?

6 A. Did you ask me for the switched rate or
7 the EDU share?

8 Q. The EDU share.

9 A. The EDU share is 41.17 percent for
10 residential customers.

11 Q. And that would mean that the remainder
12 out of the 100 percent was the CRES share, correct?

13 A. Correct.

14 Q. And then what is the commercial
15 customers? Same --

16 A. The EDU share is 28.38 percent. The
17 Choice customer is 71.62 percent commercial.

18 Q. And then if we look at the industrials.

19 A. 20.11 percent for industrials on EDU. On
20 the Standard Service Offer, 79.89 percent for
21 switched customers.

22 Q. And then there is a tally there, right,
23 for the total?

24 A. Total, right. 40.01 percent for EDU
25 share. Electric Choice customers are 60.87 percent.

1 Q. And I believe in your testimony we talked
2 about the 2016 number and I would just ask you about
3 the residential number because that's the one you
4 talked about in your testimony, but is it fair to say
5 that the company share of residential customers to
6 which it provides SSO has gone down since '16?

7 A. The company share of SSO customers has
8 gone down, yes. The switched customers has gone up.

9 Q. And so, based on the review of the
10 document today I showed you, CRES providers hold the
11 largest market share, do they not, at least as of the
12 close of March?

13 A. Yes.

14 Q. And the SSO product doesn't have the
15 largest market share of the residential class
16 customers?

17 A. That's correct.

18 Q. Or any other class of customers?

19 A. That's correct.

20 Q. In your testimony you recite numerous
21 details regarding OVEC, correct?

22 A. Yes.

23 Q. And not that it's not been tortured
24 enough in this case so far, but can you give me an
25 idea of how you came about to your understanding of

1 OVEC and what it is and maybe some understanding so I
2 can understand what your history is with OVEC?

3 A. Well, I'm just generally familiar with it
4 as a staff member back in the '90s. OVEC was an
5 issue that was being discussed. There was an attempt
6 to keep the plant that it was serving operating. So
7 the staff, the Commission -- and I was not the
8 person, but the staff of the Commission got involved
9 in trying to keep the federal plant that OVEC was
10 providing service to operating. So from that I
11 generally understood what was going on with the two
12 plants providing service to the Federal Government
13 and the Federal Government using that electricity to
14 service the nuclear facility that was in southern
15 Ohio. Just a general understanding.

16 Q. Do you know, just I'm curious, at your
17 time at the Commission, was OVEC a regulated utility
18 in Ohio?

19 MR. OLKER: Object to the extent it
20 calls for a legal question -- legal answer, but with
21 that caveat, he can provide a layman's answer.

22 EXAMINER WALSTRA: Overruled.

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

24 Q. And I think you had mentioned that when
25 you were --

1 A. Regulated by the Commission or regulated
2 by the Federal Government? Regulated by whom? And
3 are you talking about the price regulation? Are you
4 talking about safety regulation?

5 Q. So let me I guess break this down a
6 little bit, unpack it. So is OVEC, to your
7 knowledge, regulated by the Federal Government?

8 A. Again, I don't know the answer to that.

9 Q. And you answered you don't know if they
10 are regulated by the State; is that correct?

11 A. Yeah. I don't know the answer to that.
12 Again, safety, price, I wouldn't know the answer to
13 any of it.

14 Q. But I think you indicated when you were
15 at the Commission, the Commission became involved --

16 A. Sure.

17 Q. -- in some OVEC matters?

18 A. Yes.

19 Q. How so?

20 A. Just talking to the owner utilities about
21 continuing the process and fixing the rates and there
22 were utility companies that were upset that the
23 Federal Government was taking the whole load and
24 selling it into the market and those utility
25 companies were trying to break the contract, so they

1 kept the wholesale load and could resell it back into
2 the market.

3 Q. Do you know what an ICPA is or the ICPA,
4 I guess?

5 A. I reviewed the company's ICPA.

6 Q. And sir, when you say "company" --

7 A. OVEC's ICPA.

8 Q. And who are the parties to the ICPA? Do
9 you know?

10 A. There's a series of utility companies
11 that own and take generation from the ICPA or from
12 OVEC and I believe those are the parties.

13 Q. Is Duke one of them?

14 A. Yes.

15 Q. Do you know if that ICPA -- first of all,
16 do you know when that ICPA was originally drafted?

17 A. I believe it was back in the '50s.

18 Q. And has it changed or modified over time
19 to your knowledge?

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

21 Q. You said you reviewed the ICPA?

22 A. Yeah. It was attached to a document. I
23 don't have the document here with me.

24 Q. Do you happen to know -- subject to
25 check, if I told you that it was changed over time,

1 would you believe me?

2 A. Sure.

3 Q. Thank you.

4 A. Where would I check to determine that?

5 Q. Just you have to sit through this case.

6 It comes out a lot.

7 A. So in the record of this case, I could
8 determine --

9 Q. You could determine, yes.

10 A. -- that you are telling me the truth.

11 Q. I would hope so. Scout's honor.

12 Do you know which version, perhaps, of
13 the ICPA you reviewed?

14 A. No.

15 Q. And I believe in your testimony you
16 indicate that should the Commission approve Rider
17 PSR, that such a rider would essentially allow the
18 company to recover transition revenue; is that
19 correct?

20 A. Yes.

21 Q. Do you know, has the company ever made
22 application for recovery of transmission revenues?

23 A. Yes.

24 Q. When?

25 A. In 1999.

1 Q. And under what circumstances?

2 A. Through the ETP application.

3 Q. ETP.

4 Do you know, has the Commission ever
5 addressed or ruled on any type of requests similar to
6 what the company is proposing through PSR?

7 A. I have a general understanding that AEP
8 and I think Dayton have requested similar recovery
9 mechanisms. And the reason I know Dayton, I don't
10 know anything about the economics, but I believe
11 there was an argument before the Supreme Court here
12 within the last couple of months about that issue in
13 the AEP case.

14 Q. And do you know when those entities may
15 have asked for something?

16 A. No.

17 Q. Do you know how the Commission ruled on
18 any of those things?

19 A. I think they approved them.

20 Q. And you talk a little bit about AEP in
21 that case. Did you provide -- did you participate in
22 or provide any services for any party in the AEP PPA
23 case which would be 14-1693-EL-RDR?

24 A. No.

25 Q. So you didn't provide any services?

1 A. I was still an employee at McNees Wallace
2 and I can't imagine we weren't involved in that case
3 then. I don't believe I testified in that case. So
4 to the extent I provided any services, it would have
5 been for IEU through McNees Wallace. I don't
6 remember having done any of that though.

7 Q. Are you certain or are you uncertain if
8 McNees was in the case for IEU?

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

10 Q. You don't know?

11 You talk a little bit about your sort of
12 general familiarity with that AEP case. Can you tell
13 me how you came about that general familiarity?

14 A. I believe Mr. Olikier told me it had been
15 appealed to the court. That's my general familiarity
16 with it.

17 Q. But you haven't reviewed --

18 A. The application itself or the court
19 filing or any of the testimony supporting it, no.

20 Q. And you don't have any idea how many
21 Orders or Entries may be out there in that case or?

22 A. I would imagine if it's anything like
23 this one, there is probably a lot.

24 Q. Would it be fair to say a tortured
25 history?

1 A. Yes, that's a good description as in this
2 case.

3 Q. We're not done yet so.

4 A. I will be.

5 MR. MILLER: Your Honor, can we approach?

6 EXAMINER WALSTRA: You may.

7 Q. Mr. Hess, I am going to hand you a copy
8 of what is known as the Fifth Entry on Rehearing in
9 the PUCO case 14-1693-EL-RDR.

10 MR. MILLER: And we will mark this as
11 Exhibit 32 if the Bench allows.

12 EXAMINER WALSTRA: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Hess, for your convenience and in an
15 attempt to get everybody out of here earlier today, I
16 have tabbed and highlighted a section I would like
17 you to refer to and that's paragraph 83 which is on
18 page 37 of that document.

19 A. Paragraph 83 on page 37.

20 Q. Yes, sir. And I am hopeful there is a
21 yellow tab and yellow highlighting on that specific
22 language. Excellent. If you could take a look at
23 that language.

24 MR. OLIKER: Your Honor, I don't believe
25 we've established sufficient foundation at this point

1 in time that the witness has ever seen this document
2 before. So I would object to cross-examination
3 before there is at least a foundation.

4 MR. MILLER: Well, your Honor, he talked
5 about his familiarity with the case. He talked about
6 the fact that he was generally aware and that they
7 had asked for something in particular. This is a
8 public document. I am giving it to him to ask him to
9 take a look at the language.

10 MR. OLIKER: Well, first, your Honor, it
11 must be established he has seen this document.
12 Whether it's a public document doesn't really help us
13 in that analysis in whether it establishes sufficient
14 information for utilization in an administrative
15 hearing.

16 I will also add it says what it says and
17 people can freely cite to Commission Orders if they
18 so choose. We don't need to mark them as exhibits.
19 And the company is free to do whatever they want in
20 their brief, but it's not appropriate for cross.

21 EXAMINER WALSTRA: He has a very vague
22 understanding of this case, but I will allow the
23 question.

24 Q. (By Mr. Miller) So, Mr. Hess, can you
25 take a look at those lines. Could I ask you to read

1 those lines.

2 A. "The Commission finds that OCC's eleventh
3 ground for rehearing should be denied, as the
4 Commission has previously considered and rejected the
5 claim that the PPA rider enables AEP Ohio to collect
6 transition charges from customers. PPA Order at 102;
7 Second Entry on Rehearing at 99-100. We again find
8 that the OVEC contract does not meet the criteria for
9 transition costs under R.C. 4928.39(B) and (D) and,
10 therefore, the OVEC agreement cannot be the basis for
11 transition charges or their equivalent. Second Entry
12 on Rehearing at 100."

13 Q. Thank you.

14 So understanding that this issue, and I
15 think you made this comment, is under appeal at the
16 Ohio Supreme Court, would you agree that the
17 Commission at least has already decided that OVEC
18 cannot be the basis for transition charges or their
19 equivalent based on your read of that?

20 A. I think the Commission has here, yes, but
21 I completely disagree with that.

22 Q. Thank you.

23 MR. MILLER: Can you give us a minute,
24 your Honor?

25 EXAMINER WALSTRA: Sure.

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1 MR. MILLER: Thank you, Mr. Hess.

2 THE WITNESS: Thank you.

3 EXAMINER WALSTRA: You have no more
4 questions?

5 MR. MILLER: I don't, no. Sorry. My mic
6 wasn't on.

7 EXAMINER WALSTRA: We'll take a 10-minute
8 recess.

9 (Recess taken.)

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

12 And Mr. Healey.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Healey:

16 Q. Mr. Hess, I just wanted to confirm, you
17 do not have a law degree, correct?

18 A. I do not have a law degree.

19 Q. And therefore you are not an attorney.

20 A. I am not.

21 Q. You are not --

22 A. Thankfully.

23 Q. Apologies.

24 You are not testifying as a legal expert
25 on the interpretation of statutes in this case?

1 A. I am not.

2 Q. And just to confirm, notwithstanding your
3 experience at the Commission, you have never been a
4 member of the Ohio Senate or Ohio House of
5 Representatives, correct?

6 A. That's correct.

7 Q. And the PUCO staff is not part of the
8 Ohio General Assembly?

9 A. It is not. No, it's not.

10 Q. Mr. Hess, during your cross-examination
11 with the company, you gave an example of the
12 president's salary. Do you recall that example you
13 gave?

14 A. Yes.

15 Q. You were talking about Duke's president?

16 A. Duke Ohio, yes.

17 Q. Duke Ohio. And you commented that the
18 president's salary should be allocated to SSO
19 customers, correct?

20 A. Yes.

21 Q. It's your testimony that -- is it your
22 testimony that the president's entire salary should
23 be allocated to SSO customers?

24 A. No.

25 Q. Is it your understanding that SSO

1 customers currently pay no portion of the Duke
2 president's salary?

3 A. No. They do. They pay through the
4 distribution rate.

5 Q. Your proposal, with respect to SSO
6 unbundling, is that the Commission approve two new
7 riders, correct?

8 A. That's correct.

9 Q. And just for purposes of clarity, my
10 questions will be exclusively limited to the SSO
11 unbundling issue. I am not going to cross you on the
12 transition revenue. So if I refer to your testimony,
13 that's what I'm discussing.

14 A. Okay.

15 Q. Would the two riders that you are
16 proposing be part of Duke's electric security plan?

17 MR. OLIKER: Objection to the extent it
18 calls for a legal conclusion and asking him what the
19 Commission may do.

20 MR. HEALEY: It's his proposal, your
21 Honor.

22 EXAMINER WALSTRA: Overruled.

23 A. Yeah, I don't know the answer to that.
24 I'm testifying in a distribution rate case.

25 Q. So you consider your testimony to be part

1 of the distribution rate case and not part of the ESP
2 case?

3 A. I don't know the answer to that. That's
4 kind of a legal question or a procedural question.

5 Q. And you understand, given your
6 experience, the difference between a rate case and an
7 ESP case, correct?

8 A. Yes.

9 Q. If your proposal is adopted by the
10 Commission, will prices offered by CRESS in Duke
11 service territory decrease?

12 MR. OLIKER: Sorry, your Honor, I have to
13 object. It's an incomplete hypothetical with
14 multiple elements that Mr. Hess would have to assume
15 to even try to answer that question and I feel it
16 would require him to speculate.

17 MR. HEALEY: If he doesn't know, he
18 doesn't know, your Honor.

19 EXAMINER WALSTRA: Overruled.

20 A. I don't know the answer to it.

21 Q. If your proposal for two new riders is
22 adopted by the Commission, you would expect that Duke
23 would have to incur some costs to implement these two
24 new riders, correct?

25 A. No, not much. What type of costs would

1 they have to incur? Can you give me an example?

2 Q. My question was would you expect Duke to
3 incur some additional costs to implement your
4 proposal for two new riders?

5 A. No.

6 Q. So, for example, if Duke -- there would
7 be no Duke employees that would have to do anything
8 to implement your rider proposal?

9 A. But that wouldn't be an additional cost.
10 They would have probably been working on something
11 else. The fixed -- I mean, the distribution company
12 is generally a fixed cost service. So there's no
13 incremental or additional costs that are created by
14 my recommendation.

15 Q. So any costs that would -- let me strike
16 that.

17 To the extent a Duke employee were
18 spending time implementing your two rider proposal,
19 they would not be working on something else, correct?

20 A. That's correct.

21 Q. And you mentioned that any such costs,
22 for example employee time, are distribution costs, so
23 they would be paid by all customers, correct? Not
24 just shopping customers?

25 A. That's correct, yeah. Currently,

1 distribution costs are paid by all distribution
2 customers.

3 Q. Your proposal for two new riders in this
4 case would benefit IGS and RESA members; is that
5 right?

6 A. I think it would benefit the customers;
7 give them a better price signal to what the Standard
8 Service Offer is.

9 Q. Sure. But my question was would it
10 benefit IGS and RESA members as well?

11 A. I don't believe -- I don't know the
12 answer to that. It's a competitive service.

13 Q. If your two rider proposal for SSO
14 unbundling is implemented, it would make CRES in
15 Duke's territory more competitive with the Standard
16 Service Offer, correct? Is that your testimony?

17 A. My testimony is that the Standard Service
18 offer is not properly priced and there is a subsidy
19 in the distribution rates for providing the
20 generation portion of the Standard Service Offer.

21 Q. And is it your testimony that this
22 subsidy is causing an increase in the prices that
23 CRESs charge customers in Duke's territory?

