

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Filing :  
by Ohio Edison Company, :  
The Cleveland Electric :  
Illuminating Company and : Case No. 16-481-EL-UNC  
The Toledo Edison Company :  
of a Grid Modernization :  
Business Plan. :

In the Matter of the Filing :  
by Ohio Edison Company, :  
The Cleveland Electric :  
Illuminating Company and : Case No. 17-2436-EL-UNC  
The Toledo Edison Company :  
Application for Approval of :  
a Distribution Platform :  
Modernization Plan. :

In the Matter of the :  
Application of Ohio Edison :  
Company, The Cleveland :  
Electric Illuminating :  
Company and The Toledo : Case No. 18-1604-EL-UNC  
Edison Company to Implement :  
Matters Relating to the Tax :  
Cuts and Jobs Act of 2017. :

In the Matter of the :  
Application of Ohio Edison :  
Company, The Cleveland :  
Electric Illuminating :  
Company and The Toledo : Case No. 18-1656-EL-ATA  
Edison Company for Approval :  
of a Tariff Change. :

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PROCEEDINGS - VOLUME I - PUBLIC

before Mr. Gregory Price and Ms. Megan J. Addison,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 11:00 a.m. on Tuesday,  
February 5, 2019.

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On behalf of The Northeast Ohio Public  
Energy Council.

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Tuesday Morning Session,  
February 5, 2019.

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EXAMINER ADDISON: All right. We will go  
ahead and go on the record.

The Public Utilities Commission of Ohio  
has called for hearing, at this time and place, Case  
No. 16-481-EL-UNC, being In the Matter of the  
Application of Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and The Toledo Edison  
Company for Approval of a Grid Modernization Plan;  
Case No. 17-2436-EL-UNC, being In the Matter of the  
Application of Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and The Toledo Edison  
Company for Approval of a Distribution Platform  
Modernization Plan; Case No. 18-1604-EL-UNC, being In  
the Matter of the Application of Ohio Edison Company,  
The Cleveland Electric Illuminating Company, and The  
Toledo Edison Company to Implement Matters Related to  
the Tax Cuts and Jobs Act of 2017; and Case No.  
18-1656-EL-ATA, being In the Matter of The  
Application of Ohio Edison Company, The Cleveland  
Electric Illuminating Company, and The Toledo Edison  
Company for Approval of a Tariff Change.

My name is Megan Addison and with me is

Gregory Price. We are the Attorney Examiners assigned by the Commission to preside over this hearing.

We will begin with appearances, starting with the Companies.

MR. KNIPE: Thank you, your Honor. Appearing on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, Brian Knipe, 76 South Main Street, Akron, Ohio 44308. Also appearing on behalf of the Companies, James Lang and Mark Keaney, with the firm of Calfee, Halter & Griswold, 1405 East Sixth Street, Cleveland, Ohio 44114.

EXAMINER ADDISON: We could just probably go around the table.

MR. ETTER: Okay. Good morning, your Honors. On behalf of residential utility consumers, the Office of the Ohio Consumers' Counsel, Bruce Weston, Consumers' Counsel, Terry Etter and Angela O'Brien, Assistant Consumers' Counsel. We are at 65 East State Street, 7th Floor, Columbus, Ohio 43215.

EXAMINER ADDISON: Thank you.

MR. LINDGREN: On behalf of the Commission Staff, Ohio Attorney General Dave Yost, by Thomas G. Lindgren, Assistant Attorney General, the

address is 30 East Broad Street, 16th Floor,  
Columbus, Ohio 43215.

MR. KURTZ: Good morning, your Honors.  
For Ohio Energy Group, Mike Kurtz, Kurt Boehm, and  
Jody Kyler Cohn.

MR. ROYER: Good morning. On behalf of  
The Smart Thermostat Coalition, Barth Royer, Barth  
Royer, LLC, 2740 East Main Street, Bexley, Ohio  
43209.

MS. FLEISHER: Good morning, your Honors.  
On behalf of the Environmental Law and Policy Center,  
Madeline Fleisher and Robert Kelter, 21 West Broad,  
8th Floor, Columbus, Ohio 43215.

MR. OLIKER: Good morning, your Honors.  
On behalf of Interstate Gas Supply, Inc., Joe Oliker,  
Bethany Allen, and Mike Nugent, 6100 Emerald Parkway,  
Dublin, Ohio 43016.

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

MS. WHITFIELD: Good morning, your  
Honors. On behalf of The Kroger Company, Angie Paul  
Whitfield and Stephen E. Dutton, with the law firm

1 Carpenter Lipps & Leland, 280 North High Street,  
2 Suite 1300, Columbus, Ohio.

3 MR. STINSON: On behalf of The Northeast  
4 Ohio Public Energy Council, the law firm of Bricker &  
5 Eckler, LLP, by Dane Stinson and Glenn Krassen, 100  
6 South Third Street, Columbus, Ohio 43215.

7 MS. LEPPLA: On behalf of the Ohio  
8 Environmental Council, Miranda Leppla, 1145  
9 Chesapeake Avenue, Suite I, Columbus, Ohio 43212.

10 MS. PETRUCCI: Good morning, your Honors.  
11 On behalf of the Ohio Cable Telecommunications  
12 Association, the law firm of Vorys, Sater, Seymour &  
13 Pease, Gretchen L. Petrucci, 52 East Gay Street,  
14 Columbus, Ohio 43215.

15 MR. DARR: For Industrial Energy Users -  
16 Ohio, Frank Darr, of the law firm McNees, Wallace and  
17 Nurick, 21 East State Street, Columbus, Ohio.

18 MS. GLOVER: Good morning. On behalf of  
19 Direct Energy Services, LLC, and Direct Energy  
20 Business, LLC, the law firm of Whitt Sturtevant, Mark  
21 Whitt and Rebekah Glover, 88 East Broad Street, Suite  
22 1590, Columbus, Ohio 43215.

23 MS. MOONEY: On behalf of the Ohio  
24 Partners for Affordable Energy, Colleen Mooney, Post  
25 Office Box 12451, Columbus, Ohio.

1 MR. DOUGHERTY: Good morning, your  
2 Honors. On behalf of the Environmental Defense Fund,  
3 Trent Dougherty and Chris Tavenor, 1145 East  
4 Chesapeake Avenue, Suite I, Columbus, Ohio 43212.

5 EXAMINER ADDISON: Thank you, all.

6 Okay. We have several procedural matters  
7 to address this morning before we begin taking  
8 testimony.

9 First of all, ELPC filed a motion to  
10 compel discovery on January 25, 2019, to which IGS  
11 filed a memorandum contra on January 31, 2019. We  
12 have reviewed the filings and tend to agree with IGS  
13 in that the information sought by ELPC is not  
14 reasonably calculated to lead to the discovery of  
15 admissible evidence, especially as that information  
16 relates to IGS's customers and products offered  
17 outside of not only FirstEnergy's service territory  
18 but also the state. Moreover, although IGS focused  
19 primarily on the relevancy in its memorandum contra,  
20 the Examiners are also concerned with the proprietary  
21 nature of the requested information. And for these  
22 reasons we will be denying ELPC's motion to compel.

23 Next we have an outstanding motion to  
24 appear pro hac vice of Robert Kelter filed by ELPC on  
25 December 18, 2018. No memoranda contra were filed in

1 response to this motion. And we find that this  
2 motion is reasonable and should be granted at this  
3 time.

4 ELPC, NRDC, and OEC also filed a motion  
5 for protective order in conjunction with the prefiled  
6 direct testimony of Curt Volkmann on January 17, 2019  
7 in which these parties are requesting protection of  
8 information that the Companies have asserted is  
9 confidential or competitively sensitive. No  
10 memoranda contra were filed in response to this  
11 motion and we will grant the motion for protective  
12 order consistent with Ohio Admin Code 4901-1-24.

13 EXAMINER PRICE: On November 20, 2018,  
14 Ohio Manufacturers' Association Energy Group filed an  
15 interlocutory appeal of the November 15, 2018, Entry,  
16 consolidating these four cases and setting the matter  
17 for hearing. At this time we will deny certification  
18 of the interlocutory appeal. It does not present a  
19 new or novel question of law or policy or present a  
20 departure from past precedent. The Attorney  
21 Examiners have ample experience with consolidating  
22 cases, setting matters for hearing, and managing our  
23 caseload.

24 In addition, OMAEG does not claim any  
25 prejudice in the ruling, therefore it does not merit

1 certification and the request for certification will  
2 be denied.

3 Ms. Petrucci, you have a witness for us?

4 MR. ROYER: Your Honor, a preliminary  
5 matter before we call witnesses, if this is the  
6 appropriate time?

7 EXAMINER PRICE: Sure. I'm sorry.

8 MR. ROYER: As you recounted,  
9 confidential information was supplied to ELPC and  
10 they have filed that under seal. It brings up a  
11 larger question which is the cost/benefit study  
12 that's -- that's -- that underlies the Stipulation in  
13 this case. That study has never been docketed which  
14 seems contrary to the PowerForward report where the  
15 Commission specifically states "In requests for grid  
16 modernization investment, it only makes sense that  
17 the EDU include a cost/benefit analysis with the  
18 application. This way, the Commission stakeholders  
19 can transparently evaluate whether a grid  
20 modernization investment should be made in the first  
21 place."

22 So it seems there's a defect, at this  
23 point, in what's been filed in the docket. There is  
24 no -- there is no cost/benefit analysis, let alone a  
25 transparent one, at least if anything it's opaque,



1 and there is no indication who is -- who's  
2 sponsoring -- who the sponsoring witness would be for  
3 such a thing. The only thing about a cost/benefit  
4 analysis, it appears in the Stipulation, is a playing  
5 card-sized little chart that purports to claim that  
6 there is -- that there is a net cost present value  
7 benefit to the -- to the proposed investment.

8           On the other side of the coin, this  
9 presents an interesting problem because since it is  
10 not in the case, I mean, one could -- one could  
11 grandstand, I could stand up here and move to dismiss  
12 or something like that. I don't. I am looking for a  
13 solution. But the problem here is that by not  
14 presenting the cost -- anybody sponsoring the  
15 cost/benefit analysis, it completely flips the burden  
16 of proof in here because -- in this case, which  
17 should be with the proponents or the signatories to  
18 the stipulation. But now we, as Intervenor, who  
19 wish to attack the cost/benefit analysis, are the  
20 ones that have to put it in the record and that seems  
21 just backwards to me.

22           So what I am looking for is some solution  
23 whereby the cost/benefit analysis itself would be  
24 docketed. If there are confidential provisions, and  
25 I think we need to maybe at some point discuss what

1 those should be, but those can be -- you know, those  
2 can be redacted and we can go forward from there. So  
3 I'm looking for guidance on how to proceed on this.

4 MS. FLEISHER: Your Honor, if I may just  
5 add, I think Mr. Royer and I are coming at the same  
6 goal in slightly different ways because I was  
7 expecting this would come up in the cross-examination  
8 of Mr. Fanelli who we intend to ask a number of  
9 questions about the cost/benefit analysis. The  
10 Companies have designated -- this is a fairly  
11 extensive Excel spreadsheet. The Companies have  
12 designated the entirety of it as a confidential  
13 document which we entirely agree with The Smart  
14 Thermostat Coalition is inappropriate if only because  
15 significant pieces of it don't contain any  
16 confidential or proprietary information.

17 And so, we would certainly support making  
18 sure that it is filed on the docket with any actual  
19 confidential information redacted, but that the  
20 document itself be accessible to the public and to  
21 all the parties in the case.

22 EXAMINER PRICE: Do you have a  
23 confidentiality agreement with the Company to allow  
24 you to see the redacted portions?

25 MS. FLEISHER: We do.

1 EXAMINER PRICE: Mr. Royer?

2 MR. ROYER: Yes.

3 EXAMINER PRICE: It is not a matter of  
4 your due process, just your preference that more be  
5 put in the public domain.

6 MS. FLEISHER: Yes. I think  
7 consistent -- well, I would say it's our preference,  
8 consistent with the Commission's PowerForward  
9 Roadmap, but also with Ohio public records.

10 EXAMINER PRICE: Exactly. That's a  
11 given.

12 MS. FLEISHER: Right.

13 EXAMINER PRICE: We all operate under  
14 that.

15 MS. FLEISHER: Yes.

16 EXAMINER PRICE: Companies?

17 MR. LANG: And, your Honor, the -- the  
18 CBA is being sponsored by Mr. Fanelli. The response,  
19 the results of the cost/benefit analysis are part of  
20 the Stipulation that he is supporting. The  
21 cost/benefit analysis itself is a series of detailed  
22 spreadsheets with very detailed information about the  
23 Companies' infrastructure which is why it's been  
24 marked confidential and provided to parties under a  
25 confidentiality agreement.

1           The Companies do not, you know, would not  
2 agree to having it publicly disclosed or believe that  
3 it's necessary to docket the details of the CBA.  
4 The -- we have -- an earlier decision this morning,  
5 the Companies have worked through Mr. Volkmann's  
6 testimony that makes references to some of the, kind  
7 of the results, some data points that are in the CBA,  
8 have identified portions of -- significant portions  
9 of Mr. Volkmann's testimony that were redacted that  
10 we've been able to agree can be unredacted.

11           So we are actually preparing that  
12 document now and will be filing a revised motion for  
13 protective order just for the smaller set of  
14 information in Mr. Volkmann's testimony that we  
15 believe should be maintained as confidential.

16           So we are -- the Companies are certainly  
17 cognizant of the, you know, confidentiality  
18 requirements and public records law, the Companies  
19 are, you know, so we have -- have worked with the --  
20 worked with the parties to the extent that parties  
21 have approached us to raise the confidentiality as an  
22 issue.

23           This is the first I have heard from  
24 Mr. Royer that the confidentiality of the details of  
25 the CBA, you know, is an issue. But the Companies

1 certainly maintain that the -- the detailed analysis  
2 is -- is confidential and should remain confidential.

3 We've also discussed with ELPC in their  
4 using some of the -- some of these spreadsheets if  
5 they need to in cross, that either we would stipulate  
6 to their admission as confidential documents and so  
7 they could be part of the Commission record as -- as  
8 a confidential exhibit, and we're certainly willing  
9 to work with parties that we have -- as we have with  
10 ELPC to do that.

11 EXAMINER PRICE: Thank you.

12 Mr. Royer, if you're looking for  
13 guidance, just a couple of points. I guess we will  
14 deal with Mr. Fanelli's testimony. With respect to  
15 the PowerForward Roadmap, that was never intended to  
16 be a detailed set of procedural guidelines for  
17 dealing with these cases. I understand what the  
18 Commission said. But I don't think they were  
19 intending to limit the ability of the Attorney  
20 Examiners to manage these dockets.

21 With respect to the burden of proof, the  
22 Companies bear the burden of proof. It's up to them  
23 to put on their case. Nothing in the cost/benefit  
24 analysis shifts the burden of proof from the  
25 Companies to the Intervenors. They bear the burden

1 of proof in this proceeding and I am sure that they  
2 will do their best efforts to meet that burden.

3 With respect to Mr. Fanelli, I don't  
4 know -- as you know, under Supreme Court precedent,  
5 whether something is proprietary is a question of  
6 fact and I don't know if you are prepared to deal  
7 with the protective order request today or if you  
8 would like to come back tomorrow and deal with that.  
9 If you want to deal with the protective order issues  
10 on your direct, you may, or we can re-call  
11 Mr. Fanelli.

12 MR. LANG: And, your Honor, the -- the --  
13 yes, the issues being addressed on Mr. Volkmann's  
14 testimony, I think we can address tomorrow to the  
15 extent that -- to the extent that the portions that  
16 are still going to be redacted if -- to the extent  
17 anyone has an issue with that, we can address it.  
18 We're certainly hoping that people do not have an  
19 issue with that because it's -- it's minor.

20 EXAMINER PRICE: Okay. We'll take that  
21 up after we hear -- Ms. Fleisher, you had something  
22 to add?

23 MS. FLEISHER: Yes, your Honor, which is  
24 mostly in the nature of a practical issue that I was  
25 hoping could be resolved through having the

1 cost/benefit analysis available with actual  
2 confidential information redacted. I intend to ask  
3 Mr. Fanelli about portions of the cost/benefit  
4 analysis that I believe don't -- don't pertain to any  
5 confidential information, you know, things that  
6 involve assumptions from publicly-available documents  
7 that involve information that -- of the type that  
8 Mr. Volkmann included in his testimony that the  
9 Company did not find as confidential.

10 And just in terms of the clarity of the  
11 record, as a basic matter, it's going to be  
12 difficult, I think, to understand the record if the  
13 questions are public but the document itself is -- is  
14 not accessible to the public.

15 EXAMINER PRICE: If that's -- if you  
16 believe that's the case, then we will go into  
17 confidential session, as we have done millions of  
18 times around here, and that way the record will be  
19 clear for the Supreme Court if there is an appeal and  
20 for the Commissioners on the decision, and the burden  
21 will be on the Attorney Examiners and the parties to  
22 write our briefs, and Opinion and Order, that  
23 protects the confidential information; unless, at the  
24 end of this, we have whittled down what's  
25 confidential and maybe at that point we can move

1 parts of the confidential transcript back into the  
2 record -- into the public domain.

3 MS. FLEISHER: Certainly, your Honor, and  
4 I would just like to reserve the right to, if we've  
5 established that portions of the cost/benefit  
6 analysis are not confidential through  
7 cross-examination of Mr. Fanelli, I would like to  
8 reserve the right to move that those portions be put  
9 into the public record.

10 EXAMINER PRICE: You can move.

11 MS. FLEISHER: Thank you.

12 MR. LANG: And, your Honor, I would point  
13 out that the protective agreement with the parties  
14 certainly includes a process where parties that have  
15 an issue with designation can approach us, well in  
16 advance of the hearing, so we can work through these  
17 issues. No one has. So it seems relatively unfair  
18 to have this sprung on the Companies the morning of.  
19 I would just note that, you know, no one has  
20 approached with us any issues regarding the  
21 confidentiality designations except specifically with  
22 Mr. Volkmann's testimony before this morning.

23 EXAMINER PRICE: Understand. I  
24 appreciate that. Anything further on this issue?

25 Now, Ms. Petrucci, you had testimony for



1 us.

2 MS. PETRUCCI: Yes, thank you, your  
3 Honor. I am anticipating that the Stipulation and  
4 Recommendation that was filed in this docket is going  
5 to be marked as an exhibit here very shortly, and The  
6 Ohio Cable Telecommunications Association had  
7 prefiled testimony on December 7 in this matter. We  
8 polled the parties and it's our understanding that  
9 there is no cross-examination for the OCTA witness,  
10 so at this time I would like to mark that prefiled  
11 testimony as OCTA Exhibit 1.

12 EXAMINER PRICE: It will be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. PETRUCCI: And I would also like to  
15 mark the Notice of Witness Substitution that was  
16 filed by the OCTA on February 1 as an exhibit as  
17 well. OCTA Exhibit 2.

18 EXAMINER PRICE: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. PETRUCCI: And then I would also like  
21 to move for the admission of both OCTA Exhibits 1 and  
22 2.

23 EXAMINER PRICE: Any objection to  
24 admission of OCTA Exhibits 1 and 2?

25 Seeing none, they will be admitted

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 MS. PETRUCCI: Thank you, your Honor.

3 EXAMINER PRICE: Mr. Kurtz.

4 MR. KURTZ: Thank you, your Honor. On  
5 December 7, OEG submitted the testimony of Stephen J.  
6 Baron. By agreement of the parties, there is no  
7 cross for Mr. Baron; therefore, I would ask that his  
8 testimony be marked as OEG Exhibit 1 and entered into  
9 the record.

10 EXAMINER PRICE: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 EXAMINER PRICE: Any objections to the  
13 admission of OEG Exhibit 1? Seeing none, it will be  
14 admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER PRICE: Mr. Lindgren.

17 MR. LINDGREN: Thank you. On January 14  
18 of this year, Staff filed the testimony of Jonathan  
19 J. Borer. I understand that no party has  
20 cross-examination for Mr. Borer; therefore, I would  
21 ask that his direct testimony be marked as Staff  
22 Exhibit 1 and admitted into the record.

23 EXAMINER PRICE: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 EXAMINER PRICE: Any objections to the

1 admission of Staff Exhibit 1? Seeing none, it will  
2 be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PRICE: Companies may call their  
5 first witness.

6 MR. LANG: Thank you, your Honor. The  
7 Companies call Santino L. Fanelli.

8 (Witness sworn.)

9 EXAMINER PRICE: Please be seated and  
10 state your name and business address for the record  
11 and turn on your microphone.

12 THE WITNESS: Hi. Good morning. Santino  
13 Fanelli. Business address, 76 South Main Street,  
14 Akron, Ohio 44308.

15 EXAMINER PRICE: Please proceed.

16 MR. LANG: And, your Honors, we have  
17 premarked four exhibits which we have left on the  
18 corner of your desk and have provided the court  
19 reporters. I'll quickly step through them. Company  
20 Exhibit 1 is the Stipulation and Recommendation in  
21 this case. Company Exhibit 2 is the direct testimony  
22 of Mr. Fanelli. Company Exhibit 3 is the  
23 Supplemental Stipulation and Recommendation. And  
24 Company Exhibit 4 is the supplemental testimony of  
25 Mr. Fanelli. We ask that at this time that these

1 documents be considered marked for identification.

2 EXAMINER PRICE: They will be so marked.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 MR. LANG: And, your Honors, I would ask  
5 with regard to the Grid Modernization Business Plan  
6 that was filed to commence in the one proceeding and  
7 the Distribution Platform Modernization Plan that was  
8 filed to commence in another proceeding, I would ask  
9 your Honor's preference, to the extent that parties  
10 wish to cite those documents in their briefs, and I  
11 think some witnesses reference them, would -- is your  
12 preference that the Bench take notice of the plans  
13 that were filed or would you also like us to mark  
14 those plans as Company exhibits?

15 EXAMINER PRICE: We'll take  
16 administrative notice of the plans.

17 MR. LANG: Thank you, your Honor.

18 - - -

19 SANTINO L. FANELLI

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

22 DIRECT EXAMINATION

23 By Mr. Lang:

24 Q. The -- Mr. Fanelli, do you have in front  
25 of you the documents that have been premarked as

1 Company Exhibits 1 through 4?

2 A. Yes, I do.

3 Q. And can you briefly identify each one,  
4 please?

5 A. Sure. Company Exhibit 1 is the  
6 Stipulation and Recommendation filed in this  
7 proceeding. Company Exhibit 2 is my direct testimony  
8 in support of the Stipulation and Recommendation  
9 filed in this proceeding. Company Exhibit 3 is the  
10 Supplemental Stipulation and Recommendation filed in  
11 this proceeding. And Company Exhibit 4 is my  
12 supplemental testimony filed in this proceeding.

13 Q. All right. And with regard to Company  
14 Exhibits 2 and 4, your direct and supplemental  
15 testimony, do you have any corrections to make to  
16 either document?

17 A. No, I do not.

18 Q. And with respect to Company Exhibit 2,  
19 your direct testimony, if I were to ask you the same  
20 questions in that document, would you provide the  
21 same answers this morning?

22 A. Yes.

23 Q. And with respect to Company Exhibit 4,  
24 your supplemental testimony, if I were to ask you the  
25 same questions in Company Exhibit 4, would you

1 provide the same answers set forth therein?

2 A. Yes.

3 MR. LANG: Your Honor, the witness is  
4 available.

5 EXAMINER PRICE: Thank you.

6 OEG?

7 MR. KURTZ: No questions, your Honor.

8 EXAMINER PRICE: IEU-Ohio?

9 MR. DARR: No questions.

10 EXAMINER PRICE: OCTA?

11 MS. PETRUCCI: No questions, your Honor.

12 EXAMINER PRICE: IGS?

13 MS. ALLEN: No questions, your Honor.

14 EXAMINER PRICE: OPAC?

15 MS. MOONEY: No questions, your Honor.

16 EXAMINER PRICE: NOPEC?

17 MR. STINSON: No questions, your Honor.

18 EXAMINER PRICE: OCC?

19 MR. ETTER: No questions, your Honor.

20 EXAMINER PRICE: Direct Energy?

21 MS. GLOVER: No questions, your Honor.

22 EXAMINER PRICE: Mr. Lindgren?

23 MR. LINDGREN: No questions, your Honor.

24 EXAMINER PRICE: Let's go off the record  
25 a second.

1 (Discussion off the record.)

2 EXAMINER PRICE: Back on the record.

3 ELPC.

4 MS. FLEISHER: Thank you, your Honor.

5 And before I begin crossing Mr. Fanelli, the  
6 Companies and ELPC did agree to stipulate to  
7 admission of certain exhibits that are discovery  
8 responses provided by Mr. Fanelli which I have.  
9 There is a set that's confidential and a set that's  
10 public which, my apologies, I had meant to print out  
11 a numbered list for the court reporter which I failed  
12 to do but can provide after the fact. I won't be  
13 referring to these, so I think we can take care of  
14 that later. And I would also be happy to e-mail the  
15 list to the parties so everyone knows.

16 EXAMINER PRICE: That will be helpful.  
17 Thank you.

18 MR. LANG: And, your Honors, on behalf of  
19 the Companies, I would confirm that ELPC did give us  
20 a list, this morning, of 28 discovery responses and  
21 we are able to agree that 27 of them could be moved  
22 into the record.

23 EXAMINER PRICE: Do you intend to mark  
24 these, Ms. Fleisher?

25 MS. FLEISHER: Yes. I would like to mark

1     them as -- there's 22 public exhibits, so those as  
2     ELPC 1 through 22, and then five confidential  
3     exhibits, I don't know what your Honor's preference  
4     is, to do separate numbering for confidential or just  
5     pick up at 23.

6             EXAMINER PRICE: Pick up with 23 is fine.  
7     Designate them C.

8             MS. FLEISHER: Sure. Exhibits 23C  
9     through 27C, confidential exhibits, and they will  
10    have the list.

11            EXAMINER PRICE: 23 through 27C?

12            MS. FLEISHER: Correct.

13            EXAMINER PRICE: Those will be so marked.

14            (EXHIBITS MARKED FOR IDENTIFICATION.)

15            EXAMINER PRICE: Please proceed.

16            MR. LANG: Your Honors -- ELPC, were you  
17    able to -- do you have a set of those for the  
18    Companies?

19            MS. FLEISHER: Yes.

20            MS. LEPPLA: There is a lot of documents.  
21    Sorry, guys.

22            MR. LANG: I would note on the  
23    confidential ones, probably only half of the room has  
24    signed a protective agreement.

25            MS. FLEISHER: Yeah. There should be



1 just enough copies for the Attorney Examiners, the  
2 court reporter, you and us, so no one else. And  
3 Mr. Fanelli if he needs them.

4 MR. LANG: Thanks.

5 EXAMINER PRICE: And just to clarify, you  
6 will give the court reporters a list of which number  
7 goes with which discovery response?

8 MS. FLEISHER: Correct. Yes.

9 EXAMINER PRICE: Thank you.

10 Please proceed, Ms. Fleisher.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Fleisher:

14 Q. Mr. Fanelli, good morning, almost  
15 afternoon. My name is Madeline Fleisher. I  
16 represent the Environmental Law and Policy Center.  
17 And could we start off with the Stipulation, Company  
18 Exhibit 1. If you can just turn to page 25 of that  
19 document.

20 A. Okay. I'm there.

21 Q. Great. And you see where it refers to a  
22 proposal for "up to \$50 million for work needed to  
23 install or support grid modernization technologies as  
24 parts of Grid Mod II"?

25 A. I see that.

1           Q.    Okay.  And I just wanted to clarify, that  
2           reference, in fact, means the "platform component of  
3           work proposed by the Companies as part of Grid Mod  
4           I," correct?

5           A.    The \$50 million represented there, the  
6           "up to \$50 million" is in reference to spend for Grid  
7           Mod I.  I would note, however, that this particular  
8           provision was modified by the Supplemental  
9           Stipulation.

10          Q.    Great.  Thank you, yes.  I just wanted to  
11          make sure that's totally clear.  All right.  And I  
12          want to ask you a little bit about the settlement  
13          negotiations in this case.  Now, is it correct that  
14          in terms of discussions that led to the filing of the  
15          Stipulation, Company Exhibit 1, the Companies began  
16          discussions with Staff on that in June 2018, correct?

17          A.    You said June of 2018?

18          Q.    Correct.

19          A.    Yes.

20          Q.    And those discussions extended until  
21          October 30, 2018, correct?

22          A.    I'm pausing out of concern for  
23          sensitivity about details on settlement discussions.  
24          Generally, yes, there were discussions that occurred  
25          over the time period that you reference from June

1 through the end of October.

2 Q. Okay. And those discussions were with  
3 Staff only, correct?

4 A. I can't think of any that involved  
5 another party up until that point.

6 Q. And on October 31, 2018, you invited  
7 the -- all the other parties to the consolidated  
8 cases to an all-party settlement meeting on  
9 November 1, correct?

10 A. Yes.

11 Q. And I know this is part of the record,  
12 but the Stipulation was filed on November 9, correct?

13 A. The Original Stipulation was filed on  
14 November 9 and the Supplemental Stipulation on  
15 January 25 of this year.

16 Q. Okay. And you're familiar with the term  
17 "Grid Mod I" as used in the Stipulation and the  
18 Supplemental Stipulation, correct?

19 A. Yes.

20 Q. And if I use that as shorthand for the  
21 \$516 million of capital investment contemplated by  
22 the Stipulation, you'll understand what I mean?

23 A. Yes.

24 Q. And is it true that the Grid Mod I  
25 investments and the major components of the

1 investments and the amounts of those investments were  
2 determined through the settlement process?

3 A. The portfolio of work that comprises Grid  
4 Mod I was determined as part of the settlement  
5 process.

6 Q. And so, the 700,000 smart meters to be  
7 deployed was determined through the settlement  
8 process, correct?

9 A. Yes.

10 Q. And the 202 circuits of integrated  
11 volt/VAR control?

12 A. Yes.

13 Q. And those specific elements of Grid Mod I  
14 were determined through the discussions between  
15 FirstEnergy and Staff prior to October 31, 2018,  
16 correct?

17 MR. LANG: Yeah, objection, your Honor.  
18 At this point I think they are getting into the  
19 specifics of the settlement discussions which  
20 traditionally in these proceedings are not the  
21 subject of cross-examination.

22 EXAMINER PRICE: Can I have the question  
23 back again?

24 (Record read.)

25 MS. FLEISHER: If I may, your Honor?

1 EXAMINER PRICE: You may.

2 MS. FLEISHER: If you care to hear from  
3 me? Your Honor, I think while acknowledging  
4 Mr. Lang's point that the scope of cross on  
5 settlement negotiations is limited, it is allowed,  
6 particularly to explore the first prong of the  
7 stipulation standard as to whether there's been  
8 serious bargaining among capable and knowledgeable  
9 parties. And under Supreme Court precedent in Time  
10 Warner, 75 Ohio St.3d 229, as well as other cases,  
11 one aspect of that examination can go to whether  
12 parties or classes of parties were excluded from  
13 settlement discussions. And that's where this is  
14 headed.

15 EXAMINER PRICE: It's hard for me to  
16 imagine parties or classes of parties were excluded,  
17 looking at the signatory parties, but if you could  
18 just tie your question back to more what's in the  
19 Stipulation, that would be helpful. I don't think it  
20 is appropriate to cross-examine the witness on when  
21 elements of the stip were decided as long as those  
22 were all decided prior to the Stipulation. If you  
23 want to cross-examine about potential differences  
24 between the first stip and supplemental stip, that's  
25 fair. But as far as we're concerned, it all arrived

1 in one package at one time, at least the first stip  
2 for us.

3 MS. FLEISHER: Okay. Certainly, your  
4 Honor. Happy to go in that direction.

5 Q. (By Ms. Fleisher) Mr. Fanelli, did  
6 parties, other than Staff, have input into the scope  
7 and elements of Grid Mod I?

8 A. I think that all parties had input, were  
9 allowed to provide feedback on all aspects of the  
10 Stipulation.

11 Q. Do you recall FirstEnergy representatives  
12 telling parties that the scope and elements of Grid  
13 Mod I could not be changed?

14 MR. LANG: Yeah, objection, your Honor.  
15 That clearly goes to settlement discussions.

16 EXAMINER PRICE: Sustained.

17 Q. (By Ms. Fleisher) Did you change the  
18 scope of Grid Mod I after October 31, 2018?

19 MR. LANG: Just objection. I think more  
20 for clarification. She keeps referring to "Grid Mod  
21 I." Is she asking if the first Stipulation was  
22 changed after it was filed? I am unclear.

23 MS. FLEISHER: Sure. This is what I was  
24 trying to establish up front. When I am referring to  
25 "Grid Mod I," I am referring to the specific

1 investments contemplated in the Original Stipulation  
2 in terms of 700,000 AMI meters, 202 circuits of IVVC,  
3 200 circuits of distribution automation. Does that  
4 clarify for you, Mr. Fanelli?

5 MR. LANG: Right. Just for the, I guess,  
6 for everyone's understanding because Grid Mod I  
7 includes more than just that capital investment, so  
8 you are specifically defining Grid Mod I as the  
9 capital investment that's part of what's in this --  
10 the Grid Mod I that's included in the Stipulation?

11 MS. FLEISHER: Sure. Happy to clarify.  
12 I am referring to both the capital and O&M investment  
13 pieces. But what the money is being spent on, I  
14 guess, if that is a plainer way to put it.

15 MR. LANG: Maybe if we can -- maybe if  
16 the witness can have the question.

17 EXAMINER PRICE: Yes. Can we have the  
18 question back again.

19 MR. LANG: Thank you, your Honor.

20 (Record read.)

21 A. There were modifications in the  
22 Supplemental Stipulation to clarify some of the  
23 dollars in the 516 million amount. There were also  
24 other modifications that addressed operational  
25 savings which are associated with avoided costs to

1 implement the programs that were addressed in the  
2 Supplemental Stipulation.

3 Q. Okay. Putting aside the operational  
4 savings piece for one minute, can you point to the  
5 pieces of the Supplemental Stipulation that you view  
6 as clarifying?

7 A. I was referring to numbered item 11 on  
8 page 7 of the Supplemental Stipulation.

9 Q. Okay. Anything else?

10 A. Paragraph 2 that starts on the bottom of  
11 page 2 of the Supplemental Stipulation and carries  
12 over to the top of page 3.