24 A. The subsidy is required -- is causing an
25 increase in prices that CRESs is -- no.

1 Q. Are you aware of any residential
2 customers who are prohibited from taking generation
3 under the SSO?

4 A. I don't know the status of the PIPP
5 customer. I don't know if this was a separate rate
6 for the PIPP customer, but I know that the PIPP
7 customer is not allowed to shop. So I'm not certain
8 what the status of the PIPP customers' rates are.

9 Q. Sure. I wasn't asking about the rates.
10 My question is are there any residential customers --
11 let me ask it another way.

12 Are there any residential customers in
13 Duke's territory that are required to shop for their
14 generation?

15 A. No.

16 Q. Let's turn to page 7 of your testimony,
17 please.

18 A. I have that.

19 Q. And starting at line 8, you discuss the
20 requirement for electric utilities to investigate
21 customer complaints. Do you see that?

22 A. Yes.

23 Q. And you believe that some customers call
24 Duke to complain about the SSO, correct?

25 A. Yes.

1 Q. And your testimony is that when a
2 customer calls Duke to complain about the SSO, the
3 costs involved in responding to that complaint should
4 be paid only by SSO customers; is that right?

5 A. Yes.

6 Q. And so then you would agree that if a
7 customer calls Duke with a complaint about shopping,
8 and Duke, in fact, responds to that complaint, that
9 the costs Duke incurs for that complaint call would
10 have to be allocated exclusively to CRES customers,
11 correct?

12 A. It depends how they respond to the
13 question. If it was specific about the rate itself,
14 then I don't think they should have done that. They
15 should have referred it to the CRES provider. If it
16 was about shopping in general, it's probably a
17 distribution company issue. And as I've -- it was in
18 my testimony, I've got about 75 percent of that,
19 those costs allocated to the distribution company,
20 and it doesn't matter whether it's a CRES or a
21 Standard Service Offer customer.

22 Q. So questions about the SSO are SSO costs,
23 but questions about shopping are distribution costs;
24 that's your testimony?

25 A. Again, it depends on what the question

1 is. If it's generally about their ability to shop,
2 yes, it is the distribution company would have to
3 provide that information.

4 Q. So is it your testimony that there is no
5 conceivable complaint call about shopping that would
6 be related exclusively to shopping and therefore
7 should be allocated exclusively to shopping
8 customers?

9 THE WITNESS: Could I have the question
10 repeated?

11 (Record read.)

12 A. I don't understand the question. I'm
13 sorry.

14 Q. Okay. Let's walk this back maybe.
15 A customer calls the Duke complaint
16 number and has a complaint or a question about
17 shopping. Are you with me?

18 A. Yes.

19 Q. Duke's representative on the line talks
20 to this customer and attempts to answer their
21 questions about shopping, okay?

22 A. Okay.

23 Q. And your testimony is that that is a
24 distribution function responding to that call and not
25 a -- not exclusively related to shopping; is that

1 correct?

2 A. That's correct. If it's a general
3 question about shopping and how can I do it, where do
4 I go to get the information, that's -- that's a
5 distribution company responsibility.

6 Q. Does Duke receive more complaint calls
7 about the SSO or about shopping?

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

9 Q. Does Duke receive more total minutes of
10 complaint calls about the SSO or about shopping?

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

12 Q. Let's turn to page 12 of your testimony,
13 please.

14 A. I have that.

15 Q. Starting at line 7 you discuss various
16 categories of costs that you believe should be
17 unbundled. Is that a fair description generally of
18 the bullet points there?

19 A. Yes.

20 Q. On line 5 you say that these costs
21 "should be unbundled and allocated to the
22 non-shopping customers." Do you see that?

23 A. Yes.

24 Q. When you say "unbundled and allocated to
25 the non-shopping customers, just to confirm, you are

1 saying that these costs should be paid exclusively on
2 the SSO?

3 A. A portion of them, yes, a portion that I
4 allocated. An allocable portion of those costs.
5 These are examples of the types of costs that support
6 the services that I identified earlier in my
7 testimony.

8 Q. When you were being crossed by Duke
9 earlier, you testified that when a CRES supplier
10 receives a call about -- with questions about
11 distribution service, the CRES refers that call to
12 the EDU, do you recall that?

13 A. Yes.

14 Q. And that's your testimony?

15 A. Yes.

16 Q. And which CRES did you talk to to confirm
17 that's their call center policy?

18 A. IGS for the most part.

19 Q. Did you discuss that with anybody else?

20 A. I'm not sure who the other employees work
21 for, but there were a couple of other RESA members
22 that I talked to about that.

23 Q. But you don't know who they are?

24 A. Not off the top of my head, no.

25 Q. And are there CRESs in Duke's territory

1 that are not RESA members?

2 A. Yes.

3 Q. So you would agree you have no
4 knowledge --

5 A. I'm sorry. I responded to that too
6 quickly. I don't really know who the RESA members
7 are. I am not sure what full list of CRES, certified
8 CRES providers are in Duke's service territory, so I
9 don't really know the answer to the question.

10 Q. So other than IGS, you can't name a
11 single CRES in Duke's territory who you can
12 specifically identify as having a call center policy
13 that requires them to forward all
14 distribution-related calls to the EDU, correct?

15 A. I got most of that information from IGS,
16 yes.

17 Q. Thank you. That wasn't my question.

18 MR. HEALEY: Can I have the question
19 reread, please?

20 (Record read.)

21 A. I can't -- but, again -- and it wasn't
22 just Mr. Olier that I got that information from or
23 IGS. It was Mr. Whitt, who represents RESA, provided
24 some of that information to me. So I assumed that he
25 had talked to other RESA members about that.

1 Q. So you were relying on Mr. Whitt's
2 statements to you?

3 A. Yes.

4 MR. HEALEY: Your Honor, I move to strike
5 his response regarding relying on Mr. Whitt's
6 out-of-court hearsay as the basis for his testimony
7 regarding CRES call center policies.

8 MR. OLIKER: Your Honor, he asked him the
9 question and he answered it. You can't then seek to
10 strike a response of an answer to the question.

11 MR. HEALEY: Your Honor, asking a
12 question does not entitle the witness to rely on
13 hearsay; it entitles him to answer based on his
14 actual knowledge and the rules that are governed by
15 this Commission. The fact that I asked him a
16 question doesn't give him free rein to say anything
17 conceivable.

18 MR. OLIKER: And, your Honor, it's also I
19 believe a typical Commission rule to not allow call
20 centers to answer questions regarding distribution
21 service and we're getting into information that we
22 are actually specifically required to do. And as an
23 expert witness, he is allowed to rely upon hearsay to
24 some extent to information that is provided to him by
25 his counsel.

1 EXAMINER WALSTRA: I'm going to deny the
2 motion to strike. I think his answer was that he
3 spoke to Mr. Whitt and that he made an assumption
4 after that. He didn't actually go into what was
5 spoken, so. I'll deny it.

6 Q. (By Mr. Healey) Let's look at the second
7 bullet point on page 12 of your testimony, please.
8 Here you identify one of the costs as "Printing and
9 postage to communicate with SSO customers." Do you
10 see that?

11 A. Yes.

12 Q. You agree that SSO customers currently
13 pay for printing and postage to communicate with SSO
14 customers, correct?

15 MR. OLIKER: Objection. The question
16 is -- is vague and I don't believe he can answer that
17 without more information.

18 EXAMINER WALSTRA: Overruled. The
19 witness can clarify if he needs to.

20 A. Yeah, I am not certain how to answer the
21 question.

22 Q. Is it your testimony that SSO customers
23 currently pay no portion of the printing and posting
24 cost -- printing and postage costs that an EDU
25 incurs?

1 A. No, that is not my testimony at all.

2 Q. So they do, in fact, pay a portion of
3 those costs that the EDU incurs, correct?

4 A. Yes.

5 Q. And I assume you would agree that Duke
6 incurs printing and postage costs when it
7 communicates with shopping customers, correct?

8 A. Yes.

9 Q. The next bullet point refers to
10 "Accounting infrastructure and employees to establish
11 and maintain records and data sufficient to verify
12 compliance with any Commission rules for SSO
13 customers." Do you see that?

14 A. Yes.

15 Q. And you would agree that the costs
16 incurred there being part of distribution rates are
17 paid for, at least in part, by SSO customers,
18 correct?

19 A. Yes.

20 Q. The next bullet point is "IT employees,
21 infrastructure, and software." Do you see that?

22 A. Yes.

23 Q. You don't believe that Duke has IT
24 employees that work solely on SSO issues, do you?

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

1 Q. You would agree that Duke would, at
2 times, require IT employees, infrastructure, and
3 software to address shopping issues?

4 A. Yes.

5 Q. The next bullet point is "Outside and
6 inside legal, regulatory, and compliance personnel to
7 comply with the regulatory rule requirements for the
8 SSO." On line 17, page 12. Do you see that?

9 A. Yes.

10 Q. Do you believe that Duke has employees
11 whose job is limited exclusively to compliance with
12 regulatory rule requirements for the SSO?

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

14 Q. Let's look at page 8 of your testimony.
15 And at the bottom there are various fees that you say
16 CRESSs paid -- CRESSs and their customers paid to Duke
17 during 2016. Is that generally accurate?

18 A. Yes.

19 Q. And I believe you testified earlier on
20 cross that you don't know what percentage of these
21 fees were paid by IGS or RESA members, correct?

22 A. That's correct.

23 Q. And to put these numbers in context,
24 well, let's start with the first one. "CRES
25 suppliers and their customers paid \$469,335 in

1 switching fees." Do you see that?

2 A. Yes.

3 Q. How does this number compare to the total
4 administrative costs of all CRES providers in Duke's
5 territory?

6 A. Can you define administrative costs for
7 me?

8 Q. Do you not know what an administrative
9 cost is?

10 A. That's a very general description. You
11 have to be a lot more specific before I can come up
12 with specific numbers.

13 Q. Under any definition of administrative
14 costs, are you familiar with the financials of CRES
15 providers in Duke's territory?

16 A. Again, I don't know what your definition
17 of any administrative costs are.

18 Q. Let's try it a different way. The 4 --

19 A. Let me see if I can shortcut this a
20 little. If you will turn to my JEH-2. I have
21 staff's adjusted costs there under the categories
22 Customer Accounts Expense, Customer Service and
23 Information Expense, Sales Expense, and
24 Administrative and General Expenses. Which of those
25 are you talking about as far as administrative costs?

1 Q. I am going to move on --

2 A. Then there would be a lot of other types
3 of costs. The taxes associated with some of those
4 costs that could be -- is it a fully-loaded cost, is
5 it specific to these specific costs. That's the
6 kinds of definition I'm looking for when you talk
7 about administrative costs.

8 Q. Sure. I am going to move on from that
9 line of questioning.

10 I am going to stick with these numbers at
11 the bottom of page 8 though. For example, let's --
12 let's move on to the number on line 20 to 21 where
13 you say "During 2016, CRES providers paid Duke
14 \$561,192 in interval data fees. " Do you see that?

15 A. Yes.

16 Q. How does that number compare to, for
17 example, RESA members total revenues in 2016?

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

19 Q. So you can't say whether that number is
20 material when compared to total revenues, correct?

21 A. Correct.

22 Q. Do Duke's residential shopping customers
23 typically receive two electric bills per month; one
24 from Duke and one from their CRES?

25 A. I don't believe so, no.

1 Q. And so typically the residential customer
2 that's shopping would receive a single bill from Duke
3 and that would include the CRES generation charges;
4 is that right?

5 A. That's my general understanding, yes.

6 Q. And so Duke must have some process by
7 which it gets that information from the supplier,
8 correct?

9 A. Correct.

10 Q. And I would assume you agree that Duke
11 incurs at least some administrative costs in
12 procuring the information for each customer's bill
13 that it then -- from the CRES which it then uses to
14 calculate an accurate bill for the customer, correct?

15 A. Yes.

16 Q. Let's turn to page 15 of your testimony.
17 And at line 3 to 4 you state that you -- excuse me --
18 divided -- let me start again.

19 Page 15, line 3 to 4 you state that you
20 "divided Duke's SSO revenue by Duke's total revenue
21 collected from customers to get the revenue
22 allocation factor." Do you see that?

23 A. Yes.

24 Q. What was the source of your SSO rate --
25 SSO revenue number?

1 A. IGS Interrogatory 01-015 Attachment.

2 Q. And did you attach that to your
3 testimony?

4 A. No. It was part of my workpapers.

5 Q. And that was for the period January 1,
6 2016 through December 31, 2016?

7 A. To '16, yes. According to the title, the
8 response.

9 Q. And you are aware that Duke's test year
10 in this case is not January 1, 2016 through December
11 31, 2016?

12 A. I stated earlier I don't remember what
13 the test year was. I thought it was 2016. Or a
14 portion thereof.

15 Q. On -- let's turn to page 16 now of your
16 testimony, please.

17 A. Page 16.

18 Q. Yes.

19 A. I have that.

20 Q. Line 2, the first full sentence there is
21 about where you say "A utility company's revenues
22 provide a proxy for and generally mirror the costs
23 that are required to provide the utility service to
24 various customer categories." Do you see that?

25 A. Yes.

1 Q. You are not a statistician, I assume,
2 correct?

3 A. I'm an accountant.

4 Q. Are you a statistician?

5 A. Define "statistician."

6 Q. Do you have a degree in statistics.

7 A. No.

8 Q. Are you an actuary?

9 A. No.

10 Q. Are you an expert in statistical
11 analysis?

12 A. Are you referring to the sentence, this
13 current cross-examination is referring to the
14 sentence I have here?

15 Q. I am just asking you a question and I
16 would like an answer.

17 MR. OLIKER: Your Honor, I object. The
18 question is vague. It is not clear what he means by
19 a statistical analysis. There are many statistics in
20 Mr. Hess's testimony and it's not clear which ones
21 he's referring to.

22 EXAMINER WALSTRA: Overruled.

23 THE WITNESS: Can I get the question
24 repeated, please?

25 (Record read.)

1 A. Yeah. Accountants are required to be.

2 Q. Did you do any analysis in this case to
3 compare the correlation between Duke's revenues and
4 costs per customer category?

5 THE WITNESS: Can I have the question
6 reread?

7 (Record read.)

8 A. The revenues in this case are a recovery
9 of the costs per customer category.

10 Q. May --

11 A. That's just standard utility base
12 ratemaking.

13 Q. Let's turn to your Exhibit JEH-2, please.

14 A. I have that.

15 Q. Do you see the second column from the
16 right is called "SSO Allocated Expenses"?

17 A. "SSO Allocated Expenses," yes.

18 Q. I agree that's probably not a real word
19 but --

20 A. There you go. It should have been a
21 correction.

22 Q. We'll go with it.

23 In this column you are assigning certain
24 costs in each of these FERC accounts to SSO
25 customers, correct?

1 A. That's correct.

2 Q. And so under your two rider proposal for
3 SSO unbundling, effectively the costs in this column
4 are what would be shifted to the SSO customers; is
5 that right?

6 A. That's correct.

7 Q. And under your proposal you recommend
8 that these two riders be trued up every six months?

9 A. Yes.

10 Q. And so would the numbers in this column
11 change as a result of this true-up process?

12 A. I am not recommending that, no. I am
13 recommending though it be updated to comply with the
14 stipulation as for each one of those accounts or the
15 Commission Order actually. But I'm not recommending
16 it be updated every six months after that.

17 Q. So let's walk through a quick example.

18 Account No. 901. That's the one at the
19 top. There's an SSO allocation expense of \$115,953,
20 correct?

21 A. Correct.

22 Q. And your allocation method, CUST, that
23 means you did that based on customer account,
24 correct?

25 A. That's correct.

1 Q. So as the SSO customer account changes
2 every six months, you would not adjust the 115,953
3 number?

4 A. Every month?

5 Q. Every time it's trued up.

6 A. Oh, yes, I would. The 115 changes
7 because the customer allocation methodology, the
8 customer ratio would change.

9 Q. Okay. So just to clarify --

10 A. The adjusted expense of 343,246 would not
11 change.

12 Q. So Column D will not change during the
13 true-up process, but Column E could change, correct?

14 A. That's correct.

15 Q. And that would be true for the ones that
16 are allocated by customer account and for the ones
17 that are allocated by revenue?

18 A. Yes.

19 Q. And so taking it to the logical extreme,
20 if 100 percent of customers were to shop, then all
21 the numbers in Column E would be zero, correct?

22 A. That's correct. If -- if all the
23 customers were to shop, that's correct.

24 Q. And just to confirm also, you have two
25 numbers at the bottom of the page, Customer Allocator

1 and Revenue Allocator, correct?

2 A. Yes.

3 Q. And if all customers were to shop, those
4 would both be zero, correct?

5 A. If all customers were to shop, those
6 would both be zero, yes.

7 Q. Let's move on to Exhibit JEH-3, please.
8 And I just want to confirm basically the same thing
9 here. Column E, SSO Allocated Rate Base. If all
10 customers were to shop, then those numbers would all
11 be zero, correct?

12 A. Yeah. The total expenses would be. A
13 silly point to make here, but the rate of return and
14 the gross revenue conversion factor would still be
15 numbers in those columns.

16 Q. Okay.

17 A. But they would be applied to zero, so
18 they go to zero.

19 Q. Yes, thank you. I appreciate that
20 clarification. Let's turn back to JEH-1.

21 And at the top of JEH-1 you have two
22 numbers that are pulled from JEH-2 and JEH-3,
23 correct?

24 A. Yes.

25 Q. And as we just discussed, if all

1 customers were to shop, those numbers would both be
2 zero, correct?

3 A. If all customers were to shop, those
4 would both be zero, yes.

5 Q. And, therefore, the \$23 million number,
6 the 23,143,943 near the top of JEH-1 would also be
7 zero if all customers were to shop, correct?

8 A. That's correct.

9 Q. Now, it is not your testimony -- let me
10 strike that.

11 Mr. Hess, is it your testimony that if
12 all customers were to shop, Duke could reduce its
13 distribution costs by 23,143,943?

14 A. No.

15 Q. So you believe that SSO customers should
16 pay an extra 23-million-and-change for distribution
17 service simply because they're SSO customers, even
18 though Duke would incur that \$23 million whether
19 they're an SSO or not?

20 MR. OLKER: Objection. The question is
21 not time bound in any fashion and, therefore, up for
22 debate.

23 MR. HEALEY: I'll withdraw, your Honor.

24 Thank you. I'm done.

25 EXAMINER WALSTRA: Any other cross before

1 staff?

2 MR. EUBANKS: Thank you.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Eubanks:

6 Q. Do you agree that the cost-of-service
7 study submitted by the company only contains
8 distribution costs?

9 A. The cost-of-service study that was
10 sponsored by Mr. Ziolkowski in the E3 series; is that
11 what you are talking about?

12 Q. Yes.

13 A. I believe that's correct, yes.

14 Q. Do you admit that there are distribution
15 costs that support the provision of Choice
16 generation?

17 A. Do I admit that there are distribution
18 costs that support -- could you repeat that, please?

19 Q. Do you admit that there are distribution
20 costs that support the provision of Choice
21 generation?

22 A. Yes.

23 Q. Have you examined the difference in costs
24 between the provision of Choice generation and SSO
25 generation?

1 A. Yes.

2 Q. How did you examine the differences?

3 A. By reviewing the Uniform System of
4 Accounts and what was included in the adjusted
5 expenses and investment.

6 Q. I believe you were asked a question
7 earlier, but I'm not sure you answered, so I am going
8 to ask the question again. Did you do any analysis
9 on the relationship between revenue and cost per
10 customer category?

11 A. Tell me what you mean by cost per
12 customer? Residential, industrial, and commercial?

13 Q. Yes.

14 A. And other OPA?

15 Q. Yes.

16 A. And your question is did I do a -- an
17 analysis of the costs that were included in those
18 four categories?

19 Q. In relationship to revenue.

20 A. So you're asking me if I have done a
21 cost-of-service study and then compared it to the
22 revenues that were being collected?

23 Q. Yes.

24 A. No, I didn't do that.

25 Q. In answer to -- I believe at one point in

1 your testimony you said that distribution costs --
2 that a distribution company has fixed costs?

3 A. Uh-huh.

4 Q. Could you explain what you mean by that?

5 A. They don't vary with sales. For the most
6 part, distribution companies' costs are fixed. They
7 won't change with changes in revenues or sales.

8 Q. When you say "they won't change"?

9 A. Increase or decrease proportionately
10 with -- with revenues or sales as compared to a
11 variable cost which generally, under an accounting
12 definition, would vary with the change in revenues or
13 sales.

14 Q. So when you say "sales," would that be
15 customers?

16 A. Sales of kilowatt-hours.

17 Q. Okay. Does a distribution company's
18 costs change with respect to customers? As customers
19 increase, would you expect for a distribution
20 company's costs to increase?

21 MR. OLIKER: Your Honor, object to the
22 extent the question has no time bounds to it; and,
23 therefore, it's an incomplete hypothetical.

24 EXAMINER WALSTRA: Overruled. The
25 witness can seek clarification if he needs to.

1 A. How material of a change are we talking
2 about? Just a standard increase or decrease in the
3 number of customers? Can you give me a percentage of
4 what they would change?

5 Q. I'm not sure what -- what the exhibit
6 number is for this, but the title of the exhibit was
7 "Summary of Switch Rates from EDUs to CRES Providers
8 in Terms of Customers." Duke's Exhibit 31, do you
9 have that?

10 A. Yes.

11 Q. Okay. I believe you testified that you
12 did not use this exhibit when you were doing your
13 calculations for cost allocations; is that correct?

14 A. That's correct.

15 Q. But you did use something that was
16 similar to this, right, from a previous year? You
17 used data from a previous year that was similar to
18 this?

19 A. Give me a second just to check that to
20 make sure I did use a PUCO number in my -- and we are
21 talking about customer allocators?

22 Q. Yes.

23 EXAMINER WALSTRA: Mr. Hess, was that
24 your footnote on page 10?

25 THE WITNESS: Thank you.

1 MR. OLIKER: Thank you, your Honor.

2 A. Yes, I believe that's correct.

3 Q. And is that information the percentage of
4 customers that were served -- let me ask that
5 question differently.

6 The percentage of nonshopping customers
7 were different in the data that you accessed --

8 A. Yes, yes.

9 Q. -- in this, correct?

10 A. Yes.

11 Q. Was it higher or lower?

12 A. The percentage of nonshopping customers,
13 so those that are on the SSO, that percentage is
14 lower. There are more people shopping in 2018.

15 Q. Okay. And did --

16 A. In the 2018 statistic from what I had
17 done.

18 Q. Okay. So to finish this line of
19 reasoning, would you expect for the costs that Duke
20 incurred to have decreased proportionately?

21 A. Not -- again, as we walk through the math
22 of my exhibits, the costs don't change, but the
23 allocated portion of it to my credit rider and rider
24 would decrease, yes, due to change in sales
25 statistics.

1 MR. EUBANKS: I have no further
2 questions.

3 EXAMINER WALSTRA: Thank you.

4 MR. OLIKER: Your Honor, if we could have
5 just a few minutes?

6 EXAMINER WALSTRA: We will go off the
7 record for 5 minutes.

8 (Recess taken.)

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

11 Any redirect?

12 MR. OLIKER: Just a few questions, your
13 Honor.

14 - - -

15 REDIRECT EXAMINATION

16 By Mr. Oliker:

17 Q. Mr. Hess, do you remember when you
18 received questions about costs related to litigating
19 cases related to the Standard Service Offer?

20 A. Costs -- the EDU's costs related to
21 litigating the Standard Service Offer, yes.

22 Q. To your knowledge do competitive retail
23 electric service providers incur regulatory costs?

24 A. To litigate the Standard Service Offer,
25 yes.

1 Q. Do they incur other regulatory costs as
2 well?

3 A. Yes, there is a whole series of CRES
4 requirements in the PUCO rules.

5 Q. Do you remember questions you received
6 about the switching statistics in your testimony
7 relative to today? Actually, let me try to rephrase
8 that. That was a poorly-worded question.

9 Mr. Hess, do you remember receiving
10 questions about shopping statistics as they existed
11 today relative to the numbers in your testimony?

12 A. Yes.

13 Q. And are those -- do those differences
14 have a material impact on your recommendation?

15 A. The quantification of the calculation, I
16 mean it could be and it could end up being material;
17 but the process itself that I'm recommending, no, it
18 doesn't.

19 Q. And for purposes of the avoidable charge
20 that you've recommended, do you believe there would
21 be a material difference between what your testimony
22 recommends and the number that would be created by
23 the shopping statistics that exist today?

24 A. No material change, no. Theoretically
25 that number should stay about the same.

1 Q. And do you remember questions you
2 received from Counsel for staff regarding costs that
3 were incurred and relate to the cost-of-service
4 study?

5 A. Yes.

6 Q. And is it your testimony that all costs
7 reflected in the cost-of-service study relate to the
8 provision of noncompetitive distribution service?

9 MR. HEALEY: Your Honor, I am going to
10 object to these questions. They're awfully leading.
11 There's a lot of "yes" or "no" questions here. This
12 is supposed to be a redirect, not a friendly cross.

13 EXAMINER WALSTRA: I will allow it, but
14 they're pretty leading.

15 Q. Mr. Hess, do you need the question reread
16 or do you understand it?

17 A. I would like it reread.

18 (Record read.)

19 A. Well, with Counsel for the Ohio -- with
20 staff, I talked about two types of cost-of-service
21 studies; one was Ziolkowski's in the Exhibit 3s and
22 the other one he asked if I had performed a
23 cost-of-service study for class customers.
24 Ziolkowski's deals with the tariffs themselves. He
25 asked also about cost-of-service study within

1 customer classes. So I do remember that.

2 The issue of distribution costs, they are
3 all distribution costs. However, some of the
4 distribution costs, as I stated in my testimony, deal
5 with the provision of providing generation service.
6 So categorically they could be called a distribution
7 cost, but they would -- but those distribution costs
8 are in the -- are to provide a generation service.

9 Q. And do you remember questions you
10 received about the size of the SSO market share?

11 A. Yes.

12 Q. And --

13 A. And you are referring to questions from
14 Duke's attorney?

15 Q. Yes.

16 A. Yes.

17 Q. And do you have an opinion on the impact
18 of the change in size of the SSO market share?

19 A. Other than the fact that I believe it was
20 still -- it was about 40 percent, 40 percent is still
21 on the standard service offer. That's still a
22 material amount for customers who are not shopping.

23 Q. Okay. And with respect to your
24 recommendation, if shopping customers go back to the
25 SSO, does that impact Duke's ability to recover its

1 costs in any fashion?

2 A. Based upon my recommendation?

3 Q. Yes.

4 A. My recommendation is an attempt to give
5 Duke the opportunity to recover all costs, including
6 costs when a customer goes back to the EDU.

7 MR. OLIKER: Thank you, your Honor.

8 Those are all the questions I have.

9 Thank you, Mr. Hess.

10 EXAMINER WALSTRA: Thank you.

11 Duke?

12 MR. MILLER: I do have a couple.

13 - - -

14 RECROSS-EXAMINATION

15 By Mr. Miller:

16 Q. Mr. Hess, you talked I believe with
17 Counsel about litigation costs being recovered by the
18 CRES providers; is that right? Regulatory costs?

19 A. I didn't -- I didn't talk to him at all
20 about recovery of the costs. I said they incur
21 costs, regulatory costs.

22 Q. Does the company incur regulatory costs?

23 A. Yes.

24 Q. And do they incur costs for this
25 litigation, for example?

1 A. Yes.

2 Q. And do you know how they would recover
3 those costs?

4 MR. OLIKER: Objection. It's not clear
5 whether he's referring to ESP costs or distribution
6 rate case costs and the distinction may matter for
7 purpose of these questions.

8 MR. MILLER: And I'll clarify. I was
9 getting there, Joe.

10 Q. On the SSO, do you know how they recover
11 the costs?

12 A. I believe they were denied recovery of
13 the costs in the SSO as well as in -- at least the
14 staff recommended they not be recovered through a
15 distribution rate. My recommendation is they be
16 recovered through the distribution rates.

17 Q. The costs for the SSO would be recovered
18 through the distribution rates?

19 A. Yes.

20 Q. And you believe they are not recovering
21 costs for the SSO currently?

22 A. I --

23 Q. You said they were denied.

24 A. I did.

25 Q. How do you mean "denied"? In what way?

1 A. I'm sorry, I may have confused this with
2 the Dayton case. They should be included in the
3 distribution rates and amortized over a period of
4 time. Amortized over the life of the Standard
5 Service Offer case.

6 Q. And in this proceeding do you know if the
7 company is going to recover those costs for the SSO?

8 A. Again, "this proceeding" referring to the
9 distribution rate case or --

10 Q. The SSO.

11 A. -- the other seven or eight cases that
12 are --

13 Q. Specifically let's talk about the SSO.

14 A. -- listed?

15 THE WITNESS: Okay. Could I have that
16 question reread, please?

17 (Record read.)

18 A. Again, I assume that the recommendation
19 was to recover costs.

20 Q. And then an additional question. We
21 talked about the switching and we looked at all the
22 various switching summary tables. I believe the ones
23 we looked at were customers, switching of customers
24 specifically. Do you know, are there other
25 categories of switching? Is it broken into other

1 types of measures besides just customers?

2 A. Yes. There are sales.

3 Q. Sales. How are those -- how are those
4 benchmarked? Would those be megawatt-hours?

5 MR. OLIKER: Sorry. Objection. This is
6 outside the scope of redirect, your Honor.

7 EXAMINER WALSTRA: I'll allow the
8 question.

9 THE WITNESS: I'm sorry, I didn't hear
10 your --

11 EXAMINER WALSTRA: You can go ahead and
12 answer.

13 Q. So Mr. Hess, you indicated that there's a
14 sales calculation also, correct?

15 A. That's correct.

16 Q. And how -- how is -- in what increment is
17 that measured, the sales?

18 A. And we're -- are we referring to the
19 staff's published quarterly statistics?

20 Q. Yes.

21 A. I think they are in megawatt hours.

22 Q. And you're looking at something. Can I
23 ask what you're looking at?

24 A. Well, one of my supporting documents. I
25 don't know whether this was -- it is sales.

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1 Q. And so what is -- specifically what is
2 that time frame of that document?

3 A. I have March 21, 2016; June 30, 2016;
4 September 30, 2016; December 31, 2016.

5 Q. Do you have any information from any
6 timeframes other than '16?

7 A. No.

8 Q. Have you looked at any information from
9 timeframes other than '16 in regards to those --

10 A. I'm sorry. I do, yes.

11 Q. Did you look -- how current did you look?

12 A. I don't remember the last time I got on
13 the website to look at it. It would have been the
14 most current one.

15 Q. And is it fair to say that the most
16 current one may have been March 31, 2018?

17 A. Again, I don't remember. I don't
18 remember the last time I looked.

19 Q. When you looked at those current
20 documents, and let's assume for a moment, unless you
21 tell me it's not, it would be March of this year for
22 '18, did that -- did those numbers in the summary for
23 Duke change at all compared to '16?