13 Q. Okay. Anything else?

14 A. Section 3 on page 3 is a modification to  
15 the return on equity that will be included in the  
16 calculation of the costs that are recovered  
17 associated with the 516 million of capital.

18 Q. Anything else?

19 A. Section 8 on the bottom of page 4 of the  
20 Supplemental Stipulation addresses the inclusion of  
21 the net salvage or sale value of the retired meters  
22 through the cost recovery process associated with  
23 Grid Mod I.

24 Q. Anything else?

25 A. Those are the main items that come to



mind related specifically to the capital costs as you've defined Grid Mod I. Though there are other provisions related to the ongoing audit and review of those costs that are contained in the Supplemental Stipulation.

Q. Certainly. And I believe you mentioned you did receive feedback from parties, during the course of settlement discussions, regarding the contemplated spending for Grid Mod I, correct?

MR. LANG: Objection, your Honor.

EXAMINER PRICE: Sustained.

MS. FLEISHER: Your Honor, if I can just -- I am trying to be as candid as I can in my questions, but at the same time I think what we are really trying to get at here is that you can have a party in the room for settlement discussions and still be excluding them if you refuse to listen to anything they say, and the stipulation standard does provide for us to present evidence on whether there was serious bargaining. And so, I'm not asking about what the feedback was. I am not asking about who said what. I am just asking about whether they got feedback about this and whether -- I would like to ask whether they listened to that.

EXAMINER PRICE: I appreciate your

1 concerns. Sustained.

2 MS. FLEISHER: And, your Honor, if I may,  
3 I would like to ask some questions now about the  
4 cost/benefit analysis. I would like to try to keep  
5 it as much in the public record as I could, so if  
6 it's all right with you and the other parties, I  
7 would like to provide Mr. Fanelli and those who  
8 otherwise need the document a copy of the  
9 cost/benefit analysis to refer to as I ask questions  
10 but with the intention of keeping any questions  
11 regarding information that is not confidential.

12 EXAMINER PRICE: We will do our best.

13 MS. FLEISHER: Okay. Thank you, your  
14 Honor. If I may approach, your Honor?

15 EXAMINER PRICE: You may.

16 MS. FLEISHER: And I'm -- this is one of  
17 the -- a portion of one of the stipulated admitted  
18 exhibits, so I am not intending to mark it, but if  
19 anyone would like a copy who is on the protective  
20 agreement, I have some.

21 Q. (By Ms. Fleisher) Mr. Fanelli, you can  
22 put that down. I did want you to have it for  
23 reference if you needed it, but perhaps some of it  
24 you can talk about without it.

25 A. Okay. Thank you.

MS. FLEISHER: And just so the record is clear, I have provided Mr. Fanelli with a printout of portions of what is going to be marked as ELPC Exhibit 23C which is ELPC-RPD-2-2 Attachment 1, Confidential.

Q. And, Mr. Fanelli, this is a portion of the cost/benefit analysis supporting Attachment B to the Stipulation, correct?

A. I haven't had a chance to flip through the entire packet, but I presume it's the detail supporting Exhibit B in the Stipulation based on your characterization.

Q. Sure. Subject to check.

MS. BOJKO: I'm sorry, your Honor, are we marking this as a separate exhibit?

EXAMINER PRICE: No.

MS. FLEISHER: This is a stipulated exhibit, but it's for reference.

MS. BOJKO: It's a stipulated what?

MS. FLEISHER: It's among the exhibits that we agreed to stipulate.

EXAMINER PRICE: Part of the ELPC Exhibit 23.

MS. BOJKO: Okay. Thank you for that clarification.

1 MS. FLEISHER: Sorry, I said that without  
2 the microphone.

3 Q. (By Ms. Fleisher) And the Companies'  
4 cost/benefit analysis includes claimed customer and  
5 societal benefits from the proposed AMI deployment,  
6 correct?

7 A. There are estimated benefits from the AMI  
8 in the cost/benefit analysis, yes.

9 Q. And those projected benefits include a  
10 category related to benefits from customer enrollment  
11 in time-varying rates, correct?

12 A. Yes.

13 Q. And those projected AMI benefits include  
14 a category of benefits related to projected customer  
15 savings from customer energy management, correct?

16 A. Customer energy management is an  
17 estimated benefit associated with the AMI deployment.

18 Q. And in projecting those benefits, you  
19 drew assumptions from certain publicly-available  
20 nonconfidential documents, correct?

21 A. Could I please ask for clarification on  
22 which specific assumptions you are referring to?

23 Q. Sure.

24 A. Thank you.

25 Q. And if we can go into the document, there

1 is a time-varying rates section. And that refers to  
2 assumptions coming from a 2013 SGCC report, correct?

3 EXAMINER PRICE: I'm struggling to figure  
4 out where you are.

5 MS. FLEISHER: Sorry. Second page --

6 EXAMINER PRICE: I am looking at the  
7 back. Thank you.

8 A. The estimated time-varying rate  
9 assumptions were based, in part, on the SGCC report  
10 that you mentioned as a basis, along with other  
11 factors that contributed to the basis for our  
12 assumptions.

13 Q. Okay. And that reference to SGCC 20 --  
14 or 2013 SGCC report, is a 2013 Smart Grid Consumer  
15 Collaborative report entitled "Smart Grid Economic  
16 and Environmental Benefits"; does that ring a bell?

17 A. I'm sorry, I don't have the document in  
18 front of me or memorized the exhibit. "Smart Grid  
19 Consumer Collaborative" is generally how I think of  
20 that report.

21 Q. Sure. And there's also a reference on  
22 that same page to a CEI pilot; is that correct? Do  
23 you see that?

24 A. I see that reference.

25 Q. Okay. And is that a reference to a 2015

1 EPRI report entitled "FirstEnergy's Smart Grid  
2 Investment Grant Consumer Behavior Study"?

3 A. Again, I don't have the exact document in  
4 front of me, but that was generally a reference to a  
5 report from EPRI on the CEI consumer behavior study  
6 pilot.

7 Q. Okay. And you can go to -- sorry, I  
8 don't have page numbers, but if you flip through  
9 about six pages, I think you get to a tab referring  
10 to "Customer Energy Management."

11 A. I'm there.

12 Q. And that shows that you also drew certain  
13 assumptions in calculating customer energy management  
14 benefits from the same CEI pilot document, correct?

15 A. Similar to the time-varying rate benefits  
16 that we just discussed, we are referring to the CEI  
17 pilot results as part of the basis for our estimates  
18 but they were used to inform our best judgment on  
19 what we think a reasonable estimate would be for  
20 these particular benefits, so there were other  
21 considerations as well.

22 Q. Okay. And just to make sure we have  
23 nailed down on the details here, so this document  
24 refers to this CEI pilot as the source of the  
25 assumption for average kilowatt-hours savings from

1 customer energy management, correct?

2 THE WITNESS: I'm sorry. Could I have  
3 the question reread, please?

4 (Record read.)

5 A. Are you on line 6, Ms. Fleisher?

6 Q. I am, yes.

7 A. Thank you for the clarification. The  
8 basis for that particular number on that row, as is  
9 cited there, was the CEI pilot, but, again, we used  
10 that to inform our judgment along with other  
11 considerations in determining the reasonableness of  
12 use of that assumption here for Grid Mod I.

13 Q. And going down to line 12 on that same  
14 page, the CEI pilot is also cited as the source of  
15 your assumption for kilowatt savings per participant,  
16 correct?

17 A. Yes, with the same explanation in  
18 kilowatt savings in your prior question.

19 Q. And going back to that second page with  
20 the time-varying rates benefits, if you look at lines  
21 20 and 26, is it correct that the CEI pilot is cited  
22 as the source of your assumption for average  
23 kilowatt-hours savings for these customer benefits  
24 and kilowatt savings per participant?

25 A. The CEI pilot is referenced as the source

1 for both of those lines. As I said before, we took  
2 that into consideration along with some other  
3 factors.

4 Q. And are you familiar with the actual  
5 details of the CEI pilot, Mr. Fanelli?

6 A. I am generally familiar.

7 Q. Okay. Can you tell me what -- at a high  
8 level, what details you are familiar with, just so I  
9 don't waste time asking you questions?

10 MR. LANG: Objection, your Honor. I  
11 think it's vague and broad in both sense. If she has  
12 something particular that she wants to ask about  
13 other than have the witness spout everything that he  
14 knows about a program, it might be helpful.

15 EXAMINER PRICE: I will allow him to  
16 explain what he knows and what sections he does know  
17 and doesn't know, so overruled.

18 A. I'm familiar with the portions of that  
19 study and that report that were relied upon as the  
20 basis for the assumptions that we discussed.

21 Q. Okay. And is it a fair description to  
22 say that that pilot involved recruiting customers of  
23 the Companies to participate in a program over three  
24 years where they would be provided with either a  
25 programmable communicating thermostat or an in-home



1 display?

2 A. There were components of that pilot that  
3 included programmable controllable thermostats or  
4 in-home displays. The details and the timing around  
5 which those were provided, I would need to review the  
6 report.

7 Q. Okay. And in your cost/benefit analysis,  
8 are there any costs included for programmable  
9 controllable thermostats? I think I got it wrong the  
10 first time.

11 A. The costs included in the cost/benefit  
12 analysis include costs for investments in grid  
13 modernization infrastructure like smart meters,  
14 associated communications equipment and systems and  
15 processes to make data available to customers and  
16 other third-party suppliers. And the expectation is  
17 by investing in those grid modernization investments,  
18 it will allow for innovative products and services,  
19 it would be like the use of a thermostat that you  
20 mentioned to arise organically in the marketplace and  
21 promote customer choice for customers.

22 MS. FLEISHER: Your Honor, I move to  
23 strike as nonresponsive. I asked if a specific type  
24 of cost was included in the cost/benefit analysis.  
25 He gave an answer about the purpose behind Grid Mod I

1 investment.

2 EXAMINER PRICE: Can I have the question  
3 back again, please.

4 (Record read.)

5 EXAMINER PRICE: We are going to deny the  
6 motion to strike but we will warn the witness please  
7 answer the question directly that counsel is asking  
8 you. If you have any additional information,  
9 Mr. Lang will be happy to elicit that on redirect.

10 THE WITNESS: Yes, your Honor.

11 EXAMINER PRICE: This is your only  
12 warning.

13 THE WITNESS: Thank you.

14 MS. FLEISHER: And pursuant to that, your  
15 Honor, I am not sure he did answer the first time,  
16 so.

17 EXAMINER PRICE: You can reask the  
18 question.

19 MS. FLEISHER: Yes.

20 Q. (By Ms. Fleisher) Mr. Fanelli, does the  
21 cost/benefit analysis that the Companies have  
22 provided in this case include costs for programmable  
23 controllable thermostats?

24 A. If you are asking are there dollars  
25 specifically for these devices as part of the package

1 here? No. But, again, I view the costs that  
2 comprise all of Grid Mod I as supporting or enabling  
3 those types of devices.

4 MS. FLEISHER: Your Honor, I move to  
5 strike everything after "No." His counsel is free to  
6 ask him on redirect what he thinks should happen but.

7 EXAMINER PRICE: I am going to deny the  
8 motion to strike. You got your answer.

9 MS. FLEISHER: All right.

10 Q. (By Ms. Fleisher) Mr. Fanelli, does the  
11 cost/benefit analysis the Companies have provided in  
12 this case include any costs for in-home displays or  
13 other home area network devices?

14 A. Not directly for the devices. Similar to  
15 the prior question though, we are enabling the use of  
16 those devices, through the investments that we're  
17 making, customers have the option to connect  
18 qualifying devices through the home area network.

19 Q. Mr. Fanelli, does the cost/benefit  
20 analysis include costs for customer education about  
21 time-varying rates?

22 A. There are costs in the cost/benefit  
23 analysis associated with providing communication  
24 materials to customers during the deployment of AMI.  
25 The specifics of those communication materials have

1 not been finalized.

2 Q. Okay. Are there costs in the  
3 cost/benefit analysis for customer recruitment to  
4 participate in time-varying rates?

5 A. Assuming you are referring to a utility  
6 offer for a time-varying rate for nonshopping  
7 customers, there's a provision in the Stipulation  
8 where the Companies, after consultation with the  
9 collaborative, would file a Standard Service Offer  
10 time-varying rate, and so I would expect the details  
11 around that particular offering to be discussed as  
12 part of that collaborative process.

13 Q. And to ask the question again, are there  
14 costs in this cost/benefit analysis related to  
15 customer recruitment to participate in time-varying  
16 rates?

17 A. There are not because that particular  
18 offering has not been filed yet with the Commission.

19 Q. And that won't be filed for six months  
20 after a decision in this case, correct?

21 A. Correct. Six months -- within six months  
22 of an Opinion and Order in this proceeding.

23 Q. Certainly. Thank you for the  
24 clarification.

25 Mr. Fanelli, are you aware that

1 FirstEnergy proposed to conduct a residential AMI  
2 pilot in its I believe third ESP Case No.  
3 08-935-EL-SSO?

4 MR. LANG: Can I have that question read  
5 back, please?

6 EXAMINER PRICE: You may.

7 (Record read.)

8 EXAMINER PRICE: Can I have the question  
9 again. I think you need to rephrase that question.

10 MS. FLEISHER: Sure.

11 Q. (By Ms. Fleisher) Mr. Fanelli, do you  
12 know if the Companies have ever proposed a  
13 residential AMI time-of-use rate pilot prior to this  
14 case?

15 A. We have a time-varying rate option  
16 available currently in our CEI pilot territory for  
17 residential customers.

18 Q. Okay. Are you aware of such a pilot  
19 being proposed in Case No. 08-935-EL-SSO?

20 MR. LANG: And, your Honors, he may not  
21 know the case number, but if I can -- the Companies  
22 would stipulate that that is the Companies' first ESP  
23 filing.

24 MS. FLEISHER: Apologies. Lost track of  
25 the numbers.

1 EXAMINER PRICE: You will have to answer  
2 so the record is clear. You are stipulating that was  
3 proposed in the first ESP, Mr. Lang?

4 MR. LANG: Stipulating that that case  
5 number is the first ESP.

6 EXAMINER PRICE: I jumped ahead there.  
7 Okay. You do need to answer the question.

8 A. I'm sorry. I don't recall the specific  
9 provision as you've described it in our ESP I case.

10 Q. Certainly.

11 MS. FLEISHER: And, your Honor, if I may  
12 approach to show him a document that may refresh his  
13 memory?

14 EXAMINER PRICE: You may approach.

15 MS. FLEISHER: I will go ahead and mark  
16 this as, at least for identification, as ELPC Exhibit  
17 28.

18 EXAMINER PRICE: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. LANG: And, your Honor, I would note  
21 if she is refreshing recollection, it doesn't need to  
22 be marked. It's simply a question of whether  
23 reviewing the document refreshes his recollection.

24 MS. FLEISHER: Sure. And I am not sure  
25 at this point whether -- I may be offering this so I

1       figured we would mark it in case, but.

2               EXAMINER PRICE:  Let's just mark it just  
3       in case.  I understand what you are saying.

4               MR. LANG:  Yes, your Honor.

5               A.  Sorry, is there a question pending?

6               Q.  No.  Have you had a chance to look at it?

7               A.  I have.

8               Q.  And having looked at that document, are  
9       you familiar with the Companies' having proposed a  
10       residential AMI pilot in their first ESP Case No.  
11       08-935-EL-SSO?

12              A.  The excerpt you provided me, I'm sorry,  
13       is not familiar to me.

14              Q.  Okay.  So is it fair to say you did not  
15       consider any details around that proposal in  
16       preparing the cost/benefit analysis for this case?

17              A.  This particular proposal that you put in  
18       front of me was not taken into consideration in the  
19       development of the cost/benefit analysis to the best  
20       of my knowledge.

21              MS. FLEISHER:  Okay.  And, your Honor, so  
22       this is an excerpt of a filing in the Commission's  
23       docket which I am happy to offer as an exhibit.  It  
24       may be easier just to have your Honors take  
25       administrative notice of the full document which is

1 about 200 pages.

2 EXAMINER PRICE: Well, I don't think I  
3 want to take administrative notice of the entire  
4 200-page document. But is this all of Attachment F?

5 MS. FLEISHER: This is, yes, it's the  
6 cover page for the filing, the cover page for the  
7 actual volume, and the title page of the Application  
8 which is what this is, the Companies' Application,  
9 and then all the attachments to the Application.

10 EXAMINER PRICE: At this point we will  
11 take administrative notice of Attachment F to the  
12 Companies' Application filed in Case No.  
13 08-935-EL-SSO, Volume 1a.

14 MR. LANG: And, your Honors, the  
15 Companies would object simply to the extent that the  
16 request to take administrative notice of this  
17 document, we have established that this document is  
18 not relevant to this proceeding as it's four -- it's  
19 four ESPs ago and, therefore, the Companies believe a  
20 document that's not relevant to this proceeding that  
21 the Commission should not take administrative notice  
22 of it.

23 EXAMINER PRICE: I think that you've  
24 established that he did not take into consideration  
25 this document in forming the Smart Grid application



1 in this case. But it's fair for her to criticize the  
2 Company for failing to take this into consideration,  
3 if she so chooses, in the future. So overruled.

4 Q. (By Ms. Fleisher) And, Mr. Fanelli,  
5 FirstEnergy's Pennsylvania affiliates have done  
6 extensive deployment of advanced metering  
7 infrastructure, correct?