24 A. Yes.

25 Q. How did they change?

1 A. I don't remember the answer to that. I
2 don't know the answer to that.

3 Q. So you don't know if megawatt
4 measurements were higher or lower for Duke?

5 A. Again, I don't know the answer to that.

6 Q. We talked about the customer switching
7 and you indicated, I think, that the customer
8 switching is the -- looking at those tables today,
9 Duke has less customers than they had in '16; is that
10 correct? In regards to on the SSO service?

11 A. There are more customers switching, yes,
12 so there are less on the Standard Service Offer.

13 Q. Would it be your opinion that if there
14 are more customers switching, that there would be a
15 greater amount of megawatts being switched?

16 A. It seems to be practical, yes. It seems
17 to follow.

18 MR. MILLER: Thank you.

19 EXAMINER WALSTRA: Mr. Healey.

20 MR. HEALEY: Nothing, your Honor.

21 EXAMINER WALSTRA: Mr. Eubanks?

22 MR. EUBANKS: I have nothing.

23 EXAMINER WALSTRA: Thank you, Mr. Hess.

24 THE WITNESS: Thank you.

25 EXAMINER WALSTRA: Would you like to move

1 your exhibits?

2 MR. OLIKER: Your Honor, at this time
3 RESA and IGS would move for the admission of Exhibit
4 1, 2, and 3.

5 EXAMINER WALSTRA: Any objections?

6 MR. HEALEY: Your Honor, I would just
7 like some clarification on the use of objections
8 being admitted into the record. If they are a record
9 of what parties objected to, that's fine, but if we
10 are going to use objections as de facto expert
11 testimony, I think that, you know, maybe we can get a
12 clarification from the Bench that this is a record of
13 what was filed. But if a party is going to say,
14 "Well, I objected to this, therefore, that's
15 evidence," I don't think I'm comfortable with that.

16 MR. OLIKER: I don't think we are
17 offering it for that. We are just seeking to tick
18 the statutory boxes, your Honor.

19 EXAMINER WALSTRA: Yeah. I think that's
20 the understanding, it's a record of what they are
21 objecting to.

22 MR. HEALEY: Thank you, your Honor.

23 EXAMINER WALSTRA: Hearing no objections,
24 all three exhibits will be admitted.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 EXAMINER WALSTRA: Duke?

2 MR. MILLER: So we have got Exhibit 31
3 and 32.

4 EXAMINER WALSTRA: Any objections?

5 MR. OLIKER: Does that include the ESP
6 Entry on Rehearing?

7 EXAMINER WALSTRA: Yes.

8 MR. MILLER: I believe it does.

9 MR. OLIKER: I would object to the
10 admission of the document. It is what it is. It's
11 something that parties can freely cite to. I don't
12 necessarily think it's prejudicial, but I don't want
13 to make a habit of having to mark orders in order to
14 cite them.

15 EXAMINER WALSTRA: I will -- any
16 objections to Exhibit 31?

17 No? That will be admitted.

18 EXAMINER WALSTRA: I will not admit
19 Exhibit 32. I think for clarity of the record,
20 parties can refer to the case as they see fit. I
21 think it's easier to refer to as the case instead of
22 a separate exhibit.

23 MR. MILLER: Your Honor, can I ask the
24 Bench to take administrative notice of the Summary
25 Switch Rates from EDUs to CRES Providers we talked

1 about here in recross? And this would be the 2018
2 numbers ending March 31. It's the CRES providers --
3 specifically "Summary of Switch Rates from EDUs to
4 CRES Providers in Terms of Customers for the Month
5 Ending March 31, 2018," and those measurements are
6 measured in megawatts.

7 MR. OLIKER: I'm sorry, just for clarity,
8 are we admitting the exhibit or taking administrative
9 notice of it? We don't have an objection, your
10 Honor, to administrative notice.

11 EXAMINER WALSTRA: Okay. The Bench will
12 take administrative notice.

13 You didn't have any exhibits, did you?

14 MR. HEALEY: No.

15 EXAMINER WALSTRA: We'll break for lunch
16 until 1 o'clock. Go off the record.

17 (Thereupon, at 11:45 a.m., a lunch recess
18 was taken.)

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Monday Afternoon Session,
July 16, 2018.

- - -

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

OCC, would you like to call your witness?

MR. WOLTZ: Yes, thank you, your Honor.
The OCC calls Wilson Gonzalez to the stand. And may
I approach, your Honor?

EXAMINER CATHCART: You may.

(Witness sworn.)

EXAMINER CATHCART: You may be seated.

MR. WOLTZ: And if we could have marked
as OCC Exhibit 6, the direct testimony of Wilson
Gonzalez in opposition to the Joint Stipulation and
Recommendation.

EXAMINER CATHCART: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. WOLTZ: Thank you.

- - -

1 WILSON GONZALEZ

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

4 DIRECT EXAMINATION

5 By Mr. Woltz:

6 Q. And, Mr. Gonzalez, can you please state
7 your name for the record.

8 A. Wilson Gonzalez.

9 Q. And can you state your business and
10 position.

11 A. President of Tree House Energy and
12 Economics.

13 Q. And do you have before you what has
14 previously been marked as OCC Exhibit 6?

15 A. Yes.

16 Q. And can you identify that document for
17 me?

18 A. Yes. It is my testimony.

19 Q. Thank you.

20 And do you have any corrections to make
21 to that --

22 A. Yes, I do.

23 Q. -- at this time? And what would your
24 first correction be?

25 A. Page 11, footnote 16, last sentence,

1 where it says "lower overall system demand and costs"
2 instead of "in" the word should be "from."

3 There's a -- there's a parentheses,
4 there's a close parentheses on page 13, line 3, where
5 it says "'vehicle to grid' applications."

6 Then I found another one that I didn't
7 divulge in the deposition which is on page 16,
8 line 17. Rider SRC, it should be "SCR." That's all.
9 Thank you.

10 Q. And, Mr. Wilson, was this testimony
11 prepared by you or at your discretion?

12 A. Yes.

13 Q. And if I were to ask you the same
14 questions today, would your answers be the same?

15 A. Yes.

16 MR. WOLTZ: OCC moves for this pending
17 cross -- admission of this exhibit pending
18 cross-examination.

19 EXAMINER CATHCART: Thank you.

20 Any cross-examination?

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

22 MS. KINGERY: Thank you, your Honor.

23 - - -
24
25

CROSS-EXAMINATION

By Ms. Kingery:

Q. Good afternoon, Mr. Gonzalez.

A. Good afternoon.

Q. You are aware that the stipulation filed in this proceeding, if approved, would allow Duke Energy Ohio to modify its Rider NM, Net Metering, such as that net metering customers who generate more energy than they can use would be paid for that excess generation at the Rider RE rate, correct?

A. Yes.

Q. And if you could look at page 5 of your testimony. You indicate your opposition to that proposal on various grounds starting at line 15, correct?

A. Yes.

Q. And the first ground you identify is that the proposed revision would not fully implement the most recent Commission rule -- or order, I should say, in Case No. 12-2050-EL-ORD, correct?

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

Q. And you are aware that the Order you are referring to is not a final Order in that case, correct?

A. Yes. I state that in my -- one of the

1 footnotes in my testimony.

2 Q. And there are several applications for
3 rehearing that are pending, correct?

4 A. Yes.

5 Q. One of which is -- was filed by OCC,
6 correct?

7 A. Correct.

8 Q. And indeed there was an oral argument
9 before the Commission with regard to that rule
10 proceeding in January of this year, correct?

11 A. Yes, there was.

12 Q. And regardless of the fact that there is
13 no final Order at this time, you nevertheless suggest
14 that Duke Energy Ohio should offer a robust set of
15 time-differentiated or dynamic rates, correct? And
16 here -- I should say I'm quoting from your testimony
17 on page 12 if you want to look at that.

18 A. In order to provide some benefit to net
19 metering customers as stated in the Order that's not
20 finalized, I would say that being able to lower
21 customer generated bills by taking into account
22 individual peak load considerations, you know,
23 would -- it would -- the time-differentiated rates
24 would do that.

25 Q. And your --

1 A. Could do that.

2 Q. I'm sorry?

3 A. Could do that.

4 Q. Okay. And you are aware that Duke Energy
5 Ohio obtains energy and capacity to serve its
6 Standard Service Offer customers through an auction
7 process, correct?

8 A. Yes.

9 Q. And you are aware that the auction and
10 the contracts with the auction winners under that
11 process, do not provide time-differentiated or
12 dynamic rates, correct?

13 A. That's correct.

14 Q. And you would also agree that it would
15 not be possible for Duke Energy Ohio to offer such
16 rates or even to allow CRES providers to offer them
17 if it does not have the metering and customer energy
18 usage data infrastructure needed to implement such
19 rates, correct?

20 A. In the abstract, that's correct, yes.

21 Q. So looking back at page 5 again, your
22 second justification for your opposition to the
23 amendment of Rider NM is that the proposal is not
24 based on sufficient analysis, correct?

25 A. That's correct.

1 Q. So let's look at page 10, if we could, on
2 line 9. You indicate that your concern in this
3 regard is based on Mr. Ziolkowski's testimony that
4 you say "lacked rigorous analysis and quantitative
5 studies," correct?

6 A. That's what I say.

7 Q. And you quoted, in that answer you quote
8 Mr. Ziolkowski as having said that "Customer-owned
9 solar installations are not a capacity resource that
10 the Company and other customers can depend on to meet
11 the capacity needs in the Duke Energy Ohio service
12 territory." Did I read that correctly?

13 A. Yes, you did.

14 Q. And your explanation now on the next page
15 about your concern with that answer by Mr. Ziolkowski
16 was that different -- excuse me -- different
17 distributed generation technologies may coincide more
18 or less with the system peak at PJM.

19 A. Yes.

20 THE COURT REPORTER: I'm sorry. I froze
21 up. I'm going to have to reboot.

22 (Off the record.)

23 EXAMINER WALSTRA: All right. We'll go
24 back on the record.

25 Q. (By Ms. Kingery) So I will read from the

1 transcript up until where it froze up and then I will
2 go on with my question.

3 A. That's fine.

4 Q. Okay. And your explanation now on the
5 next page about your concern with that answer by
6 Mr. Ziolkowski was that different distributed
7 generation technologies may coincide more or less
8 with the PJM system peak, correct?

9 A. What lines are you reading from? I'm
10 sorry. I don't see that exact language. Is it the
11 response to Question 14?

12 Q. Yeah. Let me just get that for you.

13 A. I don't see the word "different."

14 Q. Line -- page 11, line 3.

15 A. I think you use the word "different."

16 Q. Can you read your sentence again?

17 MS. KINGERY: Karen, could you read that
18 back.

19 (Record read.)

20 A. So you were paraphrasing. You weren't
21 using my words.

22 Q. Correct.

23 A. Okay. Then the answer is yes.

24 Q. So you agree with how I phrased it?

25 A. Yeah. I think it's what I -- yeah.

1 Q. Okay. I'm not trying to put words in
2 your mouth.

3 A. Yeah.

4 Q. You understand, however, that generation
5 capacity matters to a distribution utility at times
6 of day other than just the PJM system peak, correct?

7 A. Yes. Although -- although the peak
8 contributions and peak load -- I guess peak load
9 contributions are based on the five highest hours,
10 you know, have, I think, a big impact on the cost of
11 capacity.

12 Q. You would agree that capacity may also
13 matter at night, for example?

14 A. Yes.

15 Q. And you would agree that solar
16 installations, on their own, do not provide capacity
17 at night, correct?

18 A. On their own, they don't.

19 Q. And you would agree that it's not likely
20 that solar would produce a lot of -- of energy during
21 the peaks in the winter, correct?

22 MR. OLIVER: Can I have that question
23 read again?

24 (Record read.)

25 MR. OLIVER: And I would object that the

1 question is vague, to which peaks does it refer, as
2 the 5 CP cannot occur in the winter under PJM's
3 rules.

4 MS. KINGERY: And I was not referring to
5 5 CP or the peaks. I'm sorry, I was not referring to
6 the 5 CP, and I should have asked about capacity, not
7 energy. But I would be happy to rephrase, if you
8 would like.

9 MR. OLIKER: Thank you.

10 Q. You would agree, would you not, that
11 solar installations would not contribute a great deal
12 toward the -- of capacity toward the usage during the
13 winter?

14 A. Shorter day, less solar installation and
15 so on.

16 Q. Do you recall the polar vortex during
17 January of 2014?

18 A. Vaguely.

19 Q. That's about as much as I remember too.
20 It was cold.

21 In your opinion, did solar installations
22 provide substantial capacity value that would have
23 offset the peak load requirements during that POLR
24 vortex?

25 A. I have no idea.

1 Q. And would you agree with me that PJM does
2 not value wind and solar capacity on an equal basis
3 as capacity from gas or coal plants, correct?

4 A. Yes. Discount it somewhat.

5 Q. And you would agree that during 2017, the
6 reduction in the company's 5 CP resulting from
7 customer-owned solar generation was only 8 megawatts,
8 correct?

9 A. Yes, that's what it states in the PJM
10 report. However, you know, this issue deals with
11 looking forward. And to the extent that customer
12 generation, along with storage technologies are
13 becoming more prevalent, I think that whole equation
14 will change.

15 Q. And that leads me right into my next
16 question which was going to be to talk about the fact
17 that another reason for your opposition to the
18 amendment of Rider R -- of NM is that it may
19 under-compensate residential customers who net meter
20 with solar voltaic systems and may, in the future,
21 invest in storage solutions; isn't that right?

22 A. Yes.

23 Q. And you cite to no evidence to back-up
24 your suggested increase in residential power storage,
25 correct?

1 A. I cite the situation in Germany being one
2 of the countries that has gone further in terms of
3 solar installations and storage. And as I told you
4 in deposition, I think I've talked to some of the --
5 some of the solar developers, residential solar
6 developers and they are looking at smart inverters,
7 they are looking at storage. And there are a number
8 of vendors such as the Tesla Powerwall; there's
9 Sonnen, a Germany company; there's LG, I believe;
10 Samsung. And so, there is a lot happening on the
11 storage front and so that's -- that's the concern
12 that you would be nipping a vibrant technology in the
13 bud with this type of rate design.

14 Q. We're not actually seeing much progress
15 in that regard here in southwestern Ohio, correct?

16 A. I don't know. I posed to the company the
17 interrogatory and the company said they didn't know,
18 so.

19 Q. So we didn't know and you don't know
20 either, but as far as you have been able to find out,
21 there's not a big surge yet in residential customers
22 adopting battery storage along with their solar
23 installations, correct?

24 A. I have no information, but I know that in
25 other places where distributed generation has taken

1 off, like in some of the west coast, Hawaii, so on
2 and so forth, storage has followed.

3 Q. And the west coast and certainly Hawaii
4 has more opportunity for solar, based on more sun in
5 those areas, correct, as compared with Ohio?

6 A. Because of more sun, but the solar
7 decision is not just based on sun. You know, Germany
8 doesn't get much sun compared to Ohio. It has to do
9 with public policy, fuel diversity, the rate -- rates
10 that are in -- utility rates, standby rates, there is
11 a whole mix of analytics that goes into making a
12 decision, investment decision.

13 Q. And isn't it true also that if there end
14 up being a substantial number of customers who invest
15 in battery storage, the company could always change
16 the -- its rates, the PUCO could change its policies
17 at that point?

18 A. It could change its policy, but the fact
19 is it's almost like the chicken and the egg, so if
20 there is really no financial incentive to undertake
21 that, it won't materialize so. That's one thing.