8 A. FirstEnergy Pennsylvania utilities have  
9 deployed smart meters.

10 Q. And your 2016 Grid Modernization Business  
11 Plan filing referred to that AMI deployment as the  
12 source of information that informed your -- the Grid  
13 Modernization Business Plan, correct?

14 A. I'm sorry. Are you referring to a  
15 specific portion of that Application?

16 Q. I can find one if we need it. So on  
17 page 2, I don't know if you have that document in  
18 front of you.

19 A. I do not.

20 Q. Okay. Shoot. I couldn't print it. For  
21 some reason it's too secure but -- well, I guess I  
22 can just use that as the basis for a question without  
23 needing to refer to the document. Is it correct that  
24 in filing the Companies' 2016 Grid Modernization  
25 Business Plan, you incorporated knowledge gained from

1 the utility -- the Pennsylvania utility affiliates  
2 implementation of AMI deployment?

3 A. Generally I think our -- the experience  
4 of our Pennsylvania utilities in deploying smart  
5 meters was a factor, among other factors, that was  
6 taken into consideration in developing the 2016  
7 business plan.

8 Q. And you do offer time-of-use rates to  
9 customers with AMI meters in Pennsylvania, correct?

10 MR. LANG: Your Honor, I just object to  
11 the "you" because -- as being unclear. I know we  
12 certainly have issues with what "FirstEnergy" means  
13 in this proceeding, but we do not know what "you"  
14 means in that question.

15 MS. FLEISHER: Happy to clarify.

16 EXAMINER PRICE: Please.

17 MS. FLEISHER: Fair point.

18 Q. FirstEnergy's Pennsylvania utilities do  
19 offer time-of-use rates to customers with AMI meters,  
20 correct?

21 A. I'm not involved in the Pennsylvania  
22 utilities' rate offerings so I'm not sure.

23 Q. Did you check on whether the Pennsylvania  
24 utilities offer time-of-use rates to their  
25 AMI-metered customers in the course of preparing the

1 Stipulation or the cost/benefit analysis?

2 A. Not that I recall personally and I am not  
3 sure why we would need to.

4 Q. All right. Mr. Fanelli, are you --

5 EXAMINER PRICE: One second. I am going  
6 to strike everything after "and" I think as  
7 unnecessary. So I'm striking it.

8 MS. FLEISHER: Thank you, your Honor.

9 Q. (By Ms. Fleisher) Mr. Fanelli, are you  
10 familiar that FirstEnergy reports information to the  
11 Energy Information Administration on behalf of its  
12 various utilities?

13 A. Generally I am aware of FirstEnergy  
14 information being reported to EIA.

15 MS. FLEISHER: Your Honor, if I may  
16 approach?

17 EXAMINER PRICE: You may.

18 Q. Mr. Fanelli, before you get to that  
19 document, are you aware that FirstEnergy, on behalf  
20 of its various utilities, reports information  
21 regarding advanced metering, demand response, and  
22 dynamic pricing to the Energy Information  
23 Administration?

24 A. I'm not familiar with that particular  
25 report.

1 MS. FLEISHER: And at this point I would  
2 like to represent to your Honors that this  
3 spreadsheet, which is extremely difficult to print  
4 out in a coherent way, represents information drawn  
5 from EIA publicly-available reports from the  
6 utilities' Form 861Ms that are submitted. I provided  
7 the link to the website on the front, and I'd like to  
8 ask for administrative notice of these which provide  
9 information about 2017 deployment levels of AMI for  
10 FirstEnergy's Pennsylvania utilities as well as  
11 customer participation in demand response programs  
12 and dynamic pricing programs for the Pennsylvania  
13 utilities.

14 MR. LANG: And, your Honors, the  
15 Companies would object. There's -- you know, No. 1,  
16 Ms. Fleishman (sic) purports to be able to  
17 authenticate these documents. You know, it looks  
18 like various different spreadsheets printed from  
19 somewhere; some incomplete, some not. And, you know,  
20 so if these were -- if this was, you know, data that  
21 their witness could authenticate and had included as  
22 part of his testimony as being relevant in this  
23 proceeding, then, you know, their witness could have  
24 done that, but it's improper, at this time, for  
25 Ms. Fleishman (sic) to throw some schedules --

1 EXAMINER PRICE: Ms. Fleisher.

2 MR. LANG: I'm sorry. Ms. Fleisher, my  
3 apologies, to throw these schedules in, you know, in  
4 front of a witness and the witness say, you know, he  
5 doesn't have any information. He is not familiar  
6 with those types of information, and then ask the --  
7 ask you to take administrative notice of this  
8 information. It's improper use with this witness.  
9 It's not relevant. You can't even get to a relevance  
10 determination because we don't have anyone to  
11 authenticate to determine what it is.

12 MS. FLEISHER: Your Honor, I note that it  
13 is pretty common practice for the Bench to take  
14 administrative notice of federal government documents  
15 prepared by the Energy Information Administration  
16 such as the AEO, Annual Energy Outlook, and documents  
17 such as these. These are similarly government  
18 documents. They don't require authentication. They  
19 are relevant information about what FirstEnergy may  
20 or may not have considered in formulating the  
21 proposal before your Honors today.

22 EXAMINER PRICE: First, we have talked  
23 about this document, let's mark it so.

24 MS. FLEISHER: Certainly.

25 EXAMINER PRICE: Let's mark this ELPC

1 Exhibit 29.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 EXAMINER PRICE: And then the provenance  
4 of this data, Ms. Fleisher, it indicates this was a  
5 zip file, right?

6 MS. FLEISHER: So --

7 EXAMINER PRICE: I get to ask questions.  
8 Is this a document that you downloaded and, because  
9 of the size, was -- this is -- the document, you go  
10 to the website, because of the size, this is what you  
11 get, or did you go in and put in numbers and do a  
12 search?

13 MS. FLEISHER: This is a downloaded  
14 document. I am happy to provide the landing page  
15 from which you access the zip file. It's a zip file  
16 because there are multiple spreadsheets. So when you  
17 try to download them, it all downloads as one large  
18 zip file that contains the various spreadsheets. I  
19 did -- those spreadsheets contain data regarding  
20 every utility in the United States and its  
21 territories, so I did pull out the specific data for  
22 the FirstEnergy Pennsylvania utilities, endeavoring  
23 to save some paper.

24 And if your Honors would rather take  
25 administrative notice of the full spreadsheet as

1 available on the EIA website, I certainly would not  
2 object to that at all.

3 EXAMINER PRICE: Mr. Lang, care to  
4 respond? She is correct we do take administrative  
5 notices of EIA information quite frequently, although  
6 this is an unusual application of that principle.

7 MR. LANG: I would agree it is an unusual  
8 application. And, again, your Honor, her -- her  
9 question -- you know, her statement was she's seeking  
10 to put this in the record as evidence of what the  
11 Companies may not have considered in preparing their  
12 cost/benefit analysis. If we wanted to do that, we  
13 could, you know, we could spend all day putting  
14 random documents in the record as to things that the  
15 Companies did not consider in preparing their  
16 cost/benefit analysis.

17 What should be relevant for this hearing  
18 today, the Companies believe, is what the Companies  
19 did consider as part of the cost/benefit analysis.  
20 There's been -- you know, there's been no relevance  
21 established for these documents that we believe would  
22 prompt the Commission to take administrative notice  
23 of them for purposes of this proceeding.

24 MS. FLEISHER: Your Honor, I am happy to  
25 address that if you would like me to.

1 EXAMINER PRICE: I think that omissions  
2 or alleged omissions in preparing the cost/benefit  
3 analysis are fair game. We are going to hold off  
4 taking administrative notice because I am not sure  
5 what you want to do with these numbers themselves, so  
6 why don't we -- you proceed with your  
7 cross-examination and we will come back to the  
8 question of whether we are going to take  
9 administrative notice of these numbers.

10 MS. FLEISHER: Okay. We may shortcut to  
11 that because I had not intended knowing that Mr. --  
12 knowing that Mr. Fanelli is not familiar with these  
13 documents, I had not intended to ask him specific  
14 questions about the numbers, merely to be able to  
15 refer to them in briefing to the Commission.

16 And I think it's -- it's in line with  
17 your point about omissions. I think this really goes  
18 to FirstEnergy has, itself, conceded that certain  
19 information from its Pennsylvania AMI is relevant  
20 since they considered it in preparing some of its  
21 filings in these consolidated cases, and so it's  
22 important to have this information in the record to  
23 show where they may be cherry picking.

24 EXAMINER PRICE: But you don't intend to  
25 ask the witness any questions about this information?



1 MS. FLEISHER: If your Honor thinks it's  
2 necessary to demonstrate the relevance, I can. I  
3 don't know how helpful it will be.

4 EXAMINER PRICE: I am not going to tell  
5 you how to do your cross. We'll defer ruling on the  
6 motion for administrative notice for now.

7 MS. FLEISHER: Okay.

8 Q. (By Ms. Fleisher) Mr. Fanelli, do you  
9 know, taking as a hypothetical that the Pennsylvania  
10 utilities do have time-of-use rates, do you know what  
11 the customer enrollment in those rates is?

12 A. I am not in a position to accept the  
13 hypothetical based on my personal knowledge but even  
14 if there was, no, I'm not familiar with the -- the  
15 details of those offerings if they are out there in  
16 Pennsylvania.

17 Q. Okay. And are you aware of whether the  
18 Companies' Pennsylvania utilities offer residential  
19 demand response programs?

20 A. I'm not involved in the Pennsylvania  
21 utilities' DR programs, so I wouldn't have direct  
22 knowledge of that.

23 Q. And the Company -- or FirstEnergy's  
24 Pennsylvania utilities haven't claimed any energy  
25 savings or peak-demand reduction benefits based on

1 the Pennsylvania AMI deployment, correct?

2 EXAMINER PRICE: Can I have the question  
3 back again?

4 (Record read.)

5 EXAMINER PRICE: I'm not sure what you  
6 are asking there. If you could rephrase that for me.

7 MS. FLEISHER: Sure, your Honor.

8 Q. (By Ms. Fleisher) Mr. Fanelli, we've  
9 established that the Companies' cost/benefit analysis  
10 claims certain customer energy savings and  
11 peak-demand reduction benefits from AMI deployment,  
12 correct?

13 A. There are estimated benefits in the  
14 cost/benefit analysis.

15 Q. Okay. The -- are you aware of the  
16 FirstEnergy's Pennsylvania utilities having reported  
17 on any similar benefits for Pennsylvania customers  
18 with AMI meters?

19 MS. ALLEN: Objection.

20 EXAMINER PRICE: To who?

21 MS. FLEISHER: To anybody.

22 EXAMINER PRICE: To anybody.

23 MS. FLEISHER: To anybody.

24 EXAMINER PRICE: Grounds?

25 MS. ALLEN: Relevancy. This is talking

1 about Pennsylvania and they are mandated by statute  
2 to deploy smart meters. There has been no foundation  
3 laid about the capacity market settlements, energy  
4 market settlements, any comparison to the Ohio  
5 structure.

6 MS. FLEISHER: Your Honor, that may go to  
7 the weight if -- of the evidence if IGS or any other  
8 party could establish that there are reasons to  
9 consider Pennsylvania a different case. Obviously,  
10 FirstEnergy has considered it to be relevant to its  
11 cost/benefit analysis in other respects.

12 EXAMINER PRICE: I'll allow the question.  
13 You can answer if you know.

14 THE WITNESS: I'm sorry, could I please  
15 have the question reread, please. Thank you.

16 (Record read.)

17 A. I'm aware, generally, there is tracking  
18 reporting going on associated with the AMI deployment  
19 in Pennsylvania. The details and the specifics  
20 around it, though, I am not familiar with.

21 Q. And for the customer energy management  
22 benefits that you are projecting from the AMI  
23 deployment, are those in addition to benefits from  
24 customer participation in time-varying rates?

25 A. Those estimated benefits are additive.

1           Q.    So you're not assuming that customers  
2   receiving customer energy management benefits are  
3   enrolled in a time-varying rate, correct?

4           A.    Not explicitly, no.  A customer wouldn't  
5   have to participate in a time-varying rate to achieve  
6   customer energy management benefits.

7           Q.    Wouldn't it be double counting to claim  
8   benefits from customer energy management and a  
9   time-varying rate for the same customer?

10          A.    We're not assuming necessarily that they  
11   are the same customers in each of the two benefits;  
12   and even if there was, not necessarily.

13               MS. FLEISHER:  Your Honor, if I may  
14   approach?

15               EXAMINER PRICE:  You may.

16               MS. FLEISHER:  I have ELPC Exhibit 30.

17               EXAMINER PRICE:  It will be so marked.

18               (EXHIBIT MARKED FOR IDENTIFICATION.)

19          Q.    And, Mr. Fanelli, this is the Companies'  
20   response to ELPC Set 1 Interrogatory 15 for which you  
21   are designated as the witness, correct?

22          A.    Yes.

23          Q.    And consistent with this, it's your  
24   position that the Companies' cost recovery for Grid  
25   Mod I may depend on the performance metrics listed in

1 Attachment C to the Stipulation; is that correct?

2 A. Yes.

3 Q. And can you go to Attachment C to the  
4 Stipulation, please.

5 A. I'm there.

6 Q. Okay. And on the second page of  
7 Attachment C, that includes a metric for time-of-use  
8 participation, correct?

9 A. Yes.

10 Q. And if, under that metric, the Companies  
11 achieve no or minimal participation by customers in  
12 time-of-use rates, that wouldn't negatively impact  
13 your cost recovery, would it?

14 A. Could you please help me understand what  
15 you mean by "negatively impact cost recovery"?

16 Q. Would you be able to recover -- would you  
17 not be able to recover some of your costs based on  
18 the outcome of that metric?

19 A. The linkage between Attachment C and cost  
20 recovery that we were referencing in the response to  
21 ELPC Set 1 INT-15 is with respect to the operational  
22 savings. Under the Stipulation, there is allowance  
23 for a third party to come in and do a review midway  
24 through the deployment and, as part of that review,  
25 can modify the amount of deemed operational savings

1 that are passed through the recovery mechanism.

2 So, in general, to the extent that that  
3 third-party review would be based on, in part, by the  
4 performance we had reported on these metrics would  
5 determine that there would be a change in the deemed  
6 value of operational savings, then that is what would  
7 impact the Companies' cost recovery.

8 Q. Okay. And are any of the data access and  
9 utilization metrics on page 2, going on to page 3 of  
10 Attachment C, are any of those part of that  
11 operational savings assessment?

12 A. None of those were called out explicitly  
13 in the assumptions for the cost/benefit analysis. I  
14 think that determination would be made at the time of  
15 the midterm review.

16 Q. Would it be the Companies' position that  
17 the independent auditor could recommend lowering the  
18 Companies' cost recovery based on their performance  
19 on these data access and utilization methods?

20 A. I think issues specific to cost recovery  
21 would be contemplated in the annual Rider AMI audit  
22 process that's described in the Stipulation.

23 Q. Sorry. Was that a yes or a no?

24 MR. LANG: Your Honors, it might help if  
25 we could have the original question read back.

EXAMINER PRICE: Let's have the question back, please, the previous question, not this question.

(Record read.)

A. I think that would be determined in the context of the annual Rider AMI audit.

EXAMINER PRICE: The Companies' position won't be decided in the audit. Answer the question more directly. Yes or no.

A. I think it could be contemplated at the time of the annual Rider AMI audit.

Q. I guess I want to make sure the record is clear. I am not sure you are, in fact, answering my specific question.

A. I'm sorry if I haven't.

Q. No, that's okay. I will reask it. It's been a long tenure. Is it the Companies' position under this Stipulation if approved, the Commission could order a reduction in cost recovery based on the Companies' performance on the data access and utilization metrics?

A. The Companies' position is that the annual cost recovery audit for Rider AMI would be conducted -- conducted pursuant to the process outlined in the Stipulation. And to the extent the

1 items that you are mentioning are addressed in the  
2 context of that audit, we would review the  
3 information that's presented in the context of the  
4 audit and take the appropriate position at that time.

5 Q. Does the Stipulation allow the Commission  
6 to order reduction in the Companies' cost recovery  
7 based on your performance on the data access and  
8 utilization metrics?

9 A. There's not an explicit provision in the  
10 Stipulation that addresses that.

11 Q. Would --

12 EXAMINER PRICE: So your answer is no?  
13 Or is your answer yes?

14 THE WITNESS: If the question is, is  
15 there a provision in the Stipulation that explicitly  
16 states that cost recovery is dependent upon those  
17 specific metrics that you mentioned, the answer is  
18 no.

19 Q. (By Ms. Fleisher) And there's no  
20 performance metric in Attachment C for customer  
21 energy savings from AMI meters, correct?

22 A. I don't believe there is an explicit  
23 metric in Attachment C associated with those energy  
24 savings, but as noted in the Stipulation, we would  
25 count the savings -- energy-efficiency savings from



1 the Grid Mod I work as part of our energy-efficiency  
2 savings. So there would be monitoring management and  
3 tracking that goes on in that context.

4 Q. And the Stipulation doesn't allow the  
5 Commission to reduce the Companies' cost recovery if  
6 customers don't achieve the projected AMI benefits in  
7 the cost/benefit analysis, correct?