22 The other thing I was going to say there
23 is -- you know, their projections of electric cars
24 that are going to be, you know, that are coming to
25 market and so on, is stronger in the European Union

1 than in the U.S.

2 But, you know, to the extent that an
3 electric car is a storage device, I mean, I have a
4 Volt that I've rewired to use as an inverter, so when
5 the power goes off, I could use it. So I could
6 easily use. It could cost me like 200 bucks in
7 material to do it. You know, it's not just the Tesla
8 war. Anybody who has an electric car technically has
9 a storage device that could be modified if the
10 incentive was right. I did it altruistically.

11 Q. So you also object to the recovery
12 through Rider SCR of the company's costs related to
13 payment for excess generation, correct?

14 A. I object because of the issue of SSO
15 customers having to pay twice for the excess
16 generation.

17 Q. And that double payment that you are
18 concerned about and talk about in your testimony
19 comprises, in your view, the new charge under Rider
20 SCR and the payment of the auction winners through
21 Rider RE, correct?

22 A. RE, if the -- if this is approved, but
23 right now it's RE plus RC.

24 Q. We're talking about what this new charge,
25 this double payment would be. So your concern is

1 that an SSO customer would pay for -- would pay under
2 Rider RE for energy that he uses, and would also have
3 to pay under the SCR, but you believe that the RE
4 would encompass the entire load of Duke Energy Ohio
5 and then the SCR would be on top of that; is that
6 right?

7 MR. WOLTZ: I object to the form of the
8 question. If Counsel could restate her question a
9 little bit. There was a lot going on in there and to
10 simply clarify it might be easier for the witness.

11 Q. Mr. Gonzalez, could you just go ahead and
12 describe for us why you believe there's a double
13 payment.

14 A. So I guess it would be easier to give an
15 example. So I have a PV system at my house. I know
16 my neighbors on each side, you know, stay in the
17 house, they have kids, so on and so forth. You know,
18 many times I am out of the house. They both have SSO
19 service. The -- you know, when I am out of the
20 house, the solar is producing much more than what I
21 am using and it's going over to them and over the
22 distribution lines. They pay, you know, in my case
23 it's AEP, but in Duke's case it would be analogous,
24 they pay, right now they are paying the full -- full
25 charge, the full retail rate, you know, distribution

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1 charge, all the riders, and they are paying RC; and
2 in Duke's case they are paying both the capacity on
3 the energy because that's what's being charged
4 through the SSO. And then -- so that's -- so they
5 are paying for that, right?

6 And then you're collecting, in Rider SCR
7 you're collecting the money that you paid the
8 customer generators for that. So they are
9 basically -- SSO customers are going to be paying
10 when they originally get the power through the lines,
11 the excess power from distributed generators, and
12 then they are going to have to pay the company for
13 your payment to the -- so it's the same
14 kilowatt-hours that we are talking about and they are
15 paying twice for it.

16 Q. You are aware that the excess generation
17 provided by the owners of the solar installations
18 serves to reduce the total load on the company's
19 system, correct?

20 A. Yeah. The total load and capacity.

21 Q. And you have not investigated the manner
22 in which PJM calculates the energy demand associated
23 with SSO load to determine how much Duke Energy Ohio
24 owes to the wholesale supplier, correct?

25 THE WITNESS: Can you reread that,

1 please.

2 (Record read.)

3 A. I'm more familiar with, you know, the PJM
4 manual, I believe it's Manual 19, long-term forecast,
5 and that's my understanding is that's the way the
6 obligations of the company are done on a zone basis,
7 so. And then the solar, as you mentioned earlier, is
8 called a drop, a load drop, such as, you know, load
9 management, price responsive demand, voltage
10 reductions, those kind of things.

11 Q. So if we go back to your example of your
12 two neighbors who are on SSO and your home that has a
13 solar facility; you're not home, it produces excess
14 generation, and you're concerned about what they have
15 to pay.

16 Isn't it true that PJM would see the net
17 load, their demand for energy during that time
18 period, less the amount that your house produced, so
19 Duke Energy Ohio would end up having to purchase less
20 from the market because it has the load -- the energy
21 and the capacity from your house?

22 A. That's correct.

23 MS. KINGERY: Thank you. I have nothing
24 further.

25 EXAMINER WALSTRA: Any other questions

1 for this witness?

2 MR. BEELER: No questions.

3 EXAMINER CATHCART: No questions?

4 Any redirect?

5 MR. WOLTZ: Can I have just a minute to
6 discuss with my witness?

7 EXAMINER CATHCART: You may.

8 MR. WOLTZ: We have nothing further, your
9 Honor.

10 EXAMINER CATHCART: Thank you.

11 MR. WOLTZ: OCC moves Exhibit -- for the
12 admission of Exhibit 6, the direct testimony of
13 Wilson Gonzalez.

14 EXAMINER CATHCART: Any objection?

15 MS. KINGERY: No, your Honor.

16 EXAMINER CATHCART: It will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 MR. WOLTZ: And then, your Honor, just
19 one procedural thing. OCC was planning on calling
20 Daniel Duann next instead of Jim Williams, if that's
21 okay.

22 EXAMINER CATHCART: That's fine.

23 MR. WOLTZ: And if we can have just a
24 moment, your Honor. I am pretty sure he went to the
25 bathroom.

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1 EXAMINER WALSTRA: We'll go off the
2 record.

3 (Discussion off the record.)

4 MR. WOLTZ: OCC will call Dr. Daniel J.
5 Duann as its next witness.

6 (Witness sworn.)

7 EXAMINER CATHCART: You may be seated.

8 MR. WOLTZ: May I approach, your Honor?

9 EXAMINER CATHCART: You may.

10 MR. WOLTZ: And I request that the direct
11 testimony of Daniel J. Duann be marked as OCC Exhibit
12 7.

13 EXAMINER CATHCART: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 - - -

16 DANIEL J. DUANN, Ph.D.

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

19 DIRECT EXAMINATION

20 By Mr. Woltz:

21 Q. Dr. Duann, will you state your name for
22 the record, please.

23 A. Daniel J. Duann.

24 Q. And for whom are you employed and where?

25 A. I'm -- I'm employed by the Office of the

1 Ohio Consumers' Counsel, and my business address is
2 65 East State Street, 7th floor, Columbus, Ohio
3 43215.

4 Q. And do you have in front of you what has
5 been marked as OCC Exhibit 7?

6 A. Yes.

7 Q. And can you identify that document for
8 me?

9 A. Yes. That's the direct testimony of
10 Daniel J. Duann in Opposition to the Joint
11 Stipulation and the Recommendation, filed on June 25,
12 2018.

13 Q. Thank you.

14 And do you have any corrections to make
15 at this time to that document?

16 A. Yes. I have a few corrections.

17 The first correction is on page 1,
18 line 5. "I am a Principal Regulatory Analyst" that
19 should be deleted and my position is I am the
20 Assistant Director of Analytical Service then with
21 the Office of the Ohio Consumers' Counsel.

22 The second correction is page 1, line 11.
23 My current position is June 2018. So start from
24 line 10, "I was promoted to my current position in
25 June 2018."

1 Q. And was this testimony created by you or
2 at your discretion? Direction?

3 A. Yes.

4 Q. And if I were to ask you these questions
5 again today, would your answers be the same?

6 A. Yes.

7 MR. WOLTZ: Thank you.

8 OCC moves for the admission of OCC
9 Exhibit No. 7, pending cross-examination.

10 EXAMINER CATHCART: Any questions? Duke?

11 MS. PASHOS: No objection, but we do have
12 some cross-exam.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Pashos:

16 Q. Good afternoon, Dr. Duann.

17 A. Good afternoon.

18 Q. You testified about return on equity in
19 your prefiled testimony, right?

20 A. That's one -- one area that I talk about,
21 yes.

22 Q. That's what I want to concentrate on
23 first. You did not prepare your own discounted cash
24 flow analysis for this case, did you?

25 A. No, I did not.

1 Q. And you did not prepare your own risk
2 premium analysis for this case as well, right?

3 A. I did not use a risk premium analysis. I
4 am using a CAPM analysis.

5 Q. And although you discuss the CAPM
6 analysis, you did not prepare your own capital asset
7 pricing model analysis for this case, right?

8 A. No, that's not true. I -- I did my own
9 CAPM analysis.

10 Q. Okay. Kind of -- would you describe
11 yours as kind of being a bottoms-up, from-scratch
12 CAPM analysis?

13 A. I don't know, what do you mean by
14 bottoms-up, from-scratch analysis. And I did my CAPM
15 analysis and I am -- my analysis basically modified
16 the staff analysis in a CAPM analysis because I find
17 there's several elements of staff's CAPM analysis
18 flawed and produce unreasonable results, so I
19 modified that and came to my own CAPM analysis.

20 Q. Okay. Regarding your Exhibit DJD-6,
21 page 5 of 13, if you could turn to that.

22 A. Yes, I'm there.

23 Q. And this is a copy of a Regulatory
24 Research Associates survey of major rate case
25 decisions, right?

1 A. This report is published by the
2 Regulatory Research Associates on January 30, 2018.
3 And this is page 5 of that report.

4 Q. And it's a survey of major rate case
5 decisions, right?

6 A. I would not characterize it as a survey.
7 I say it's just the RA prepared the report,
8 summarized the major rate case decision in 2017.

9 Q. Okay.

10 A. So I would characterize it as a survey,
11 and when you use the survey, it means you send out
12 questionnaires, but at least it's not based on any
13 questionnaire.

14 Q. Okay.

15 A. It's based on their understanding of the
16 major rate case happening in 2017.

17 Q. Okay. So maybe "survey" is not the best
18 word. We can call it a summary of major rate case
19 decisions, right?

20 A. That report is, yes.

21 Q. According to this summary by RRA, the
22 average electric utility authorized return on equity
23 for 2017 was 9.74; is that correct?

24 A. Yes. In that page on, at the bottom of
25 the page, the 2017 full year.

1 Q. And you testified that the 9.84 percent
2 return on equity agreed to in the stipulation in this
3 case is higher than the average 2017 return on
4 equity, right?

5 A. Yes, and I also specifically point out
6 that for the distribution-only electric utility,
7 their return on equity is much lower than 9.74.

8 Q. I am looking at this page 5 of 13 which
9 has all electric utilities. So I think we can agree
10 that the -- for the average of 2017 for all electric
11 utilities, the average ROE was 9.74, and the
12 stipulation ROE in this case is 9.84, correct?

13 A. That's correct.

14 Q. And so it differs by 10 basis points,
15 right?

16 A. Yes.

17 Q. But your proposed return on equity in
18 this case is 8.28 percent, correct?

19 A. Yes.

20 Q. And you would agree that's below the
21 average 2017 return on equity for electric utilities,
22 right?

23 A. Yes.

24 Q. And it's below by almost 150 basis
25 points, right?

1 A. If you -- the math calculation, 9.74
2 minus 8.28 is, yeah, a little bit less than 150 basis
3 points.

4 Q. Okay. Can you name one utility in the
5 nation that has an authorized return on equity as low
6 as what you are recommending in this case?

7 A. For what time period?

8 Q. 2017.

9 A. There's some utility case which has ROE,
10 ROE of 8.40, and that's pretty close to what I
11 recommended.

12 Q. But it's still not as low as what you are
13 recommending here, right?

14 A. Yeah. It's pretty close.

15 Q. But it's not quite as low as what you are
16 recommending.

17 A. Yeah, 8.4 is different from 8.28.

18 Q. And the utilities, I think I believe
19 there are two utilities actually that have, that are
20 shown in the RRA 2017 electric utility ROEs that have
21 ROEs of 8.4 percent, and that would be Ameren and
22 Commonwealth Edison; am I right about that?

23 A. Yes.

24 Q. So both in Illinois, right?

25 A. Yes, I believe so, yes.

1 Q. And would you agree that in Illinois
2 there is a formula rate statute that is used to
3 determine return on equity as opposed to the
4 traditional cost of equity analysis used in other
5 jurisdictions?

6 MR. WOLTZ: Objection. It's outside the
7 scope of this hearing, your Honor. We are not here
8 testifying about what they do in another state or how
9 they determine and set rates in another state.

10 MS. PASHOS: This is information in the
11 witness's exhibit. He does talk in his testimony
12 about how it's important to look around at the nation
13 and see what other ROEs are.

14 MR. WOLTZ: And I think there's a
15 difference between comparing what other ROEs are and
16 asking the witness to discuss how they formulate
17 rates in other states. I think there is a clear
18 distinction there.

19 EXAMINER CATHCART: Overruled. The
20 witness can answer if he knows.

21 A. I don't know.

22 Q. So you're not aware that they use a
23 formulaic return on equity -- or, they use a formula
24 to determine return on equity per statute in
25 Illinois? You don't have any familiarity with that?

1 A. No, I don't know. And I don't know
2 whether that's true or not true. I simply don't
3 know.

4 Q. And you wouldn't know about what
5 Regulatory Research Associates have to say about
6 Illinois' use of a statutory formulaic approach to
7 setting ROEs?

8 A. I did not go into the detail of that.

9 Q. Would you agree mathematically that if
10 you take out those two Illinois utilities, Ameren and
11 Commonwealth Edison with their 8.4 ROEs from the 2017
12 ROE averages, that the average electric utility in
13 2017 would be higher?

14 A. I don't know. I did not make that
15 calculation.

16 Q. But if you take the two lowest out of an
17 average and then recalculate the average, just
18 mathematically wouldn't that be a higher number?

19 A. Well, as I say, I did not make that
20 calculation.

21 Q. Okay. I assume you're familiar with the
22 current authorized ROEs for other investor-owned
23 utilities in Ohio, right?

24 A. Yes.

25 Q. And would you agree that Duke Energy

1 Ohio's current authorized ROE is 9.84 percent?

2 A. That's determined in the last rate case,
3 yes.

4 Q. And would you agree that Ohio Power's
5 current ROE is 10.3 percent?

6 A. I'm not sure because that case was
7 determined in 2011 so -- and I believe at that time
8 it was both Columbus Southern Power and Ohio Power
9 and I believe the composite return -- ROE at the time
10 is -- I don't believe the composite is 10.3.

11 Q. Okay. Would you agree that in 2015, the
12 Commission authorized an ROE of 10.2 percent for
13 AEP's distribution investment rider?

14 A. I cannot report -- I believe the most
15 recent ESP case, the Commission authorized ROE for
16 Columbus Southern is 10 percent.

17 Q. Okay. Additionally, are you aware of the
18 recent settlement that the Commission staff and the
19 OCC reached with Dayton Power and Light?

20 A. I have some knowledge about that.

21 Q. And would you agree that the ROE agreed
22 to in that settlement was 9.999 percent ROE?

23 A. Yes.

24 Q. And are you aware that the OCC --

25 MR. WOLTZ: I object to the previous

1 question and move to strike as it is pending and that
2 doesn't mean the Commission itself has even granted
3 or authorized that. The trial hasn't started for
4 Dayton Power and Light's ROE.

5 A. Yes. I -- I probably misspoke. There
6 was a stipulation that -- filed by the parties and in
7 that stipulation there is an ROE stated and I don't
8 know how the Commission will decide regarding that.

9 Q. I think we can agree it's a pending
10 stipulation. But the OCC is a party to that
11 stipulation, correct?

12 MR. OLIKER: Your Honor, at this point I
13 would object to the extent that a stipulation is
14 offered for the position of a party regarding a
15 specific particular issue. Every single stipulation
16 always contains the term that this stipulation is a
17 package deal and you cannot look at one item and it's
18 not cited for evidence against any party.