8 MR. LANG: Objection, your Honor.

9 EXAMINER PRICE: Grounds?

10 MR. LANG: To the extent, at this point,  
11 it is talking about what the Stipulation allows the  
12 Commission to do. And I believe that calls for a  
13 legal conclusion rather than simply asking for the  
14 witness's view of the Stipulation.

15 EXAMINER PRICE: He's sponsoring the  
16 Stipulation. Overruled.

17 THE WITNESS: I'm sorry. Could I have  
18 the question reread, please?

19 (Record read.)

20 A. While there's not an explicit direct  
21 linkage noted in the Stipulation between cost  
22 recovery and achievement of those benefits, I think  
23 there is a very robust audit process that's outlined  
24 in the Stipulation; so matters can be raised in the  
25 context of that annual cost recovery audit.

1           Q.    If the Commission ordered a reduction in  
2   the Companies' cost recovery based on the failure of  
3   customers to realize the benefits in the cost/benefit  
4   analysis, would the Companies' accede to that order?

5           MR. LANG:  Objection, your Honor.

6           MS. FLEISHER:  I can rephrase.

7           EXAMINER PRICE:  I think you should  
8   rephrase that question.

9           MS. FLEISHER:  Okay.

10          Q.    (By Ms. Fleisher) Is it the Companies'  
11   view that the Stipulation allows the Commission to  
12   reduce cost recovery for Grid Mod I based on  
13   achievement of the benefits projected in the  
14   cost/benefit analysis?

15          A.    There's not a provision in the  
16   Stipulation that allows that.

17          EXAMINER PRICE:  So your answer would be  
18   no, the Commission cannot order a reduction in cost  
19   recovery.

20          THE WITNESS:  The reason I'm struggling a  
21   little bit is because we can't control what goes on  
22   in the context of that annual audit, so I'm not sure  
23   I can say for sure what the Companies' position would  
24   be if a recommendation is made in the audit in this  
25   regard.

EXAMINER PRICE: I think Ms. Fleisher's muddying the waters of the Companies' position. Does the Stipulation provide the Commission can reduce the Companies' cost recovery if the Company does not meet the projected cost benefits of -- the projected benefits contained in the cost/benefit analysis?

THE WITNESS: There's not a direct linkage between the achievement of the estimated benefits in the cost/benefit analysis and the Company -- and the cost/benefit analysis itself.

EXAMINER PRICE: So the answer is no.

THE WITNESS: The answer is no, the Stipulation does not contain that provision.

EXAMINER PRICE: Thank you.

Q. (By Ms. Fleisher) Mr. Fanelli, can you look at page 3 of the Supplemental Stipulation.

A. I'm there.

Q. And are you familiar with -- I would hope you're familiar with Paragraph No. 4 referring to a review by the Commission for whether costs were prudently incurred or were not used and useful? Do you see that?

A. I'm familiar with Provision 4, yes.

Q. Okay. And as a sponsor of the Stipulation, does the Commission's review of the Grid

1 Mod I costs for -- under the used and useful standard  
2 or prudence standard, include an evaluation of  
3 whether the Companies have achieved the benefits  
4 projected in the cost/benefit analysis?

5 A. If that determination will be made by the  
6 auditor, generally from the Companies' view, just  
7 because you may have performance that is different  
8 than what was estimated in the cost/benefit analysis,  
9 doesn't necessarily mean the investments were not  
10 prudently incurred.

11 Q. So the -- that could be included in the  
12 review whether the Companies had attained the  
13 benefits from the cost/benefit analysis?

14 A. In the Companies' view, I don't think the  
15 performance against the estimated benefits in the  
16 cost/benefit analysis has a direct relation to the  
17 prudently-incurred standard here. Ultimately,  
18 though, it would be up to the auditor to review what  
19 they think makes sense in the context of this audit.

20 Q. Can you go to pages -- page 17 of the  
21 Stipulation.

22 A. I'm there.

23 Q. Thank you. And on the bottom of page 17,  
24 going on to the top of 18, it -- the Stipulation  
25 provides conditions under which the Companies, with

1 Commission approval, will withdraw their SSO  
2 time-of-use rate on, correct?

3 A. With Commission approval, yes.

4 Q. And looking at Condition (a) relating to  
5 products utilizing AMI data, could that condition be  
6 triggered if three competitive suppliers offered  
7 fixed-rate products that are charged based on AMI  
8 data?

9 A. I think that determination would be made  
10 by the Commission.

11 Q. The Stipulation doesn't preclude it,  
12 correct?

13 A. There's no language in the Stipulation  
14 that explicitly addresses that one way or the other.  
15 I think the determination would be made by the  
16 Commission at the appropriate time.

17 Q. And the Stipulation doesn't provide that  
18 any particular number of customers must have signed  
19 up for a competitive supplier rate offering, correct?

20 A. I'm sorry, Ms. Fleisher, are you still at  
21 the top of page 18?

22 Q. Yes. My apologies.

23 A. That's okay.

24 Q. I can just reask that question to keep  
25 things from getting confused.

1           To trigger that Condition (a) regarding  
2   three suppliers offering products utilizing AMI data,  
3   nothing in this Stipulation precludes that condition  
4   from being triggered if three customers have signed  
5   up for those products, correct?

6           A.   There's not an explicit reference to  
7   number of customers in this provision. I think the  
8   intention is that we would meet collaboratively, as  
9   noted in the next section on page 18, submit a report  
10   to Staff, based on that collaborative discussion, the  
11   details, the types of offers we think reasonably may  
12   be available. I would expect that would influence  
13   the final determination as to whether the condition  
14   has been met.

15          Q.   And a competitive supplier offer of free  
16   weekends of electricity would qualify as a product  
17   utilizing AMI data, correct?

18          A.   Again, in this context, I think that  
19   determination would be made by the Commission.

20          Q.   Your cost -- sorry. The Companies'  
21   cost/benefit analysis does not include any projected  
22   customer savings based on fixed-rate products using  
23   AMI data, correct?

24          A.   I am a sorry, I am not sure what you mean  
25   "fixed rate."

1           Q.    A fixed-per-kilowatt-hour rate, like the  
2           current Standard Service Offer rate, for example.

3           A.    I don't think that's true. Within the  
4           customer energy management benefit, even if a  
5           customer is on a fixed price, by utilizing the  
6           additional data that's available to them through the  
7           customer portal and the communication materials that  
8           are provided through the AMI deployment, they may  
9           have more information at their fingertips and be more  
10          inclined to better manage their usage even under a  
11          fixed-pricing setup.

12          Q.    Do you know whether the customers in the  
13          CEI pilot that we've referred to is the basis for the  
14          customer energy management benefits, do you know  
15          whether those customers were on a fixed rate or a  
16          time-varying rate?

17               MR. LANG:  Objection, your Honor, as to  
18          the -- objection to the form of the question.

19               EXAMINER PRICE:  Go ahead and rephrase  
20          the question, please.

21               MS. FLEISHER:  Sure.

22          Q.    (By Ms. Fleisher) We've agreed we've  
23          established that the customer energy management  
24          benefits in the cost/benefit analysis include  
25          assumptions based on the CEI pilot?

1           A.    In part, in conjunction with other  
2 factors that were taken into consideration.

3           Q.    Do you know whether any of the CEI pilot  
4 participants were on a fixed kilowatt-hour rate?

5           A.    At the time that particular study was  
6 conducted, I believe some participating customers  
7 were offered a peak time rebate.

8           MS. FLEISHER: One moment, your Honor. I  
9 may be at the end. Your Honor, I am done with my  
10 public questions. I have a few confidential.

11           EXAMINER PRICE: Okay. Let's go off the  
12 record.

13                   (Discussion off the record.)

14           EXAMINER PRICE: Let's go back on the  
15 record. Mr. Royer.

16           MR. ROYER: Thank you, your Honor.

17                                 - - -

18                                 CROSS-EXAMINATION

19 By Mr. Royer:

20           Q.    Let's start with your supplemental  
21 testimony in support of the Stipulation. And at  
22 pages 4 and 5, you describe some benefits to  
23 customers that result from the additional provisions  
24 that have been added to the Stipulation via the  
25 Supplemental Stipulation.



1 MR. LANG: Your Honor, could we have  
2 Mr. Royer use a microphone?

3 MR. ROYER: Oh, I'm sorry.

4 EXAMINER PRICE: Do you need the question  
5 back?

6 THE WITNESS: Yes, please. Thank you.

7 EXAMINER PRICE: Read the question back.

8 (Record read.)

9 A. Correct.

10 Q. Sorry. Now I am looking at the wrong  
11 testimony. I am looking for your supplemental  
12 testimony. Okay. Here we go.

13 Okay. And one of the -- at the top of  
14 page 5, one of the benefits you cite is that it --  
15 the Stipulation contains a prohibition against the  
16 inclusion of any costs for distributed energy  
17 resources services located on the customer's side of  
18 the meter, correct?

19 A. Yes, the Supplemental Stipulation  
20 clarifies that there's no costs for distributed  
21 energy resources on the customer side of the meter as  
22 part of the Grid Mod I portfolio.

23 Q. And why is that a benefit?

24 A. It's a benefit here in this context  
25 because no additional costs were added from the

1 Original Stipulation to the Supplemental Stipulation.

2 Q. So that's a net benefit between the two  
3 Stipulations -- between the two versions?

4 A. It's a benefit in that the costs didn't  
5 go up and also further clarification as to what is  
6 included in the costs.

7 Q. Okay. When you use the term here  
8 "distributed energy resources services," are you  
9 defining that -- are you using the NARUC definition  
10 of that term that's in the PowerForward Roadmap?  
11 Well, let me try it this way. Does that -- okay. So  
12 a -- that includes distributed generation, correct?

13 A. It includes things like solar panels.

14 Q. Right. Distributed generation. Does it  
15 also include -- does it also include demand-side  
16 resources? Demand-side management resources?

17 A. Could you maybe help clarify that for me  
18 or give an example of what you mean there?

19 Q. Well, would it include customer-owned  
20 enabling technologies?

21 A. The cost of customer-owned enabling  
22 technologies, if any, would not be included in the  
23 516 million.

24 Q. Okay. And so, however, does it -- does  
25 it include -- does it prohibit the offering of

1 incentives to encourage customers to employ  
2 demand-side management technologies?

3 A. If by "incentive" you are referring to  
4 something like a rebate, there aren't any dollars in  
5 Grid Mod I for that type of activity.

6 Q. I understand that. But is there a --  
7 does this preclude the offering of a rebate? Or as  
8 an incentive?

9 A. No. In the context of the spend for Grid  
10 Mod I and associated cost recovery, yes, I think it  
11 would preclude that.

12 Q. So there is no dollars -- there is no  
13 dollars in there for the incentive, correct?

14 MR. LANG: Objection, your Honor, to  
15 the -- just the form of the question. That's vague.

16 Q. All right. So there -- there are no  
17 dollars -- try it again.

18 There are no dollars in the plan for --  
19 to incentivize customers to install demand-side  
20 energy-savings devices and also you believe that the  
21 plan itself, because of this provision, would  
22 preclude offering such a rebate, correct?

23 MR. LANG: Objection, compound, form.

24 EXAMINER PRICE: Overruled.

25 A. There are dollars in the Grid Mod I

1 budget of 516 million that go towards the Companies  
2 making investments in grid modernization  
3 infrastructure like smart meters and the associated  
4 data access capabilities. And by installing that  
5 infrastructure, the expectation is that will  
6 facilitate or enable innovative products and services  
7 like the types that you're -- that I understand to be  
8 in the question, to sort of rise organically in the  
9 marketplace and promote customer choice. And so,  
10 from that perspective, I think there are costs in  
11 here that help support or promote the use of those  
12 devices. The question is specifically is there  
13 dollars in the 516 million for rebates provided by  
14 the Company for those types of activities, no.

15 Q. And does this provision preclude the  
16 Commission from authorizing such -- or requiring the  
17 Company to offer such -- some sort of rebate program?

18 A. I think historically for us the costs of  
19 rebates for DR programs like that were handled in our  
20 energy efficiency portfolio plan cases, but  
21 ultimately it would be up to the Commission to  
22 decide. I am not in a position to speak for the  
23 Commission.

24 Q. Right. And the Stipulation can't bind  
25 the Commission in any event, can it?

1 MR. LANG: Objection, your Honor.

2 EXAMINER PRICE: Grounds?

3 MR. LANG: He is asking for the legal  
4 impact of the Stipulation on the Commission.

5 EXAMINER PRICE: Fair enough.

6 MR. ROYER: I'll withdraw it.

7 Q. (By Mr. Royer) Are you aware that the  
8 PowerForward Roadmap suggests, at page 31, that the  
9 proposal may also include a rebate program for  
10 enabling technologies, e.g., smart thermostats, which  
11 can be paired with time-of-use rates offered through  
12 the SSO or through CRES provider offerings that  
13 utilize time-based pricing?

14 A. I'm sorry. I don't have a copy of the  
15 PowerForward Roadmap in front of me.

16 Q. I have the excerpt. And I am assuming we  
17 can take -- the Commission will take administrative  
18 notice of that document.

19 EXAMINER PRICE: We certainly will.

20 MR. LANG: No objection, your Honor.

21 Q. Page 31. That's in the left column about  
22 halfway down.

23 A. Thank you for the document, Mr. Royer.  
24 I'm sorry, could you please provide me the reference  
25 that you were --

1           Q.    Yes.  I'm looking at -- in the first full  
2 paragraph on the left-hand column almost halfway down  
3 the sentence -- I'm sorry.

4                    Yes, first full paragraph, left-hand  
5 column, the last sentence in that paragraph.

6           A.    I see that reference.

7           Q.    Okay.  Did you give any consideration to  
8 offering such a program during the -- during the  
9 settlement discussions?

10           A.    I think the Stipulation explicitly does  
11 address this and includes a provision that the  
12 Companies would work with the Grid Mod collaborative  
13 group, first, and then propose a time-varying rate  
14 that -- for nonshopping customers that should  
15 leverage enabling device.

16           Q.    But that doesn't address my question  
17 which was, was it discussed whether rebate incentives  
18 should be included per the Commission's suggestion in  
19 the PowerForward Roadmap?

20                   MR. LANG:  Objection, your Honor.  It's  
21 argumentative and he's mischaracterizing the roadmap.

22                   EXAMINER PRICE:  Sustained.

23           Q.    (By Mr. Royer) The Company does offer --  
24 first of all, let's start with this, so do you have  
25 any -- you do not doubt, do you, that thermostats

1 produce energy savings and can -- and can reduce peak  
2 demand?

3 A. I haven't personally conducted any  
4 analysis of that.

5 Q. Well, the Company believes it, don't  
6 they?

7 A. The Companies have smart thermostat  
8 offerings in their energy efficiency portfolio plan.

9 Q. And, in fact, the Companies, in their  
10 Energy Save Ohio website, have a -- I'm sorry, have a  
11 page devoted to smart thermostats, do they not?

12 MR. ROYER: May I approach the witness?

13 EXAMINER PRICE: You may.

14 THE WITNESS: Thank you.

15 MR. ROYER: I would like to have this  
16 three-page document -- yes, a three-page document  
17 titled -- the front page of which is headed "Smart  
18 Thermostats," marked as STC Exhibit 1.

19 EXAMINER PRICE: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. (By Mr. Royer) Now, and I'll represent to  
22 you this is the text from the smart thermostat tab in  
23 FirstEnergy -- I'm sorry, from the FirstEnergy Ohio  
24 Energy Save Ohio website. Are you familiar with  
25 this -- with that website?

1           A.    I'm generally familiar with Energy Save  
2   Ohio.

3           Q.    Okay.  And, for example -- and first, I  
4   apologize, your Honor.  This is -- I tried to do this  
5   with a screenshot so it would be what it actually  
6   shows.  This is sort of a printer-friendly version  
7   but all the information is included.  I'll warrant  
8   that anyway.

9                        So looking at the last paragraph on the  
10   first page, the Company has indicated that based on  
11   typical energy costs, the smart thermostat can  
12   provide savings of 131 to 145 dollars per year.  Do  
13   you see that?

14                   MR. LANG:  Objection, your Honor.

15                   EXAMINER PRICE:  Grounds?

16                   MR. LANG:  Perhaps we're missing a step.  
17   He's saying that that's what the Companies  
18   represented.  I think we're missing the step where he  
19   ties this to a -- this website to a Company  
20   representation.  I'm not saying it's wrong.  He just  
21   hasn't done it.

22           Q.    Well, if you will look at the bottom of  
23   the page in the footer, does that appear to be the  
24   Energy Save Ohio website that's maintained by  
25   FirstEnergy?



1           A.    It appears to be the web address for  
2   Energy Save Ohio.

3           Q.    Okay.  You don't have any doubts that  
4   this is -- that this is the FirstEnergy Ohio -- a  
5   FirstEnergy Ohio position?

6           A.    I'm sorry, could you clarify what you  
7   mean by "position," please?

8           Q.    Well, FirstEnergy -- through this website  
9   and specifically from this page, FirstEnergy is  
10   advising customers of the advantages of smart  
11   thermostats in terms of delivering energy savings; is  
12   that correct?

13          A.    There's a section here on this -- in this  
14   excerpt, "Smart Thermostats Deliver Energy Savings  
15   with Added Convenience and Control."

16          Q.    And then at the bottom of that page, it  
17   goes on to state that the smart thermostat can  
18   provide savings of 131 to 145 dollars per year; is  
19   that correct?