19 MS. PASHOS: I am just asking his
20 knowledge of what's in the stipulation.

21 MR. WOLTZ: And I think that's irrelevant
22 at this point, your Honor. I would also object it's
23 not relevant as to what's going on in the DP&L
24 stipulation unless Counsel is offering to litigate
25 that here this week as well. I don't believe it's

1 relevant to Duke's stipulation.

2 EXAMINER CATHCART: Overruled. I'll
3 allow a little bit of leeway here.

4 THE WITNESS: Can I have the question
5 read back, please.

6 (Record read.)

7 A. OCC signed the stipulation, yes.

8 Q. And am I also correct that the OCC -- a
9 witness for the OCC filed testimony supporting that
10 stipulation and the overall return in that
11 stipulation?

12 MR. WOLTZ: And I am going to object
13 again, your Honor. I mean, what we are -- what is
14 proposed in a stipulation that is not even before the
15 PUCO in this matter isn't relevant. The positions
16 that OCC may have taken in that stipulation is
17 different given the fact that I mean as Counsel is --
18 has said many times, and I think we are all aware the
19 way the PUCO view these stipulations as a package
20 deal, and the OCC may have negotiated different terms
21 for different reasons and have come to agree on that
22 based on different things, and I don't think that's
23 relevant to this case here.

24 EXAMINER CATHCART: I am going to sustain
25 the objection.

1 MS. PASHOS: Thank you, your Honor.

2 Q. (By Ms. Pashos) We'll move on to credit
3 quality. Am I correct that you've not performed any
4 independent analysis of Duke Energy Ohio's credit
5 quality, such as cash flow analyses, funds from
6 operations and LLCs, debt coverage analyses, et
7 cetera for this case?

8 A. No, that's not true. I did not perform
9 an independent analysis regarding those credit
10 metrics, but I did look at Duke's earning in the
11 past, Duke's -- the credit agencies rating of Duke's,
12 and so I do have an opinion on Duke's credit quality
13 and I have said that in my testimony. So the only
14 thing I did not do is I did not do those credit
15 metrics analysis.

16 Q. And that's what I was asking about. So
17 you didn't calculate cash flow analyses for Duke
18 Energy Ohio, right?

19 A. I did not calculate those cash flows from
20 operation, pre-working capital, and how that would be
21 affected by the settlement or by the any individual
22 provision of the settlement.

23 Q. Okay. Thank you.

24 And similarly, for example, with regard
25 to the Tax Cut and Jobs Act, am I correct that you

1 did not independently calculate what the cash flow
2 impacts of that would be on Duke Energy Ohio?

3 A. I did not calculate those credit metrics.

4 MS. PASHOS: Thank you. That's all I
5 have.

6 EXAMINER CATHCART: Thank you.

7 Staff, any questions?

8 MR. BEELEER: No questions, thank you.

9 MR. WOLTZ: If I could have just one
10 minute with my witness, your Honor.

11 EXAMINER CATHCART: You may.

12 (Pause in proceedings.)

13 EXAMINER CATHCART: Any redirect?

14 MR. WOLTZ: Just a couple of questions,
15 your Honor.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Woltz:

19 Q. Dr. Duann, do you remember earlier when
20 you were asked about I believe it was Attachment 6 to
21 your testimony?

22 A. Yeah.

23 Q. And you were asked about different ROEs
24 as they compared among different utilities among the
25 states; is that correct?

1 A. Yes.

2 Q. And would you -- as part of the ROE, does
3 the ROE play a factor in the ROR, the rate of return?

4 A. Yes.

5 Q. And can you tell us how the rate of
6 return compares in other states as well?

7 A. Yes. I think in the stipulation I think
8 the overall rate of return is 6.75 percent. And when
9 we look at the -- those major rate case decisions,
10 2017, there is plenty of case where the overall rate
11 of return was way below 6.75 percent.

12 For example, I think in the Electric
13 Transmission case in Texas, the overall rate of
14 return is only 6.39 percent. And in -- in DTE
15 Electric company in Michigan, the overall rate of
16 return is 5.55 percent. And also in Consumers Energy
17 Company in Michigan, the overall return is 5.94
18 percent. So this -- in Oklahoma Gas and Electric,
19 the -- the -- in Arkansas, the rate of return is
20 5.42 percent. And so, there's others. And even in
21 the case that Duke Counsel talk about, DP&L, I think
22 their overall return is also lower than 6.75 percent.

23 So I think we have -- you can look at
24 both the ROE as well as the overall rate of return
25 and, from that, I don't believe that the company's

1 return on equity as well as the overall rate of
2 return are reasonable.

3 MR. WOLTZ: Thank you, Dr. Duann.

4 Nothing further, your Honor.

5 EXAMINER CATHCART: Thank you.

6 MS. PASHOS: I have just a couple recross
7 questions if I may.

8 - - -

9 RECROSS-EXAMINATION

10 By Ms. Pashos:

11 Q. Would you agree in calculating an overall
12 rate of return what you need to include in that
13 calculation, in addition to return on equity or cost
14 of equity, is the capital structure of the utility
15 and the utility's cost of debt?

16 A. Yes.

17 Q. And does the Public Utilities Commission
18 of Ohio have jurisdiction over a utility's cost of
19 debt?

20 MR. WOLTZ: Objection, your Honor, as to
21 we are asking legal opinion. Dr. Duann is not an
22 attorney, is not a legal expert. And asking him if
23 the PUCO has authority is a little beyond the bounds
24 there.

25 MS. PASHOS: I'll rephrase my question.

1 Q. (By Ms. Pashos) Is -- is a utility's cost
2 of debt, to your knowledge, approved by the
3 Commission?

4 A. I think in a rate case they determine --
5 would determine both the return on equity as well as
6 the cost of debt.

7 Q. And it's the actual cost of debt that
8 they are considering.

9 A. Not necessarily. Not necessarily.

10 Q. Is the cost of debt of a utility totally
11 within the utility's control?

12 A. The cost of debt -- the cost of debt --
13 the company, the utility has the -- can determine
14 when they want to issue the debt and at that time the
15 market condition would determine the cost of debt.
16 And when the company -- when the utility come in for
17 a rate case, the Commission will make a determination
18 on the cost of debt, yeah. And also the overall
19 revenue requirement is determined by the overall rate
20 of return, not just by the return on equity.

21 Q. Right. But, again, there are --
22 utilities differ in their capital structure and their
23 cost of debt, correct?

24 A. Yes. Just as they are different in their
25 return on equity.

1 Q. But the ways they differ, for example
2 cost of debt, are the reasons why the utilities' cost
3 of debt is different from one another, are very
4 different, then that might be the reason why they
5 differ on return on equity, right?

6 A. Every utility is different.

7 Q. That I think we can agree on.

8 I wanted to go back to something you
9 responded to the OCC lawyer. I think you were
10 characterizing the Dayton Power & Light overall rate
11 of return in the stipulation that we talked about
12 that's pending. What did you say about the level of
13 that?

14 A. I believe that level is lower than 6.75
15 percent.

16 MS. PASHOS: Okay. Thank you. That's
17 all I have.

18 EXAMINER CATHCART: Thank you. Thank
19 you.

20 MR. BEELER: No recross either.

21 MR. WOLTZ: OCC moves Exhibit 7, the
22 direct testimony of Dr. Daniel Duann.

23 EXAMINER CATHCART: Any objection?

24 MS. PASHOS: No objection.

25 EXAMINER CATHCART: It will be admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER WALSTRA: Why don't we take a
3 10-minute recess since we have got one more witness.

4 (Recess taken.)

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

7 Would OCC like to call their next
8 witness?

9 MR. MICHAEL: We call Jim Williams.

10 (Witness sworn.)

11 MR. MICHAEL: And could we have marked,
12 your Honor, as OCC Exhibit No. 8, the Direct
13 Testimony of James D. Williams in Opposition to the
14 Joint Stipulation and Recommendation, please.

15 EXAMINER WALSTRA: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 - - -

18 JAMES D. WILLIAMS

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

21 DIRECT EXAMINATION

22 By Mr. Michael:

23 Q. Could you state your name, please?

24 A. Yes. My name is James D. Williams.

25 Q. And where are you employed?

1 A. I'm employed with the Office of the Ohio
2 Consumers' Counsel.

3 Q. And Mr. Williams, you should have in
4 front of you what's been previously marked as OCC
5 Exhibit No. 8. Can you identify that document,
6 please?

7 A. Yes. This is the Direct Testimony of
8 James D. Williams in Opposition to the Joint
9 Stipulation and Recommendation.

10 Q. And was that testimony prepared by you or
11 at your direction?

12 A. Yes, it was.

13 Q. And do you have any modifications to that
14 testimony, Mr. Williams?

15 A. I do have a correction on some numbers.
16 And I'll -- it's going to be changing a number,
17 623,000, to 604 million. I will go through and
18 identify where that occurs. The first one is on
19 page 5, line 19.

20 MS. WATTS: What are we changing it to,
21 Jim?

22 THE WITNESS: 604.

23 A. The second one is on page 36, line 14.
24 The third one is on page 37, line 3. And then the
25 last one is on page 42, line 13. Actually, there's

1 also one on page 47, line 20.

2 And then I have two other minor
3 corrections.

4 The first one is on page 41, line 21.
5 "(B) (9) (d) " should be reflected as 4928.143(B) (2) (h) .

6 And then the last item is an omission.

7 MS. WATTS: Sorry. What was that last
8 one?

9 THE WITNESS: This was on page 41, line
10 21, and the citation should be 4928.143(B) (2) (h) .

11 A. And then also I noticed that in the list
12 of cases that I filed testimony in, I did not list
13 the most recent DP&L case, 15-1830-EL-AIR. And I
14 filed testimony in that case on April 11, 2018.

15 That's all the corrections.

16 Q. And, Mr. Williams, with those
17 corrections, were I to ask you the same questions
18 reflected in OCC Exhibit No. 8, would your answers be
19 the same?

20 A. Yes, sir.

21 MR. MICHAEL: Your Honor, I move for
22 admission of OCC Exhibit 8, subject to
23 cross-examination.

24 EXAMINER WALSTRA: Thank you.

25 IGS?

1 MR. OLIKER: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Oliker:

5 Q. Good afternoon, Mr. Williams.

6 A. Good afternoon.

7 Q. Just a few questions for you today. If I
8 could have you turn to page 45 in your testimony.

9 And --

10 A. I'm there.

11 Q. -- am I correct that you are recommending
12 that a discount rate be assessed to receivables
13 purchased from a competitive retail electric service
14 provider?

15 A. Can you -- what line are you looking at?

16 Q. I am referring to your recommendation
17 regarding the purchase of accounts receivable
18 starting in Question 43.

19 A. Yes, in Question 43 I address how the
20 settlement addresses an audit process of the Purchase
21 of Accounts Receivable Program. And then in Question
22 44 and -- Question 44 and the Answer to 44, I then
23 provide an opinion concerning the possibility of
24 eliminating the discount rate.

25 Q. Mr. Williams, would you agree that if

1 your recommendation was accepted and a discount rate
2 was imposed on the purchase of CRES-related
3 receivables, that would increase costs for CRES
4 providers?

5 A. It may or may not increase the costs.

6 Q. Assuming --

7 A. I am not familiar with your cost
8 structure.

9 Q. Mr. Williams, would you agree that a
10 discount rate is a percentage amount that is applied
11 to a receivable that is purchased?

12 A. Generally that's how they are
13 implemented.

14 Q. Would you agree that any amount of
15 discount rate would cause a CRES provider to be paid
16 less than it is with a zero discount rate?

17 A. Can you repeat the question?

18 MR. OLIKER: Karen, can you repeat the
19 question, please.

20 (Record read.)

21 A. Yes.

22 Q. And, therefore, back to the question that
23 I asked you earlier, would you agree that if a
24 discount rate is imposed that is greater than zero,
25 that it would require CRES providers to be paid less

1 money?

2 A. For accounts receivable, yes.

3 Q. All else being equal, would you agree
4 that with the discount rate that would decrease the
5 amount of income that a CRES provider earns?

6 A. It could. That depends upon the rate
7 structure for an individual supplier or group of
8 suppliers.

9 Q. And would you agree that CRES providers
10 have multiple-year contracts at times?

11 A. I believe that sometimes CRES providers
12 have multiple-year contracts; sometimes they have
13 month-to-month deals.

14 Q. And would you agree that in order to set
15 fixed price rates, a CRES provider has to assume a
16 certain level of costs?

17 A. I assume there is some costs.

18 Q. And you would agree that imposing a
19 discount rate relative to a zero discount rate could
20 increase the cost the CRES provider incurs?

21 A. Potentially.

22 Q. Okay. Mr. Williams, in the event that
23 the Commission were to adopt your recommendation of
24 imposing a discount rate, would you recommend that
25 the Standard Service Offer customers bear the

1 responsibility of all collections related to SSO
2 generation revenue?

3 A. I'm not sure I understand your question.

4 Q. Which part of it don't you understand?

5 A. Can you rephrase the question? I'm not
6 sure what -- what you are -- what you are asking me
7 with that question.

8 Q. Okay. Let's take it one step at a time.
9 Would you agree that Duke Energy Ohio collects the
10 receivables for Standard Service Offer customers?

11 A. They do.

12 Q. Would you agree that sometimes they are
13 not successful in collecting those receivables?

14 A. That's true.

15 Q. And would you agree we call that "bad
16 debt expense"?

17 A. That's true.

18 Q. And in the event that the Commission
19 adopts a discount rate for receivables purchased from
20 competitive suppliers, would you agree that it would
21 also be fair to require the SSO to bear the cost of
22 its own uncollected receivables?

23 A. I am not sure that it's not already.

24 Q. Would you agree that it's currently
25 allocated to distribution rates?

1 A. I believe that there's two different
2 uncollectible riders that collect the expenses
3 associated with uncollectible distribution and
4 uncollectible generation.

5 Q. And you agree that they are all
6 nonbypassable today, correct?

7 A. That's my understanding.

8 Q. And in the event that there is a discount
9 rate imposed on the receivables of competitive
10 suppliers, would you agree that if there is no
11 corresponding change to the manner in which the
12 SSO-related receivables are collected, there could be
13 an unfair competitive advantage for the SSO?

14 MR. MICHAEL: Object to form.

15 EXAMINER WALSTRA: Overruled.

16 MR. MICHAEL: Could you reread the
17 question, please, Karen.

18 (Record read.)

19 A. I'm not sure that there's not already a
20 discount rate that's between Duke -- it seems -- I am
21 trying to recalling some discovery. It seems to me
22 there already is a discount rate that goes through
23 one of Duke's affiliates for some parts of this.

24 Q. And when you say "there is already a
25 discount rate," are you referring to there is already

1 some amount of bad debt expense included in
2 distribution rates?

3 A. That's my understanding.

4 Q. Okay. Maybe I will come at it from this
5 direction: If a discount rate is imposed on the
6 receivables paid to CRES providers, would you agree
7 that it would be appropriate to allocate a portion of
8 the bad debt expense in distribution rates to the SSO
9 rate?

10 A. Are you talking about the distribution
11 rate or are you talking about the uncollectible
12 rider? To where?

13 Q. I am speaking of taking the bad debt
14 expense in distribution rates which relates to the
15 SSO now and allocating that bad debt expense to the
16 SSO bypassable rates.

17 A. And your question is?

18 Q. Would that be reasonable?

19 A. I mean, I think as part of the audit
20 process that the settling parties agreed to, that
21 that's something that should be evaluated and that
22 was really the nature of my testimony is if there is
23 going to be an evaluation of the -- of the Purchase
24 of Accounts Receivable Program, that it should also
25 examine the possibility of also eliminating the

1 discount rate. And the whole purpose of that would
2 be to -- to, you know, then ensure that marketers
3 have the responsibility for their uncollectible debt,
4 not all the other customers that pay the
5 uncollectible riders.