20          A.    I see that reference.

21          Q.    Okay.  And, of course, this is without --  
22   since this is currently on the website, this is  
23   without AMI, correct?

24          A.    I wasn't involved in the development of  
25   the numbers here that are in this excerpt.

1 Generally, though, other than the pilot area that we  
2 have in CEI, the FirstEnergy Ohio operating companies  
3 don't have deployment of AMI at this time.

4 Q. And by the same token, subject to that  
5 same possible exception, there -- this -- this --  
6 this does not assume time-of-use rates either, does  
7 it?

8 A. I don't know that it does or it doesn't.

9 Q. You don't have time-of-use rates now,  
10 correct? Except for the narrow exception you were  
11 talking about earlier with Ms. Fleisher?

12 A. For residential customers, we only have  
13 the time-of-use rate that's available in our CEI  
14 pilot territory.

15 Q. Right. But this is -- this is available  
16 to all customers of the Companies, correct?

17 MR. LANG: Objection again to form, your  
18 Honor.

19 Q. The website is available to all customers  
20 of the Companies, correct?

21 A. I would expect customers that have access  
22 to the internet would be able to view the website.

23 Q. Okay. And the Company wouldn't knowingly  
24 misrepresent this, would they?

25 MR. LANG: Objection, your Honor. Again,

1 he still hasn't established with Mr. Fanelli that  
2 these are Company representations.

3 MR. ROYER: I thought we did all that  
4 when I asked him to look at the footer at the bottom  
5 of the page. I thought we were past that point.

6 EXAMINER PRICE: He can't verify a  
7 footer. The question is -- he said you asked him if  
8 he was generally familiar with the Energy Save Ohio  
9 website and he said yes. The question is, is he  
10 specifically familiar with this page. Mr. Fanelli,  
11 are you familiar with this specific page?

12 THE WITNESS: I am not. I have not  
13 personally viewed this page. It does not look  
14 familiar to me.

15 EXAMINER PRICE: Are you familiar with  
16 the \$131 to \$145 savings that is represented on this  
17 page?

18 THE WITNESS: I'm not. I was not  
19 involved in the development of those estimates.

20 MR. ROYER: My turn?

21 Q. (By Mr. Royer) Do you have any reason to  
22 believe that this -- that this number is misleading  
23 in any way?

24 MR. LANG: Objection, your Honor,  
25 relevance.

1 MR. ROYER: The relevance is there is  
2 significant shavings to be had from a program that  
3 was apparently never considered.

4 EXAMINER PRICE: Sustained.

5 MR. ROYER: I'm sorry?

6 EXAMINER PRICE: His objection was  
7 sustained.

8 MR. ROYER: May I approach?

9 EXAMINER PRICE: You may.

10 MR. ROYER: I am going to hand the  
11 witness another three-page document, unless it is a  
12 two-page document. Another three-page document I  
13 would ask to be marked as STC Exhibit 2.

14 EXAMINER PRICE: It will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Mr. Royer) And I'll represent to you  
17 this is from the same website we've just been  
18 discussing, the Energy Save Ohio website, and this is  
19 under the HVAC program page. Are you familiar with  
20 this website? Or with this web page?

21 A. I'm generally familiar with Energy Save  
22 Ohio.

23 EXAMINER PRICE: That's not what he  
24 asked. He asked are you familiar with this page.

25 THE WITNESS: I was not involved in the

1 developing of any of the information on this page.

2 Q. All right. Does this -- does this page  
3 appear to suggest that the Companies provide  
4 customers with a \$50 rebate on tune-up of heating and  
5 cooling equipment?

6 MR. LANG: Objection, your Honor.  
7 Foundation.

8 EXAMINER PRICE: Sustained.

9 Q. Do you know if -- if the Companies  
10 provide customers options -- the opportunities to  
11 receive a \$50 rebate on tune-up and heating --  
12 tune-up of heating and cooling equipment?

13 A. I see that reference here on page 2 that  
14 you handed me.

15 EXAMINER PRICE: That's not what he  
16 asked. He asked are you familiar.

17 A. I'm generally aware that our Companies  
18 have HVAC-related maintenance programs as part of  
19 their energy-efficiency efforts. I'm not familiar  
20 with the specific details that are here.

21 Q. Okay. And do you have a -- any  
22 understanding or -- as to why the Companies would  
23 offer this program?

24 A. Generally I would expect a program like  
25 this would help the Companies achieve their

1 energy-efficiency targets as part of their portfolio  
2 plans.

3 Q. And to that end, who pays for -- who pays  
4 for the costs of these programs ultimately?

5 MR. LANG: Objection, your Honor. At  
6 this point relevance.

7 MR. ROYER: May I be heard?

8 EXAMINER PRICE: Yes.

9 MR. ROYER: As I understand it, the  
10 benefit of the Supplemental Stipulation is the  
11 customers now don't have to pay for -- for  
12 demand-side -- demand-side resources -- energy  
13 resources because the Stipulation prohibits it from  
14 being recovered through the Grid Mod plan.

15 Now, I am entitled to explore whether to  
16 further the interest of energy efficiency, the  
17 Company does, in fact, routinely offer other options  
18 to customers that customers generally pay for, even  
19 though they may not be the specific beneficiary of  
20 the savings. Isn't that what the energy efficiency  
21 plan is intended to do?

22 EXAMINER PRICE: Don't ask another  
23 question. I haven't ruled on the objection yet. I'm  
24 not sure if I understand. You are saying because the  
25 Companies offer statutorily-mandated energy

1 efficiency programs, they can't also offer a Smart  
2 Grid program?

3 MR. ROYER: No. I am saying if the  
4 rationale for rejecting the Smart Grid program is  
5 because -- and leaving it to the marketplace is  
6 because they think individual customers should pay  
7 for it, I am trying to point out that in other  
8 contexts they don't have any problems with customers  
9 paying generally for -- for energy-efficiency  
10 measures that actually only benefit the customer in  
11 question.

12 MS. FLEISHER: Your Honor, if I can add,  
13 I believe Mr. Fanelli referred to technologies like  
14 smart thermostats being funded through the Companies'  
15 energy efficiency programs and he put that at issue.

16 EXAMINER PRICE: I don't know that he put  
17 it at issue. I am still not sure I understand what  
18 the issue is, but we'll give Mr. Royer a little  
19 leeway.

20 Q. (By Mr. Royer) Do you remember the  
21 question? I may not.

22 A. If there is, could it please be reread?

23 EXAMINER PRICE: Let's have the question  
24 over again.

25 (Record read.)

1           A.    And by "these programs," Mr. Royer, you  
2   are referring to --

3           Q.    The programs the Company enters into to  
4   satisfy its energy savings mandate.

5           A.    The Companies have a separate recovery  
6   mechanism for costs associated with complying with  
7   the energy efficiency mandates that are charged to  
8   the customers that don't opt out.

9           Q.    Right. And that's -- those are customers  
10   generally, right? Not just the beneficiary of the  
11   HVAC tune-up.

12          A.    The costs are spread across the customers  
13   that are not opting out of the energy efficiency  
14   programs.

15          Q.    Now, with respect to the smart  
16   thermostats themselves, do customers involved in any  
17   incentive programs have to do with the sale of smart  
18   thermostats by retailers?

19               EXAMINER PRICE: Can I have that question  
20   back again?

21               (Record read.)

22               MR. ROYER: I'm sorry, I meant Companies.

23          Q.    Do Companies -- do the Companies offer  
24   any incentives to retailers in connection with the  
25   sale of smart thermostats?



1           A.    As part of their current energy  
2 efficiency plan, there are offerings of incentives  
3 for smart thermostats.

4           Q.    Okay.  And -- and do you know any of the  
5 specifics of that plan?  Of that program?

6           A.    There are two separate offerings.  I  
7 don't know the -- depending on what you mean by the  
8 details of the specifics, I am not sure I would know.

9           Q.    Okay.  Do you know if it -- do you know  
10 if it entails a rebate offer to the certain big box  
11 retailers in connection with achieving certain sales  
12 goals for smart thermostats?

13          A.    I am not sure about the last piece of  
14 what you said regarding the sales.  I am generally  
15 aware there is an arrangement between the utility and  
16 certain retailers of the devices.

17          Q.    The retailers would be Lowe's, Home  
18 Depot, and Best Buy; is that correct?

19          A.    I don't know specifically who the  
20 retailers are that are parties to the particular  
21 offerings.

22          Q.    It's not offered to all retailers  
23 generally, correct?  If you know.

24          A.    I'm sorry, I don't know.  I think I have  
25 gotten to the point where I have provided as much

1 information as I know on that particular topic.

2 Q. All right. And you said there were -- I  
3 believe you said you thought there were two programs.  
4 Do any of those programs provide any benefit in terms  
5 of savings directly to customers?

6 A. For all the programs in our energy  
7 efficiency portfolio plan we would try to quantify  
8 the estimated energy savings.

9 Q. Okay. And so the -- and so that rebate,  
10 it would be logical to assume then that the rebate  
11 would -- would count in achieving the energy  
12 efficiency -- mandatory energy efficiency goals,  
13 right?

14 A. In general, I think if we have an  
15 approved offering or program as part of our portfolio  
16 plan, we can track and count the savings achieved  
17 from those programs to comply with our mandates.

18 Q. Okay. And, again, that would --  
19 ultimately that would be funded by customers  
20 generally, correct?

21 A. The costs in our energy -- of our energy  
22 efficiency programs would be recovered through the  
23 energy efficiency recovery mechanism that we  
24 discussed earlier.

25 Q. Okay. Now, the Companies also, through

1     their market -- smart -- Smartmart marketplace  
2     website offers to provide smart thermostats to  
3     customers, do they not?

4             MR. LANG:  Objection, your Honor.

5             EXAMINER PRICE:  Grounds?

6             MR. LANG:  Relevance, the fact that the  
7     Company sells smart thermostats.  I think we're far  
8     from -- far from Grid Mod I and far from the  
9     Stipulation.

10            EXAMINER PRICE:  At a minimum, we don't  
11    have much of a foundation because I don't have any  
12    idea what he is talking about so.

13            MR. ROYER:  All right.  May I approach?

14            EXAMINER PRICE:  You can -- go ahead.  
15    You may.

16            MR. ROYER:  This is a two-page document,  
17    I would like to have marked as STC Exhibit 3.

18            EXAMINER PRICE:  So marked.

19            (EXHIBIT MARKED FOR IDENTIFICATION.)

20            Q.     (By Mr. Royer) Okay.  Let's back up just  
21    a second.  What is the Smartmart website?

22            A.     My general understanding is the Smartmart  
23    website provides offers of various products that can  
24    be purchased.

25            Q.     And, of course, those are -- that's a

1 nonregulated offering, correct?

2 MR. LANG: Objection, your Honor.

3 EXAMINER PRICE: Grounds?

4 MR. LANG: Relevance and potentially  
5 calling for a legal conclusion. I am not really sure  
6 what he is trying to get to.

7 Q. (By Mr. Royer) Well, you don't come to  
8 the Commission to have your rates set for the  
9 Smartmart website, correct?

10 EXAMINER PRICE: First of all, we haven't  
11 established that the Companies are running the  
12 Smartmart website.

13 MR. ROYER: All right.

14 Q. (By Mr. Royer) Would you turn to page 2  
15 of the exhibit. And would you look at the disclaimer  
16 that appears in the center of that page. So this is  
17 a FirstEnergy website based on that information?

18 MR. LANG: And, your Honor, first, the  
19 question is does this witness have that information,  
20 have that knowledge, his personal knowledge, not just  
21 from a document that Mr. Royer is showing him. Does  
22 the witness have that personal knowledge. And then  
23 even if he does, is it relevant that -- that smart  
24 thermostats are sold in the marketplace? I think the  
25 Companies would stipulate that smart thermostats are

1 sold in -- by, you know, many different people. You  
2 can get -- you can purchase them on Amazon. What  
3 does that have to do with this case?

4 EXAMINER PRICE: Mr. Royer, care to  
5 respond to that?

6 MR. ROYER: Sure. FirstEnergy will sell  
7 you -- or will provide you with a smart thermostat  
8 for \$14.99 a month. Okay? And that includes  
9 installation if you will read through the web -- the  
10 cost of installation. It's effectively a lease. It  
11 comes out to just cents short of \$180 per year.

12 However, in their -- in the -- their web  
13 page, where they are explaining the benefits of smart  
14 thermostats to customers, they cite savings of \$131  
15 to \$145 a year. So it's in FirstEnergy's interest to  
16 sell these thermostats since customers are paying  
17 more for these thermostats under this plan than for  
18 the savings.

19 I am just trying to point out that there  
20 are other ways to -- to deploy smart thermostats that  
21 would actually provide benefits to customers as  
22 opposed to a detriment which is what they did under  
23 this program.

24 EXAMINER PRICE: When you say "this  
25 program," are you talking about the Smartmart or are

1 you talking about the Application?

2 MR. ROYER: I am talking about the  
3 Smartmart --

4 EXAMINER PRICE: Sustained.

5 MR. ROYER: -- offer.

6 EXAMINER PRICE: Relevance.

7 Q. (By Mr. Royer) Just a couple more  
8 questions in some different areas. Okay. Just  
9 returning to the subject of the cost/benefit analysis  
10 that you were discussing with Ms. Fleisher, and  
11 you -- you indicated that the benefits were -- the  
12 benefits were determined based on the CEI pilot  
13 and -- in one instance and on the SGCC report in the  
14 other instance. And then you said but there were  
15 other considerations. What were the other  
16 considerations?

17 A. Could I just seek to clarify to make sure  
18 we are talking about the same thing?

19 Q. Sure.

20 A. I believe you're referencing a discussion  
21 in the context of the estimated benefits from  
22 time-varying rates and customer energy management  
23 through the AMI deployment?

24 Q. Correct, correct.

25 A. So in developing those estimates, we do

1 have experience in our CEI pilot territory, so that  
2 we have actual practical data we can rely on. We use  
3 that as a starting point. It's the basis to inform  
4 our judgment on what made sense for estimates going  
5 forward for purposes of this cost/benefit analysis.

6 And so, we also took into consideration  
7 the directives from the PowerForward Roadmap which is  
8 to foster or enable innovative products and services  
9 to arise organically through the marketplace, as well  
10 as the Commission Order in our current Electric  
11 Security Plan case which commits the Companies to  
12 empower customers through grid modernization  
13 investments like smart meters and to promote customer  
14 choice.

15 And so, the way I view Grid Mod I, it  
16 includes costs associated with grid modernization  
17 infrastructure that will do just that. It will  
18 provide smart meter data through a number of forms to  
19 customers and third-party suppliers, with the  
20 expectation that that data access to more parties and  
21 the granularity of it will help facilitate and  
22 stimulate market participation in those sorts of  
23 innovative products and service offerings.

24 We also have an option in the Stipulation  
25 where customers can have their own enabled device

1 through the home area network.

2 So we sort of looked at it holistically  
3 in estimating the benefits in the cost/benefit  
4 analysis to make a determination that the results  
5 that we were seeing come out of our pilot we thought  
6 were reasonable to expect or estimate for purposes  
7 here, given the circumstances with the PowerForward  
8 direction and our ESP IV case.

9 Q. Okay. So, for example -- can you turn to  
10 the ELPC 23C. Rather than try to pick and choose,  
11 I'll just wait for your confidential portion of your  
12 testimony to pursue that. I apologize.

13 A. Okay. That's okay.

14 Q. So -- and you're also talking about the  
15 provision in the Stipulation that says that the  
16 Company can -- with Commission approval, can withdraw  
17 its time-of-use rates if there are -- under certain  
18 circumstances, depending on what CRES providers in  
19 the service area are doing with time-of-use rates and  
20 also with flat rates that are enabled by AMI. Can  
21 you explain to me where the Company would want --  
22 would want to withdraw its time-of-use rates?

23 A. This is in reference to -- make sure I am  
24 in the right spot -- page 17 and 18 of the  
25 Stipulation?



1 Q. Yeah.

2 A. And the question again? I'm sorry, Mr.  
3 Royer.

4 Q. Why does the Company -- would the Company  
5 wish to withdraw its time-of-use rates?

6 A. As an initial matter, this was agreed  
7 upon by the signatory parties as part of the package  
8 of the Stipulation, and I think the intention is that  
9 we will install the grid modernization infrastructure  
10 as I discussed and we expect that there would be  
11 offerings available to customers for innovative  
12 products and services that leverage enabling devices.

13 So I think what we are contemplating here  
14 is the Companies would work with the collaborative  
15 group and develop a Company offer time-of-use rate  
16 that leverages enabling devices for nonshopping  
17 customers to the extent that we need to have time for  
18 the market to develop and offer -- make available  
19 additional offerings for our customers. So it's sort  
20 of an interim measure to have a utility offering in  
21 place. And then the threshold for removing it, under  
22 the Stipulation, would be a Commission determination  
23 there's sufficient offers available in the market.

24 So ultimately I think that's the goal of  
25 the Stipulation is to get to that point consistent

1 with the outcome of PowerForward which contemplates  
2 these types of innovative products and services  
3 arising through the competitive marketplace.

4 Q. Only the Company can offer time-of-use  
5 rates, correct?

6 A. No.

7 Q. I'm sorry, when you are talking about the  
8 innovations throughout the marketplace, are you  
9 referring to time-of-use offerings by CRES providers  
10 or are you talking about the technologies that we  
11 were talking about earlier?