6 MR. OLIKER: Your Honor, I don't believe
7 that answer actually responded to my question which
8 was how the discount rate should be changed relative
9 to the SSO. I did not ask about how the audit
10 process should work or whether they should get rid of
11 the zero discount rate for CRES receivables. I asked
12 him simply if his recommendation is adopted, how the
13 SSO bad debt expense should be treated and I don't
14 think that question was answered.

15 MR. MICHAEL: And I think Mr. Williams
16 was responding to Mr. Oliker's inference, saying yes,
17 that should be looked at by way of the audit. And
18 then he further confirmed, in response to
19 Mr. Oliker's question, that perhaps different
20 methodologies and considerations for the purchases of
21 accounts receivable should be considered by the
22 Commission, which I think is inherent in Mr. Oliker's
23 question.

24 MR. OLIKER: If that were his response, I
25 don't know that I would be raising this issue. He

1 can answer anything else he wants about the audit,
2 but I do want him to answer my question.

3 EXAMINER WALSTRA: I think your question
4 was is it reasonable.

5 MR. OLIKER: Relating to the prior
6 question about what to do with the SSO bad debt
7 expense, I believe.

8 EXAMINER WALSTRA: I am going to
9 overrule. You can clarify.

10 MR. OLIKER: Thank you, your Honor.

11 Q. (By Mr. Olikier) So, Mr. Williams, just so
12 we're clear here, let's put the audit aside and how
13 you might administer a discount rate to CRES
14 providers, but let's assume for a second your
15 recommendation is adopted and a discount rate to CRES
16 receivables is adopted by the Commission, and in that
17 circumstance, do you agree it would also be
18 reasonable to require any bad debt expense associated
19 with SSO bypassable rates to be allocated to the SSO
20 service? As opposed to the distribution rates where
21 it exists today?

22 A. I believe you're making a recommendation
23 that goes beyond any recommendation that I've made in
24 my testimony. I think my testimony is very, very
25 clear, and I talk about specifically this issue in

1 Answer 43:

2 "The PUCO Staff, Duke, and the other
3 parties to the settlement agreed that an audit would
4 be performed.... The audit is supposed to examine
5 the sufficiency of Duke's processes and controls for
6 monitoring Marketer compliance with the PAR
7 agreement. Costs for the audit will be paid for by
8 customers through the UE-GEN rider."

9 And the whole point of that testimony is
10 to say that an audit is going to be performed of the
11 Purchase of Accounts Receivable Program. I don't see
12 any reason why it has to be assumed that a purchase
13 of accounts receivable has to continue in the program
14 if an auditor can look at it and come up with other
15 ways to -- to address the program based upon where
16 the competitive market is today in Duke's service
17 territory.

18 MR. OLIKER: Your Honor, once again, he
19 has not answered my question. I would move to strike
20 the answer. I tried to get him a few different
21 angles to answer it "yes" or "no," and he continues
22 to come back to this audit process which is
23 completely different from what I've asked him.

24 MR. MICHAEL: And I think that's because,
25 your Honor, as Mr. Williams pointed out, Mr. Oliker

1 is trying to put words in Mr. Williams' mouth, and
2 Mr. Williams is correcting Mr. Olikier as to what his
3 recommendation is, as to what his testimony is, and,
4 therefore, Mr. Williams cannot answer the question
5 Mr. Olikier asked because Mr. Williams is not going to
6 allow Mr. Olikier to put words in his mouth. He is
7 going to stick to his testimony.

8 MR. OLIER: Your Honor, he can say "no,"
9 but he never said "yes" or "no." He answered a
10 different question.

11 EXAMINER WALSTRA: I'll grant the motion
12 to strike.

13 MR. OLIER: Thank you, your Honor.

14 Q. (By Mr. Olikier) Let me try it one more
15 time. Mr. Williams, please put the audit process
16 aside and what may happen in that process, but just
17 assume for a second that the Commission does, in
18 fact, impose a discount rate on CRES providers.
19 Would you agree that if that occurs, it would also be
20 reasonable to require any bad debt expense that's
21 caused by the bypassable SSO rates to be allocated to
22 the SSO service?

23 A. It could be.

24 Q. Okay. Thank you.

25 And am I correct that one of your

1 recommendations is you believe it's appropriate for
2 CRES providers to bear their own bad debt expense?

3 A. I believe so. I believe that's
4 consistent with -- with other utility implementation
5 of purchase receivables programs in the state.

6 Q. Are you familiar with supplier
7 consolidated billing?

8 A. I am.

9 Q. Would you agree that under a supplier
10 consolidated billing, CRES providers may actually
11 purchase the receivable of the utility?

12 A. I believe that to be the case. I did not
13 address supplier consolidated billing in my
14 testimony.

15 Q. From a collection-of-receivables
16 standpoint, would you support supplier consolidated
17 billing inasmuch as it required a CRES provider to
18 bear its own uncollectible expense?

19 MR. MICHAEL: Objection. Beyond the
20 scope of Mr. Williams' testimony.

21 EXAMINER WALSTRA: Overruled.

22 A. The scope of this testimony addresses an
23 audit to be performed, under the direction of PUCO
24 staff, of Duke's Purchase of Accounts Receivable
25 Program. It doesn't go beyond that other than to --

1 then to -- instead of assuming that the purchase of
2 accounts receivable with no discount continues,
3 examine the possibility of a potential change in that
4 and adding a discount rate and seeing what the impact
5 would be on the program and on customers.

6 And I made some other recommendations
7 concerning looking at some of the charges and other
8 items that customers might be discounted for. It
9 doesn't go beyond that.

10 MR. OLIKER: Can I have my question read,
11 Karen?

12 (Record read.)

13 Q. Mr. Williams, recognizing what your
14 testimony may state, do you have an opinion in which
15 you would support supplier consolidated billing if it
16 required CRES providers to bear their own
17 uncollectible expense?

18 A. As far as I know, Duke does not have a
19 supplier consolidated billing program. I'm only
20 aware of very limited applications of supplier
21 consolidated billing in the state, so it really would
22 be highly speculative to offer an opinion on a
23 program that doesn't exist.

24 Q. Well, let's maybe ask a hypothetical and
25 hopefully we can get there.

1 Mr. Williams, focusing on your concern
2 that you have in this testimony regarding the
3 Purchase of Accounts Receivable Program,
4 hypothetically speaking, if Duke Energy Ohio had a
5 supplier consolidated billing program and it required
6 suppliers to purchase Duke Energy Ohio's receivables
7 at a discount, assuming it's at the discount rate or
8 the bad debt rate that Duke has today for its
9 distribution receivables, and then bear the cost of
10 their own receivables, by "their own" I mean the CRES
11 providers; from a debt collection and bad debt
12 expense perspective, would you support that approach
13 relative to the process that's used today?

14 A. Just depending upon how the program was
15 structured and the details of it, perhaps. But one
16 of the major considerations would be that -- that if
17 the suppliers are purchasing Duke's receivables,
18 that's purely generation charges. And it's --
19 it's -- whereas in the case of the Purchase of
20 Accounts Receivable Program, the way it's currently
21 structured is that the potential exists for supplier
22 charges to go beyond, for CRES charges to go beyond
23 just generation, direct generation charges. I think
24 that's part of what the purpose of the audit is for
25 is to investigate the controls that are in place.

1 Q. Mr. Williams, if a supplier consolidated
2 billing program is in place, would you agree that the
3 only receivables that a supplier would be purchasing
4 of the utilities' would be distribution related?

5 A. It would generally be distribution.
6 Although, again, depending upon how it was
7 structured, if the supplier purchased, you know, the
8 entire receivable, maybe there could be other
9 charges, other things associated with it, you know,
10 distribution, that's only distribution, that's my
11 point.

12 MR. OLIKER: May I have one minute, your
13 Honor?

14 Q. Am I correct you just mentioned a minute
15 ago, one of the concerns you had in the audit is the
16 inclusion of potentially charges that are unrelated
17 to retail electric service?

18 A. I believe the purpose of the audit is to
19 look at some of the control processes, make sure that
20 only appropriate CRES charges are being included in
21 the purchase of accounts receivable.

22 Q. And going back to our earlier discussion,
23 would you agree that if supplier consolidated billing
24 were in effect, that concern would go away?

25 A. It may or may not depending upon how the

1 program -- the supplier consolidated billing is
2 arranged. There could still be controls on what type
3 of charges suppliers could include on their bill.

4 Q. But you agree your concern of Duke
5 purchasing a supplier's receivables that include
6 noncommodity charges, that issue would go away all
7 together in the event that a supplier bore all of its
8 own uncollectible risk, correct?

9 A. At least to that aspect of the supplier
10 risk, yes.

11 MR. OLIKER: Thank you, your Honor.

12 No more questions, Mr. Williams.

13 THE WITNESS: Thank you.

14 EXAMINER WALSTRA: Thank you.

15 THE WITNESS: Are we done?

16 MS. WATTS: The worst is yet to come.

17 Is it my turn?

18 EXAMINER WALSTRA: Whenever you're ready.

19 MS. WATTS: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Watts:

23 Q. Good afternoon, Mr. Williams.

24 A. Good afternoon.

25 Q. Do you need a fireball?

1 A. Not at the moment.

2 Q. Just to be clear for the record, sir, you
3 are not a lawyer and you are not an engineer,
4 correct?

5 A. That's correct.

6 Q. And you have never worked for a public
7 utility.

8 A. I have not.

9 Q. And you have never had responsibility for
10 the management of a distribution system, correct?

11 A. I have not.

12 Q. And, sir, you began working with OCC
13 approximately 22 years ago, isn't that right?

14 A. That is correct.

15 Q. And turning to page 5 of your testimony.

16 EXAMINER WALSTRA: Ms. Watts, can you
17 move your microphone.

18 A. I'm there.

19 Q. On page 5 of your testimony, you state
20 that you believe that the settlement in these
21 proceedings, wherein the reliability standards are
22 established, contradict Ohio law and Commission
23 order. Do you see that?

24 A. I do.

25 Q. And you believe that this is true at

1 least partially because the standards were based upon
2 confidential settlement discussion, correct?

3 A. That certainly contributed, but it goes
4 beyond that. I also believe that OCC, as a party in
5 the case, was denied access to any of the information
6 concerning the methodology for how the proposed
7 standards were developed.

8 Q. Sure. So that's part of your argument
9 that it was a confidential settlement discussion and,
10 therefore, you believe is violative of the
11 Commission's -- of Ohio law and Commission order.

12 A. I believe that OCC was never provided, as
13 a party in the case, access to any of the methodology
14 used to establish the standard.

15 Q. I understand that. You've already
16 testified with respect to that, but I want to just be
17 clear: One of the reasons you believe that the
18 settlement is violative of Ohio law and regulatory
19 Commission order is because it's the result of a
20 confidential settlement discussion.

21 MR. MICHAEL: Objection, asked and
22 answered. And subject to your Honor's ruling on that
23 objection, I was wondering if Counsel would point me
24 to the provision in Mr. Williams' testimony to which
25 she is now referring, please.

1 EXAMINER WALSTRA: The objection is
2 overruled.

3 MR. MICHAEL: Liz, can you tell me where
4 in his testimony you're referring right now?

5 MS. WATTS: I was on page 5.

6 MR. MICHAEL: 2, 3, or 4, or where?

7 MS. WATTS: 2. Item 2.

8 May we approach, your Honor?

9 EXAMINER WALSTRA: You may.

10 Q. (By Ms. Watts) Mr. Williams, I took your
11 deposition just last Tuesday, correct?

12 A. I believe so.

13 Q. And you have before you a copy of a
14 transcript of that deposition?

15 A. I do.

16 Q. And have you seen that transcript
17 previously?

18 A. I have.

19 Q. Would you turn to page 8, please.
20 Beginning on line 4 of page 8, are you there?

21 A. Yes, I'm there.

22 Q. Do you see that I asked you: "Can you
23 tell me how you believe those standards contradict
24 Ohio law and Commission order?

25 And you responded: "Yes. Specifically

1 on the PUCO order, the standards that were set for
2 2008 in the settlement were based upon confidential
3 settlement discussions, they were not based upon an
4 actual -- the actual requirements that are required
5 in the PUCO rules for establishing the standards, as
6 well as the Staff guidelines for establishing
7 settlement." Did I read that correctly?

8 A. You did, but a correction has been made
9 to this transcript as well.

10 Q. How so?

11 A. "2008" is "2018."

12 Q. And so you intended to say "2018"; is
13 that what you are telling me?

14 A. Yeah. This was 2018.

15 Q. Okay. And so, with that correction,
16 would that be a correct recitation of what you stated
17 in that deposition?

18 A. Yes, specific for 2018.

19 Q. Okay. In footnote 3 of your testimony,
20 sir.

21 A. Where are you at?

22 Q. Page 2. Are you there?

23 A. I'm there.

24 Q. And I believe, correct me if I'm wrong,
25 but footnote 3 supports the concept that you were

1 involved in the cases mentioned there, including
2 Case No. 13-1539-EL-ESS?

3 A. Yes. For each of the Duke reliability
4 standards, but in the 2009 case as well as the '13
5 case, OCC was a party in those proceedings, also a
6 signatory party in those proceedings.

7 Q. Okay. And so for that 13-1539 case, that
8 case set standards for 2015 and '16, correct?

9 A. It did.

10 Q. And you believe that the company should
11 currently be complying with those standards, correct?

12 A. There -- yes. That the -- those -- those
13 standards were continued until new standards were
14 established for the most recent reliability case,
15 16-1602.

16 Q. And do you recall that -- that the 15-39
17 case, referenced in your footnote, was resolved by
18 stipulation?

19 A. It was resolved by stipulation.

20 Q. And OCC was a signatory to that
21 stipulation.

22 A. Yes, it was. But, again, there was an
23 Entry in 16-1602 --

24 Q. I understand. There is no question
25 pending right now, sir.

1 MR. MICHAEL: Your Honor, I think the
2 witness needs an opportunity to fully respond to the
3 questions asked by Counsel. And for Counsel to
4 interrupt the witness's responses I think is
5 completely unfair and it's unprecedented in the
6 course of this hearing, where all parties have
7 allowed the witness to give a full response. And if
8 Counsel thinks it's unresponsive, she can move to
9 strike, but interrupting him is not appropriate.

10 EXAMINER WALSTRA: Understood, but I
11 think he answered the question.

12 Q. (By Ms. Watts) Sir, with respect to
13 customer expectations, it's your understanding, and
14 correct me if I'm wrong, is it your understanding
15 that the company is to consider customer expectations
16 in determining what its appropriate service
17 reliability standards should be?

18 A. Yeah. My understanding is that Ohio
19 Administrative Code 4901:1-10-10 has a specific set
20 of requirements that need to be included as part of
21 an application to establish reliability standards.
22 Part of that is customer perception surveys that are
23 conducted, I believe quarterly, under the direction
24 of the PUCO. And those customer perception surveys
25 are to be used to help influence reliability

1 standards.

2 Q. And when I referred to the 16-1602 case,
3 do we understand that to be the case that's presently
4 consolidated in these proceedings, wherein the
5 company filed an application for reliability
6 standards?

7 A. Yes, that's my understanding.

8 Q. And in that case, did the company file
9 customer perception information?

10 A. Yes, it did.

11 Q. And in determining what the customers'
12 perceptions are or customers' expectations are in
13 Duke Energy Ohio's service territories, the only
14 thing you looked at was what the company filed in
15 that proceeding, correct?

16 A. Yes, the surveys that were filed in
17 that -- I can't recall if they were filed with the
18 actual application or if we got the information
19 through discovery, but it was -- it was that customer
20 perception survey that's supposed to be used for the
21 purpose of establishing standards.

22 Q. Sure. And OCC did not perform any
23 customer surveys of its own, did it?

24 A. OCC relied upon the information that's
25 supposed to be used to establish standards.

1 Q. Okay. Turning to page 6 of your
2 testimony.

3 A. I'm there.

4 Q. You have, at the top of the page, some
5 continuing -- a continuing list of items that starts
6 with 5, 6 and 7. Do you see that?

7 A. Yes, I do.

8 Q. In Item 6 you state that "the Settlement
9 permits Duke to trim trees less frequently, which can
10 result in more outages for customers." Do you see
11 that?

12 A. I do.

13 Q. Now, have you done any independent
14 research regarding that statement?

15 A. I just relied upon some discovery
16 responses that showed there had not been an analysis
17 performed.

18 Q. And you have not examined any of the
19 specifications provided to tree-trimming crews by the
20 company, correct?

21 A. That are provided to the crews?

22 Q. Yes.

23 A. The only thing that I would have examined
24 would have been the tree-trimming plans, programs,
25 that are included as part of the company's

1 inspection, maintenance, repair, and replacement
2 program in 4901:1-10-27.

3 Q. And is there anything in those
4 specifications to support your statement that
5 trimming trees less frequently will result in more
6 outages?

7 A. In the inspection, maintenance, repair,
8 and replacement plan?

9 Q. Yes.

10 A. The plan reflects Duke performing a
11 cycle-based tree-trimming program every four years.
12 And as I understand the settlement, that would extend
13 it to a five-year; yet, there was no analysis
14 performed by Duke to look at what the impact could be
15 on customer outages.

16 Q. Nor did OCC perform any analysis,
17 correct?

18 A. I believe that Duke has the burden of
19 proof.

20 Q. I understand that you believe that Duke
21 has the burden of proof. Did OCC perform any
22 analysis on that issue?

23 MR. MICHAEL: Objection, asked and
24 answered.

25 EXAMINER WALSTRA: Overruled.

1 A. OCC did not perform an additional
2 analysis. We relied upon the information provided by
3 the company.

4 Q. And, sir, you have never had any
5 responsibility for a vegetation management program,
6 correct?

7 A. Just on my own property.

8 MR. MICHAEL: You ought to see it. It's
9 beautiful.

10 MS. WATTS: Does he have a chicken-shaped
11 swimming pool?

12 Q. In preparing your testimony, did you do
13 any industry research relating to tree-trimming cycle
14 times?

15 A. Just within Ohio. And I am generally
16 familiar with the Ohio EDUs. I believe that all are
17 on either a four-year or five-year cycle-based
18 tree-trimming program.

19 Q. Do you know which EDU is on which
20 cycle-based program?

21 A. As I sit here today, I would be
22 speculating.

23 Q. Sir, when you prepared your testimony,
24 did you know what the per customer cost for Rider DCI
25 for 2018 would be for Duke Energy Ohio customers if

1 the Commission permitted Rider DCI to continue?

2 A. I recall seeing some of those numbers in
3 the settlement.

4 Q. Do you recall them as you are sitting
5 here today?

6 A. Not particularly.

7 Q. Going back to the tree-trimming topic.
8 If the company moves from a four-year cycle to a
9 five-year cycle, would you expect there would be
10 fewer miles to trim each year?

11 A. I do after the initial, after the --
12 after the company is fully on a five-year cycle, yes.

13 Q. And if the work is paid on a per-mile
14 basis, fewer miles -- fewer miles per year would be
15 less cost per year, correct?

16 A. Not necessarily. I believe that OCC
17 Witness Lanzalotta is probably the person you should
18 talk to about that.

19 Q. Turning to page 46 -- I'm sorry, scratch
20 that.

21 In connection with preparing your
22 testimony, you did not do any studies or analysis
23 with respect to CAIDI and SAIFI standards as applied
24 to utilities in other states, correct?

25 A. No, I didn't. Just Ohio.

1 Q. And as you sit here today, are you able
2 to tell me what the CAIDI and SAIFI standards are
3 that apply to any of the other Ohio investor-owned
4 utilities?

5 A. I could not recite them as I sit here. I
6 can give you a general idea of -- I can tell you that
7 every EDU in the state met their reliability
8 standards in 2017; with the exception of Duke, who
9 missed both CAIDI and SAIFI, and DP&L, who I believe
10 missed the CAIDI standard.

11 Q. And you are not presently aware of any
12 violations by Duke Energy Ohio with respect to OSHA,
13 Occupational Safety and Health Administration,
14 regulations, correct?

15 A. No. I believe that some of that data --
16 some of the safety types of complaints, things like
17 that are reported in Duke's system improvement plan
18 under the Rule 26 plan. I generally look at that
19 information, but I did not rely upon it as I -- when
20 I established my testimony.

21 Q. And are you aware -- aware of any
22 specific other safety violations by Duke Energy Ohio?

23 A. No.

24 Q. On page 35 of your testimony, you have a
25 statement that shows operations of self-healing

1 teams, correct?

2 A. Yes, I do.

3 Q. Could you describe your understanding of
4 what a self-healing team is?

5 A. Similar to what I included on line 1 and
6 2 on page 35, self-healing teams are technology that
7 allows power to automatically be rerouted during an
8 outage, so potentially fewer customers are
9 interrupted.

10 Q. Do you have any specific technical
11 understanding of how a self-healing team operates?

12 A. Not beyond what I have seen with the Ohio
13 EDUs. AEP has provided demonstrations of the
14 technology at some of its collaboratives and other
15 things. So just a high-level understanding of how
16 that technology works.

17 Q. At line -- on page 35, underneath the
18 table, you state that "Duke did not track
19 self-healing team performance in 2017." Do you see
20 that?

21 A. Yes, I do.

22 Q. And you cite to -- in support of that
23 statement you cite to footnote 43 which is an OCC
24 discovery response that you have attached to your
25 testimony, correct?

1 A. I believe I did attach it.

2 Q. And that discovery response is JDW-12?

3 A. That's correct.

4 Q. Would you turn to that, please.

5 A. I'm there.

6 Q. Hold on. I am trying to get there.

7 So JDW-12 is OCC request for production
8 of documents No. 06-50, correct?

9 A. Yes, it is.

10 Q. And in that request for production, isn't
11 it true that OCC asked for a copy of Duke Energy
12 Ohio's Non-Financial Metrics Report?

13 A. That's true.

14 Q. So the request does not specifically ask
15 for self-healing team operations for 2017, does it?

16 A. It was the Non-Financial Metrics Report
17 which includes information on self-healing teams.

18 Q. Right. But it doesn't specifically ask
19 for self-healing team operations.

20 A. It's the report that would include that
21 information. Kind of semantics it seems to me.

22 Q. That report -- that information would
23 exist independent of the report if it existed,
24 correct?

25 A. I would assume it would. If you're

1 talking about the self-healing team performance data,
2 I would assume that would exist separate from this.

3 Q. Do you know whether OCC ever asked for
4 discovery for self-healing team operations
5 specifically beyond 2016?

6 A. I believe that we did.

7 Q. Do you know what that report showed?

8 A. I can't remember the exact number. I do
9 know that '16 -- I believe that the 2017 performance
10 was definitely better than '16. One --

11 Q. And -- I'm sorry. Go ahead.

12 A. I think it's important to recognize the
13 reason why I didn't add the '17 data though is
14 because I wanted to be able to use the same source
15 for the data and that was the nonfinancial metrics
16 report. Just to make sure there wasn't confusion
17 over what was included and what wasn't.

18 Q. Does it seem correct to you, based on
19 what you reviewed, that the self-healing teams
20 successful operation rate was closer to 90 percent
21 for 2017?

22 A. That sounds about right.

23 Q. Do you know how many self-healing teams
24 are presently installed in the company's system?

25 A. By "the company," you mean Duke Energy

1 Ohio?

2 Q. Yes.

3 A. I know for sure 33. I believe I saw a
4 response somewhere along the line there may have been
5 three more that were planned for installation in '17.
6 I don't know whether or not those were installed.

7 What's probably more important about that
8 though is that the -- there are other companies that
9 are installing self-healing teams and they do have
10 performance measures specifically tied to those
11 self-healing teams unlike Duke. The settlement in
12 the -- in this -- the settlement that's being
13 addressed now, there is no specific performance
14 requirements for Duke's self-healing teams. That's
15 my issue. That's the concern I was raising.

16 MS. WATTS: And I move to strike
17 beginning with the words "what's more important" as
18 it was not at all responsive to my question.

19 MR. MICHAEL: Can we have the question
20 read back, your Honor.

21 EXAMINER WALSTRA: Sure.

22 (Record read.)

23 EXAMINER WALSTRA: I just want to see
24 your face.

25 I'll grant the motion.

1 MS. WATTS: Thank you, your Honor.

2 Q. (By Ms. Watts) Sure. You do not have any
3 industry knowledge about what an acceptable
4 operations success rate is for a self-healing team
5 other than your understanding of what AEP's
6 performance rate is?

7 A. AEP is -- there's two different contexts
8 of that. There was a case a few years back that was
9 looking at comparing Duke's performance with AEP's
10 and that was -- that's a point of departure for some
11 information. But then there's also for self-healing
12 teams that AEP is installing today that there are
13 performance standards that are tied to that.

14 Q. Okay. So I'm asking you to put your
15 understanding of whatever you know about AEP aside,
16 do you have any other industry information or
17 research to support an understanding of what
18 successful self-healing team operations should look
19 like?

20 A. Just if customers are paying for it, they
21 should certainly work.

22 Q. When a self-healing team fails to
23 operate, are you aware of what some of the potential
24 causes are for such failure?

25 A. I recall some extensive work on this back

1 in -- earlier in Duke's SmartGrid case, and a lot of
2 it had to do with communications failures. There was
3 some equipment failure, but a lot of it had to do
4 with communications.

5 Q. Anything else?

6 A. Those -- that's the primary things that I
7 recall right now.

8 Q. And when a self-healing team fails to
9 work on the Duke Energy Ohio's system, are you aware
10 of what actions the company takes to research that?

11 A. Again, if the procedures haven't changed
12 from when this was looked at in the '14 case, the
13 company does an extensive analysis of the costs for
14 the failure.

15 MS. WATTS: Thank you. I have no further
16 questions.

17 EXAMINER WALSTRA: Thank you.

18 Mr. Beeler?

19 MR. BEELEER: No questions, your Honor.

20 MR. MICHAEL: May we have a moment to
21 consult with Mr. Williams, please?

22 EXAMINER WALSTRA: Sure. We'll go off
23 the record for 5 minutes or so.

24 (Recess taken.)

25 MR. MICHAEL: I have brief redirect, your

1 Honor.

2 EXAMINER WALSTRA: Okay.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. Michael:

6 Q. Mr. Williams, I would like to bring you
7 back to the questioning from Ms. Watts regarding
8 footnote 3 on page 2 of your testimony.

9 A. I'm there.

10 Q. And do you recall Ms. Watts asking you
11 questions about the cases cited in that footnote?

12 A. I do.

13 Q. And do you recall her questions regarding
14 the standard being set as part of a settlement in
15 connection with those cases?

16 A. I do.

17 Q. And do you recall Ms. Watts' questions
18 regarding setting standards as a result of settlement
19 in the case that brings us here today?

20 A. Yes, I do.

21 Q. Are there any differences between the
22 case or cases cited in footnote 3 and the settlement
23 reached in those cases and the settlement reached in
24 this case as it relates to the standard setting?

25 A. There are major differences. The 13-1539

1 case was an open and transparent process that
2 involved staff, the OCC, and the company working
3 through the reliability standards, determining
4 exactly how the standards were going to be
5 calculated, determining what type of information was
6 lacking that could be included as part of a reopener
7 that was going to occur two years later. It
8 established specific performance measures for
9 technology that was going to be installed, like the
10 self-healing teams, to be able to evaluate an impact
11 of some of that data in 2014 and '15.

12 It was a multipage document that
13 reflect -- accurately reflected and would provide an
14 understanding to anybody of how those standards were
15 established. In this case the reliability standards
16 are now a paragraph in a settlement.

17 I contend that OCC was totally blocked
18 from getting any information from Duke about how
19 those standards were calculated and there was no
20 enforcement mechanisms for those standards. It's a
21 totally different process.

22 MR. MICHAEL: Thank you, Mr. Williams.

23 I have no further questions, your Honor.

24 MS. WATTS: Just a brief follow-up, your
25 Honor.

1 - - -

2 RECROSS-EXAMINATION

3 By Ms. Watts:

4 Q. The case -- there is the case, the
5 13-1539 case, right, and you are comparing that to
6 the 16-1602 case.

7 A. I am comparing -- I'm comparing the --
8 the -- the 13-1539 case with the global settlement.

9 Q. But specifically you are comparing the
10 reliability standards discussions with respect to the
11 two cases, correct?

12 A. The --

13 MR. MICHAEL: Your Honor, I want to
14 object to that. I think Mr. Williams' testimony was
15 pretty clear, and perhaps Ms. Watts is
16 mischaracterizing. Mr. Williams was comparing not
17 the discussions but I think the documents themselves,
18 the settlement in 13-1539 and the settlement proposed
19 in this matter.

20 THE WITNESS: That's correct.

21 Q. I'm sorry if I mischaracterized your
22 testimony. It was my understanding you were talking
23 about the process that led to the stipulation in the
24 two different cases; was that not correct?

25 A. I'm still not exactly sure what you are

1 asking me. What --

2 Q. Okay. Let me ask a different question.

3 The 16-1602 case was filed, by
4 definition, in 2016, correct?

5 A. That is correct.

6 Q. And this is 2018. And it was, if I'm
7 correct, consolidated into these proceedings sometime
8 this year, correct?

9 A. That is correct.

10 Q. So the 16-1602 case has been pending
11 since sometime in 2016.

12 A. It has been.

13 Q. And after it was filed by the company,
14 after the application was filed by the company, there
15 were comments filed by the parties in that docket,
16 correct?

17 A. There were. There were comments filed
18 by -- all three of the parties filed, yes.

19 Q. Okay. And after -- and were you involved
20 in filing comments on behalf of OCC in that docket?

21 A. Yes, I was.

22 Q. And then after the comments were filed,
23 did the parties meet to have settlement discussion?

24 A. There were settlement discussions,
25 actually open and transparent settlement discussions.

1 Q. And do you know approximately how many of
2 those there were?

3 A. In that particular case, I can recall at
4 least three.

5 MS. WATTS: Okay. I have nothing
6 further. Thank you, your Honor.

7 EXAMINER WALSTRA: Thank you.
8 Staff?

9 MR. BEELEER: Nothing, thank you.

10 EXAMINER WALSTRA: Thank you,
11 Mr. Williams.

12 THE WITNESS: Thank you.

13 EXAMINER WALSTRA: Would you like to move
14 your exhibit?

15 MR. MICHAEL: Indeed. OCC moves Exhibit
16 No. 8.

17 EXAMINER WALSTRA: Any objection?
18 Hearing none, it will be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 We'll go off the record.

21 (Discussion off the record.)

22 (Thereupon, at 3:15 p.m., the hearing was
23 adjourned.)

24 - - -

25

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 Monday, July 16, 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-6581)

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Summary: Transcript in the matter of the Duke Energy Ohio, Inc. hearing held on 07/16/18 - Volume VI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.