12 A. I think generally both.

13 Q. So -- so, but in that regard, only --  
14 only the Company can offer time-of-use rates to SSO  
15 customers, correct?

16 A. Only the Companies can provide generation  
17 service to nonshopping customers. As we sit here  
18 today, our shopping levels are north of 80 percent,  
19 so most of our customers are participating through  
20 the retail competitive market.

21 Q. Right. But you -- but if you -- if you  
22 withdraw that, if you withdraw the time-of-use rates,  
23 that would leave those customers without the benefit  
24 of time-of-use rates, correct? Unless -- unless --  
25 as long as -- unless they wish to enroll with a CRES

1 provider, correct?

2 A. Right. I would say it wouldn't  
3 necessarily leave them without an option because the  
4 expectation is, at this point, there is robust  
5 market offerings in place. And so, customers, if  
6 they are nonshopping and they want to seek a pricing  
7 product, a time-varying rate product, the expectation  
8 would be there would be something available for them  
9 on the competitive market.

10 Q. And what if -- so -- so if the instant --  
11 for example, in the instance there are three CRES  
12 providers offering a time-of-use product, you would  
13 come to the Commission and say we want to propose if  
14 we want to withdraw our time-of-use rate? Is that  
15 the idea?

16 EXAMINER PRICE: Can I have the question  
17 back again?

18 (Record read.)

19 A. I am not sure the process would be quite  
20 that rigid, I guess, for lack of a better word  
21 because the Stipulation contemplates that the  
22 Companies would work with a collaborative group to  
23 get an idea of what types of offerings may be  
24 available, and to submit a report to the Staff,  
25 detailing the time-varying rates that we think

1 reasonably might be offered to customers.

2 And so, I think the determination as to  
3 whether the utility SSO offer of time-of-use rate  
4 would continue, would be influenced or informed by  
5 the outcome of those collaborative discussions. It  
6 wouldn't be at the Companies' sole determination.

7 Q. I'm sorry, I apologize. Okay. But to  
8 the extent there was still SSO customers, they would  
9 no longer have the option to benefit from a  
10 time-of-use rate, correct?

11 MR. LANG: Objection, your Honor, asked  
12 and answered.

13 EXAMINER PRICE: Sustained.

14 Q. So, okay. So in terms of deploying the  
15 smart meters, who gets the smart meters?

16 A. Under the Stipulation, it would be  
17 700,000 smart meters deployed. In general, the  
18 target would be the residential and small commercial  
19 customers.

20 Q. Does -- do customers have to participate  
21 in the smart meter program or is it an opt-out  
22 program or opt-in program or how will that work?

23 A. I think the AMI deployment as part of  
24 Grid Mod I would be consistent with the applicable  
25 AMI opt-out rules that are in place in Ohio.

1           Q.    So -- so the -- the deployment then goes  
2 to -- goes area by area; is that what's envisioned?

3           A.    The final deployment, the deployment of  
4 the AMI meters has not been finalized at this time.  
5 We don't yet have a Commission Order approving Grid  
6 Mod I.

7                   I think, in general, we would look to  
8 deploy in the most efficient way possible,  
9 recognizing you can't just have kind of Swiss cheese  
10 out there because of the communication network. And  
11 we would also want to try, where we can, to leverage  
12 all of the technologies that are part of Grid Mod I  
13 and integrate them. So there may be some  
14 coordination with the circuits that are selected for  
15 distribution automation or Volt/VAR control. So  
16 those are factors we would take into consideration,  
17 along with logistically the meter reading routes that  
18 would be -- that would come into play for the  
19 customers that are getting the smart meters as part  
20 of this Phase I of deployment.

21           Q.    Okay. But the smart meters will be  
22 deployed to both SSO and shopping customers, correct?

23           A.    Generally, yes, there's not a distinction  
24 in the deployment between shopping and nonshopping  
25 customers.

1           Q.    Okay.  Turning for a moment to Attachment  
2   C to the Stipulation.

3           A.    I'm there.

4           Q.    Okay.  And I believe it's on the same  
5   page as you were discussing with Ms. Fleisher, is  
6   there also a metric for enabling technologies?

7           A.    Yes.

8           Q.    Okay.  And -- and that asks or that  
9   contemplates that the evaluation of rebates or  
10  incentives available for any enabling technologies,  
11  e.g., smart thermostats, the number of devices  
12  provided to each customer are broken out by  
13  technology; is that correct?

14          A.    This metric contemplates tracking those  
15  rebates or incentives, yeah.

16          Q.    So -- so when the -- is it the auditor  
17  that's supposed to apply these metrics?  Or the  
18  third-party consultant?

19          A.    I'm sorry, I am not sure what you mean by  
20  apply the metrics.  The Companies will report on the  
21  metrics quarterly.

22          Q.    Okay.  So we already know that the answer  
23  for that enabling technology metric is zero, right?  
24  Because you are not going to have any -- you are not  
25  going to offer any incentive or rebates for smart

1 thermostats, correct?

2 A. I don't read this metric as specific to  
3 rebates or incentives offered by the Companies  
4 necessarily.

5 Q. Well, aren't all these metrics  
6 company-specific metrics?

7 A. The metrics will be tracked, monitored,  
8 and reported on by the Companies.

9 Q. So it's a time-of-use rate metric --  
10 time-of-use rate metric that -- that refers to the  
11 Companies' time-of-use rate, right?

12 A. The time-of-use metric, yes, refers to  
13 the time-of-use rate offerings to SSO customers.

14 Q. Right. Time-of-use participation, number  
15 of SSO customers participating in the -- of the  
16 Companies' SSO customers that are participating in  
17 the offerings?

18 A. Yes, that's what I said.

19 Q. And then, all of a sudden, enabling  
20 technologies, that's not a Company metric?

21 A. It would include rebates or incentives  
22 offered by the Companies if there are any. I'm just  
23 saying I don't read it as restricted to that.

24 EXAMINER PRICE: You're saying if I'm a  
25 customer and I receive my smart meter and I look at

1 my pattern of usage and I, self-motivated, go out and  
2 buy a Google Nest, that that would be counted in the  
3 metric? Or some other smart thermostat?

4 THE WITNESS: I think if we -- if we know  
5 about it. The way I am thinking about it, this would  
6 be a collaborative process. We have the Grid Mod  
7 collaborative that's contemplated in the Stipulation.  
8 We will meet periodically and review the results or  
9 the performance of the plan. So within the context  
10 of that discussion we may learn about information  
11 that's -- that collectively we feel makes sense to  
12 report on the metrics.

13 EXAMINER PRICE: If IGS is my CRES  
14 provider and they supplied me, as part of my  
15 contract, with a programmable thermostat, that would  
16 be counted as part of the metrics and they reported  
17 it to you.

18 THE WITNESS: I think if we knew about  
19 it, and it was determined collaboratively that it was  
20 important to include here for reporting, then I think  
21 it could be included.

22 Q. (By Mr. Royer) But aren't these -- okay.  
23 Just to backtrack a second on this idea of  
24 withdrawing the time-of-use rate. If there's --  
25 under the various conditions, the three CRES



1 providers that are providing a schedule and so forth  
2 are providing a time-of-use rate, so what happens if  
3 one -- so what happens if -- if a CRES provider, you  
4 have three providing it, after a year, one of the  
5 CRES providers decides they are not going to offer it  
6 anymore, those contracts expire; now does the Company  
7 come back and offer a time-of-use rate?

8 A. I think if that situation arose, it would  
9 be discussed as part of the collaborative process.

10 Q. If you withdraw the time-of-use offer,  
11 can you still count -- how does that impact the  
12 cost/benefit analysis for the out years after that  
13 happens?

14 A. I'm sorry, could I please have the  
15 question reread?

16 Q. Does that mean that the benefits in the  
17 out years after that happens is reduced?

18 A. I'm sorry, Mr. Royer, I am not sure I  
19 understand. I am having trouble linking the  
20 cost/benefit analysis, which is based on our current  
21 estimates, with the hypothetical you are posing.

22 Q. But your cost/benefit analysis is based  
23 on certain assumptions about time-of-use rates being  
24 implemented, correct?

25 A. There's an estimated benefit from

1 time-varying rates included in the cost/benefit  
2 analysis.

3 Q. And if the time-varying rate is  
4 subsequently withdrawn, how does that affect the  
5 ability of the Companies to achieve the -- to achieve  
6 the projected savings? The goals, I guess.

7 A. I think the opportunity to review that  
8 would be during the midterm review where the party  
9 conducting the midterm review has the option, under  
10 the Stipulation, to conduct an independent  
11 cost/benefit analysis.

12 Q. Okay. So if -- that's the other thing I  
13 am not clear about. So the third-party consultant  
14 comes in and conducts the midterm review and he finds  
15 that the -- that the savings benefits and the  
16 reduction benefits that you projected in your initial  
17 cost/benefit analysis are not -- are not being met,  
18 what happens?

19 A. Under the Stipulation, the results of the  
20 reviews that occur during midterm could be  
21 incorporated into consideration in the Companies'  
22 future grid modernization deployment efforts.

23 Q. But does the Company then -- but nothing  
24 happens in terms of the cost recover -- the cost  
25 recovery?

1           A.    I mean, I don't think immediately in the  
2           situation you pose where you have a third-party  
3           monitor report, that, in and of itself, at that time  
4           wouldn't have a direct impact on cost recovery.  
5           There's a separate process, through the annual Rider  
6           AMI audit, to review the costs.

7           Q.    Would you agree with me that smart  
8           meters, on a standalone basis, will do nothing to  
9           reduce peak demand or provide energy savings to  
10          customers?

11          A.    When you say "on a standalone basis,"  
12          Mr. Royer, you mean it's not communicating or the  
13          data is not available? What do you mean "standalone  
14          basis"?

15          Q.    I mean if you do nothing but go out and  
16          deploy these 700,000 smart meters, and nothing else  
17          is done, that won't serve to reduce that -- that  
18          investment by itself will not serve to reduce peak  
19          demand or produce energy savings; would you agree?

20               MR. LANG: Your Honor, I would object.  
21          When he says "deploy the meters, nothing else is  
22          done," there are other provisions in Grid Mod I that  
23          go along with the deployment of the smart meters, and  
24          it's not clear as to whether he is creating a  
25          hypothetical that is not based on the Stipulation or

1 whether he wants the witness to answer a hypothetical  
2 that is based on the Stipulation.

3 EXAMINER PRICE: You can rephrase.

4 Q. (By Mr. Royer) Okay. What I am asking is  
5 if you install a smart meter at my house, nothing  
6 else is done, will that serve -- will that produce  
7 energy savings and peak-demand reduction?

8 MR. LANG: Objection again. Whatever he  
9 means by "nothing else is done." It's unclear.

10 MR. ROYER: It's totally clear. You  
11 install a smart meter. You hook me up. Nothing else  
12 is done.

13 EXAMINER PRICE: I don't understand what  
14 you mean by "nothing else is done."

15 MR. ROYER: I mean -- I mean, that I am  
16 not provided any educational process. I am not  
17 provided with education how to benefit from it. I'm  
18 not -- I don't have any -- I'm not instructed as to  
19 what enabling technologies will do for me under this  
20 scenario. I am not instructed about how time of use  
21 of rates will figure in. So the physical hardware  
22 itself won't produce any -- any demand reduction  
23 or -- or energy savings for me, right?

24 EXAMINER PRICE: But how is your question  
25 relevant to the Application in front of the

1 Company -- or in front of the Commission? Clearly  
 2 the Company has filed an application that has smart  
 3 meters, has Volt/VAR, has DACR, and according to  
 4 witness testimony earlier, has some provisions for  
 5 communication materials back out to the customers.

6 MR. ROYER: I'm just asking about the  
 7 capability of the smart meter itself.

8 EXAMINER PRICE: Irrelevant.

9 MR. ROYER: It's not relevant what the  
 10 smart meter is capable of doing?

11 EXAMINER PRICE: Your hypothetical is  
 12 irrelevant to what's before the Commission. Let's  
 13 move on.

14 Q. (By Mr. Royer) Okay. Let me go at it  
 15 this way, and without revealing any numbers in the  
 16 confidential portions of the cost study, what costs  
 17 are included in the -- in the AMI costs category that  
 18 are then -- that are then paired with the benefits?  
 19 Are there any costs in that category other than did  
 20 the -- other than the costs of the smart meter  
 21 themselves?

22 A. Yes, there are other costs in the AMI  
 23 category that help support the benefits for AMI.  
 24 Namely, we -- we -- it's not just putting the meters  
 25 out there. It's also having the communication

1 information out -- communication infrastructure in  
2 place so we can get the information from the meters  
3 as well as the data access systems and processes that  
4 are enabled through the AMI deployment that make the  
5 data available to customers and to other parties.

6 We also envision having a customer portal  
7 available where customers can go out and download  
8 their data and provisions regarding providing the AMI  
9 meter data to CRES providers in an efficient manner.

10 So in conjunction with just the meter  
11 itself, those other communication costs as well as  
12 the costs associated with the systems and processes  
13 and the ongoing costs of communicating to the 700,000  
14 meters that are being deployed, I think help support  
15 the benefits that we expect to arise from the AMI  
16 deployment and Grid Mod I.

17 Q. I may come back to that when we do your  
18 other part. Okay. Now, there's discussion of the  
19 Grid Mod I collaborative. Who's eligible to be in  
20 the Grid Mod I collaborative?

21 A. Interested stakeholders.

22 Q. How is that determined?

23 A. I think if there's a party who is  
24 interested in participating in the collaborative  
25 discussions, they can do so.

1           Q.    A party being a signatory to the  
2   Stipulation or?

3           A.    No, not necessarily.

4           Q.    A party --

5           A.    Interested stakeholders.

6           Q.    A party to this case?

7           A.    Not necessarily.  Stakeholders,  
8   interested stakeholders.

9           Q.    Okay.  So when you added -- when there  
10   was -- you added language in the Supplemental  
11   Stipulation that specifically designated OCC and  
12   NOPEC as being -- as requiring -- requiring that they  
13   be a party to all the collaborative activities, why  
14   was that added if it's open to all stakeholders?

15          A.    For clarification --

16          Q.    Were they concerned that they would be  
17   excluded?

18               MR. STINSON:  Objection, your Honor.  I  
19   think that goes to the content of the negotiations  
20   that was confidential.

21               EXAMINER PRICE:  Also goes into what was  
22   OCC and NOPEC's method which I assume he cannot  
23   testify to.  Sustained.

24               MR. ROYER:  Should -- okay.

25          Q.    So -- well, let me just ask you bluntly,

1 was there -- would there be a commitment, the  
2 Companies are willing to commit to include providers  
3 of smart thermostats, allow them to participate in  
4 the Grid Mod collaborative if they were interested in  
5 this case?

6 A. I am not sure I am in a position, as I  
7 sit here at this moment, to make a commitment.

8 Q. Okay. So then what are the criteria by  
9 what you would decide who gets in and who is not in?

10 A. Those specific criteria I think that you  
11 are asking about are not specified in the  
12 Stipulation. I think from the Companies'  
13 perspective, we want to engage other parties. I  
14 mean, we want there to be benefits associated with  
15 the Grid Mod I investments. We're interested in  
16 engaging in discussions and hearing from other  
17 parties on what works and what doesn't. And so we  
18 want a full collaborative process.

19 I think should a situation arise where  
20 maybe there is a question of participation from an  
21 individual entity, we would have to address it at  
22 that time.

23 EXAMINER PRICE: Let's go off the record.

24 (Discussion off the record.)

25 (At 2:15 p.m., a lunch recess was taken.)



1 Tuesday Afternoon Session,  
2 February 5, 2019.

3 - - -

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

6 Please continue, Mr. Royer.

7 MR. ROYER: No further questions.

8 EXAMINER PRICE: Ms. Bojko.

9 MS. LEPPLA: Your Honor, if I may, I have  
10 just a couple of questions, and to keep subject  
11 matter together, if I could go next, that would be  
12 great.

13 EXAMINER PRICE: Sure.

14 - - -

15 SANTINO L. FANELLI  
16 being previously duly sworn, as prescribed by law,  
17 was examined and further testified as follows:

18 CROSS-EXAMINATION

19 By Ms. Leppla:

20 Q. Mr. Fanelli, I'm Miranda Leppla. I'm  
21 with the Ohio Environmental Council. I just have a  
22 couple of quick questions for you. You were asked  
23 some questions previously about FirstEnergy's energy  
24 efficiency programs and also about some of the  
25 metrics related to rebates and incentives in

1 Attachment C of the Stipulation.

2 Can you tell me how many FirstEnergy  
3 customers have rebates or incentives -- have  
4 received, I am sorry, have received rebates or  
5 incentives for smart thermostats?

6 A. I don't know this information.

7 Q. Okay. And are -- the energy efficiency  
8 programs run by FirstEnergy, are they designed to  
9 achieve the statutory energy efficiency standard or  
10 to support the Companies' Smart Grid deployment?

11 EXAMINER PRICE: Can I have the question  
12 back again?

13 (Record read.)

14 A. You're referring to the portfolio plan?

15 Q. Yes.

16 A. Energy efficiency portfolio plan?  
17 Generally that is intended to help the Companies  
18 achieve their State mandates for energy efficiency,  
19 though grid savings from grid modernization programs  
20 could be included.

21 MS. LEPPLA: No further questions, your  
22 Honor.

23 EXAMINER PRICE: Thank you.

24 Now Ms. Bojko.

25 MS. BOJKO: Thank you.

- - -

CROSS-EXAMINATION

By Ms. Bojko:

Q. Good afternoon, Mr. Fanelli.

A. Good afternoon.

Q. Could you turn to page 3 of the Supplemental Stipulation, please. Are you there, sir?

A. Yes, I am.

Q. At the end of page 3, it's Section 5, going over to the new section, this is an added section to the supplemental stip, is that correct, or it's an added section to the original stipulation, correct?

A. This Item No. 5 in the Supplemental Stipulation is adding a new section to the Original Stipulation.

Q. Thank you. And this new provision, it provides that the Companies will include additional language in its AMI tariff filing; is that correct?

A. Yes.

Q. And the provision as on page 4 of the Supplemental Stipulation, it states that the "Rider is subject to reconciliation including, but not limited to, increases or refunds. Such

1 reconciliation shall be based solely upon the results  
2 of audits ordered by the Commission in accordance  
3 with the July 18, 2012 Opinion and Order in Case No.  
4 12-1230-EL-SSO," and then it lists several other  
5 Orders and case numbers; is that correct?

6 A. Yes.

7 Q. And you would agree, sir, that this  
8 language precludes a refund or reconciliation in the  
9 event that the Commission determined that the  
10 Companies had overcollected from customers in a  
11 proceeding that is not listed in the language  
12 provided for in the Stipulation.

13 MR. LANG: Objection, your Honor.

14 EXAMINER PRICE: Grounds?

15 MR. LANG: The -- this -- this language  
16 that she's asking about, the refund language, has  
17 been approved by the Commission in prior proceedings.  
18 The only thing that was added that is at issue in the  
19 Stipulation is the four case numbers that will -- the  
20 four case numbers of these proceedings. So it's --  
21 what she is asking about is something that's already  
22 been determined by the Commission and not relevant to  
23 this proceeding.

24 EXAMINER PRICE: Well, she's entitled to  
25 ask for a change in the Commission practice.

1 Overruled.

2 THE WITNESS: May I please have the  
3 question reread?

4 (Record read.)

5 MS. BOJKO: Your Honor, I will withdraw  
6 that question and restate it. I don't think that was  
7 quite correct. I will try again.

8 EXAMINER PRICE: You win, Mr. Lang.

9 Q. (By Ms. Bojko) Mr. Fanelli, you would  
10 agree that the language precludes a refund or  
11 reconciliation adjustment in the event that the  
12 Commission determined that the Companies had  
13 overcollected from customers in a proceeding that is  
14 not listed in the language provided for in this  
15 Supplemental Stipulation, correct?

16 A. Not necessarily.

17 Q. So you believe that this language allows  
18 a refund or reconciliation in the event that the  
19 Commission determines that the Companies have  
20 overcollected from customers if it occurred in a  
21 proceeding not listed in the language on page 4 of  
22 the Supplemental Stipulation?

23 A. I think what this language is doing is  
24 listing the case numbers that are subject to the  
25 Stipulation, so should there be an audit in a

1 separate case, say, for example, our annual Rider AMI  
2 filing, filed in a separate docket, but that audit is  
3 conducted pursuant to the terms and conditions of the  
4 case numbers here that are addressed in the  
5 Stipulation, then I think this tariff language could  
6 apply.

7 Q. And when you say could apply, you mean  
8 that there could be refunds passed back to customers  
9 as long as the audit was related to one of the case  
10 numbers listed in the paragraph?

11 A. In your hypothetical, if the audit that  
12 results in a recommendation for a disallowance, if  
13 that audit is conducted consistent with the terms and  
14 conditions of the Stipulation here in these four case  
15 numbers, then, yes.

16 Q. And would you agree that based on the  
17 language, customers could not be refunded under this  
18 language as a result of a Supreme Court of Ohio  
19 determination that the Companies have unlawfully  
20 collected charges from customers under this rider?

21 MR. LANG: Objection, your Honor, to  
22 that.

23 EXAMINER PRICE: Grounds?

24 MR. LANG: Legal conclusion grounds.

25 EXAMINER PRICE: Ms. Bojko, care to

1 respond?

2 MS. BOJKO: Yes, thank you, your Honor.  
 3 I am asking him the intent of the paragraph. He is  
 4 the Company witness putting forth this paragraph as  
 5 part of the stipulation or settlement, both  
 6 stipulations consisting of a settlement, and I am  
 7 asking him if it's the Companies' intent to pass  
 8 through refunds if there was a Supreme Court decision  
 9 stating that it was unlawfully -- or were unlawfully  
 10 collected.

11 EXAMINER PRICE: I think the problem is,  
 12 Ms. Bojko, you have an incomplete hypothetical. I  
 13 think if you could amend your question to say a  
 14 Supreme Court decision and then a remand to the  
 15 Commission, you would have a complete hypothetical.  
 16 But as we all know, the black letter law in this  
 17 state, the Court does not order refunds. They order  
 18 us to make adjustments following a decision.

19 MS. BOJKO: Fair enough, your Honor.  
 20 Thank you for that clarification. I'll rephrase.

21 Q. (By Ms. Bojko) And I will ask you,  
 22 Mr. Fanelli, if the Supreme Court of Ohio determined  
 23 that a Commission decision authorizing the charge was  
 24 unlawful and remanded the case back to the  
 25 Commission, under that situation, would the

1 Company -- would this Stipulation language allow  
2 refunds to be passed back to customers?

3 MR. LANG: And, your Honor, in  
4 furtherance of the incomplete hypothetical, is this  
5 an Ohio Supreme Court appeal from an audit  
6 proceeding?

7 EXAMINER PRICE: I'm not sure. Could you  
8 please clarify, Ms. Bojko?

9 MS. BOJKO: Sure.

10 Q. (By Ms. Bojko) I think we all know what  
11 we are talking about but, yes, it would be a -- the  
12 hypothetical is that there is an appeal from a  
13 Commission decision in the audit proceeding and the  
14 Supreme Court determined that there was a charge that  
15 was unlawfully collected and the Supreme Court  
16 remanded the case back to the Commission, and would,  
17 at that time, this language allow refunds to be  
18 passed back to customers?

19 A. In your hypothetical I'm not sure about  
20 the way you use the word "lawfulness," but in general  
21 if there was an audit proceeding that's conducted  
22 pursuant to the terms and conditions that are listed  
23 here in these four case numbers and there's a  
24 Commission decision that potentially has, say, a  
25 recommended disallowance in that, if that gets



1 appealed to the Supreme Court and eventually gets  
2 remanded back to the Commission, as long as it's part  
3 of the same audit proceeding where the recommendation  
4 originated, then I think this language would be  
5 applicable.

6 Q. And would your response be the same even  
7 if the Commission opened a new case number to  
8 consider the remand proceeding?

9 MR. LANG: Objection, relevance.

10 EXAMINER PRICE: I'll allow it.

11 A. I think I would need assistance from  
12 legal if that situation were to arise.

13 Q. To be clear, the paragraph on page 4 does  
14 not reference a remand proceeding or a Supreme Court  
15 proceeding, correct?

16 A. The language on the top of page 4 does  
17 not include the word "Supreme Court" or "remand."

18 Q. And are you aware, sir, that the word --  
19 well, first of all, the paragraph that we've been  
20 discussing and that I read into the record,  
21 paraphrased into the record, that language contains  
22 the word "solely"; is that correct?

23 A. Yes, the language on page 4 includes the  
24 word "solely."

25 Q. And you are aware that the word "solely"

1 does not appear in the language regarding riders of  
2 other Ohio utilities, correct?

3 MR. LANG: Objection, your Honor,  
4 relevance.

5 EXAMINER PRICE: He can answer if he  
6 knows.

7 A. I'm not familiar with all the tariff  
8 language of the other utilities. I know this  
9 particular language we're discussing here is already  
10 in our Commission-approved tariff, approved last  
11 year, and there is no changes to it as part of the  
12 Stipulation.

13 Q. Except for the addition of certain case  
14 numbers, correct?

15 A. Yes, that's correct.

16 Q. Sir, could you turn to page 4 of your  
17 original testimony so it's Company Exhibit 2.

18 A. Okay. I'm there.

19 Q. On page 4 of your testimony, starting on  
20 line 7 with the word "Indeed," you reference an AEP  
21 Ohio case; is that correct?

22 A. Two separate case numbers, but yes.

23 Q. And the AEP Ohio proceeding with two case  
24 numbers that you reference, that was about the TCJA  
25 or the tax -- the tax adjustment case; is that

1 correct?

2 A. Those case numbers addressed the process  
3 and methods for providing federal tax savings in AEP  
4 Ohio's rates.

5 Q. And that was called, the name "TCJA" is  
6 the Tax Cuts and Jobs Act; is that correct?

7 A. Yes.

8 Q. And you're aware that other utilities  
9 have also initiated proceedings or resolved the TCJA  
10 issues through pending proceedings, correct?

11 A. By "resolved" do you mean the  
12 Commission's decision?

13 Q. I mean that the -- just as the AEP  
14 proceeding that you referenced, there are other  
15 utility proceedings out there that discuss the  
16 process of providing a tax savings to customers.

17 A. Generally, yes. There was a Commission  
18 Order that directed utility -- applicable utilities  
19 to file certain applications to address the TCJA  
20 matters.

21 Q. Okay. And that Commission Order is the  
22 COI that's referenced on lines 13 and 14 in your  
23 testimony?

24 A. The order I was referring to is  
25 referenced on pages 3 and 4 of this page, but it's an

1 order in that case number that's on line 13.

2 Q. Thank you.

3 MS. BOJKO: Your Honors, at this time, I  
4 would like to mark as OMAEG Exhibit 1, a compilation  
5 of tariff language. Bear with me for a minute. May  
6 we approach?

7 EXAMINER PRICE: You may.

8 MS. BOJKO: Your Honor, also at this  
9 time, I would like to mark as OMAEG Exhibit 2, a  
10 packet of documents. In order to expedite the  
11 process for you today, I put a packet together. May  
12 we approach?

13 EXAMINER PRICE: Can you describe it?

14 MS. BOJKO: I'm sorry, it's a packet of a  
15 compilation of utility tariff sheets.

16 EXAMINER PRICE: Different from this one?

17 MS. BOJKO: Yes.

18 EXAMINER PRICE: You may approach.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 Q. (By Ms. Bojko) Mr. Fanelli, do you have  
21 in front of you what's been marked as OMAEG Exhibit  
22 1?

23 A. Yes, I do.

24 Q. And the title of this document is a  
25 "Sampling of Refund Language in Other Utilities"

1 Rider Tariffs"; is that correct?

2 A. Yes.

3 Q. And the first case listed is called "AEP  
4 Tax Rider" and it is a reference to Case No.  
5 18-1451-EL AT; do you see that?

6 MR. LANG: Objection, your Honor.

7 EXAMINER PRICE: Grounds?

8 MR. LANG: Authentication and relevance.

9 EXAMINER PRICE: Sustained on foundation.  
10 But not to relevance.

11 MS. BOJKO: Yes, your Honor. I am  
12 getting there. If you could give me a little leeway.

13 Q. If you would look at page 4 of your  
14 testimony that we just discussed previously. Is the  
15 Case No. 18-1451, the AEP Ohio case that you  
16 reference on page 4 of your testimony?

17 A. Case No. 18-1451-EL-ATA is referenced on  
18 line 8 of page 4 of my direct testimony.

19 Q. And could you look at OMAEG Exhibit 2.  
20 Sir, does this appear to be a tariff sheet from the  
21 Ohio Power Company with the case number at the  
22 bottom, 18-1451-EL-ATA?

23 MS. PETRUCCI: Are you referring to just  
24 the first page?

25 MS. BOJKO: Yes.

1 MS. PETRUCCI: Thank you.

2 A. It appears to be, although I don't  
3 believe I have seen this before.

4 Q. Okay. And, sir, do you know, would you  
5 recognize that the reference to AEP Ohio is another  
6 name for Ohio Power Company?

7 A. Generally, I think of AEP Ohio as both  
8 Ohio Power and Columbus Southern Power zones.

9 Q. Two rate zones, Ohio Power and Columbus  
10 Southern Power zones that have now been merged into  
11 one company called Ohio Power Company?

12 A. That's my understanding.

13 Q. And, sir, you have never seen the tariff  
14 from the Ohio Power Company regarding the tax savings  
15 credit rider that you discuss on page 4 of your  
16 testimony?

17 EXAMINER PRICE: Can we go off the  
18 record?

19 (Discussion off the record.)

20 EXAMINER PRICE: Let's go back on the  
21 record. Pursuant to our off-the-record conversation,  
22 the Bench, at this time, will take administrative  
23 notice of the tariffs pages contained in OMAEG  
24 Exhibit 2.

25 MS. BOJKO: Thank you, your Honor.

1           Q.     (By Ms. Bojko) Mr. Fanelli, do the pages  
2 contained in OMAEG Exhibit 2 appear to be tariff  
3 sheets from other Ohio utilities?

4           MR. LANG:  Objection, your Honor.  If we  
5 could establish his -- if he has any familiarity with  
6 them first before he begins testifying what they are.

7           EXAMINER PRICE:  Sustained.

8           Q.     I thought I asked you, Mr. Fanelli, you  
9 are aware that each utility in the State of Ohio is  
10 required to maintain tariff sheets on file at the  
11 Commission, correct?

12          A.     Yes.

13          Q.     And, in fact, the three operating  
14 companies of FirstEnergy maintain tariff sheets on  
15 file with the Commission; is that correct?

16          A.     Yes.

17          Q.     And the language that we've been  
18 discussing that's in the Supplemental Stipulation,  
19 that paragraph, can we call that the "refund language  
20 paragraph"?  That's on page 4 of the Supplemental  
21 Stipulation?

22          A.     Sure, that's fine.

23          Q.     Okay.  That refund language paragraph on  
24 page 4 of the Supplemental Stipulation will, in fact,  
25 appear on a tariff sheet that's on file with the

1 Commission, correct?

2 A. If this Stipulation is approved without  
3 modification to this particular language, then the  
4 language would be included on our Rider AMI tariff  
5 sheet.

6 Q. And looking at OMAEG Exhibit 2, do these  
7 appear to be tariff sheets from other Ohio utilities  
8 with regard to various riders of different Ohio  
9 utilities?

10 MR. LANG: Objection.

11 EXAMINER PRICE: Grounds?

12 MR. LANG: Still hasn't laid a foundation  
13 if he has any familiarity with these particular  
14 tariff pages.

15 EXAMINER PRICE: Sustained.

16 Mr. Fanelli, with the first one on top,  
17 do you recall ever seeing this document before?

18 THE WITNESS: I don't believe I have.

19 EXAMINER PRICE: Thank you.

20 Q. (By Ms. Bojko) Mr. Fanelli, does the  
21 tariff sheet, the first one on top, appear to be a  
22 rider for an Ohio utility?

23 MR. LANG: Objection.

24 MS. BOJKO: Your Honor, he said -- okay,  
25 let me reask.



1           Q.    Mr. Fanelli, you are familiar with other  
2 Ohio utility tariff sheets and what they look like,  
3 correct?

4           A.    I'm familiar that the other utilities in  
5 the State have tariff sheets similar to our  
6 Companies'.

7           Q.    Okay. And does the packet, OMAEG Exhibit  
8 2, appear to be various tariff sheets of other Ohio  
9 utilities?

10           MR. LANG: Objection.

11           EXAMINER PRICE: Sustained. You can't go  
12 from the general "You are generally aware they have  
13 tariffs" to "specifically authenticating this  
14 document." For him to authenticate this document,  
15 for you to ask him questions on this document, he has  
16 to be familiar with the document, and we know as to  
17 the top one, he is not. And so --

18           MR. DARR: Your Honor, may I? Is there  
19 any point to authenticating this document, at this  
20 point, given that there is already judicial --  
21 administrative notice of it?

22           EXAMINER PRICE: Well, I was hoping not,  
23 but she still can't ask him questions if he is not  
24 familiar with the document.

25           MR. DARR: Thank you, your Honor.

1           Q.     (By Ms. Bojko) So, Mr. Fanelli, do you  
2     prepare FirstEnergy's, the operating Companies',  
3     tariff sheets?

4           A.     The tariffs are managed by our team, yes.

5           Q.     And do you have the occasion to review  
6     other utilities' tariff sheets when drafting your  
7     own?

8           A.     For purposes of the Stipulation here, I  
9     don't believe we relied upon or researched other  
10    utilities' tariffs.

11          Q.     Fair enough. But have you, in the past,  
12    reviewed other utilities' tariff sheets?

13          A.     Yes, I've seen other utilities' tariff  
14    sheets in the past.

15          Q.     And did you review other utilities'  
16    tariff sheets with regard to the TCJA proceedings?  
17    Have you reviewed other utilities' tariff sheets with  
18    regard to their riders for the TCJA proceedings?

19          A.     Not that I recall.

20          Q.     Okay. Sir, do you know whether other  
21    utilities -- did you -- did you research or review  
22    other utilities' tariff language regarding a refund  
23    provision?

24          A.     For purposes of the Stipulation, we did  
25    not review tariff language from other utilities.

1 This language is largely already approved in our  
2 tariffs and we just wanted to make sure we added the  
3 additional case numbers.

4 Q. So referring back to your testimony on  
5 page 4 of your direct testimony, line 7, you state  
6 that the Commission encouraged utilities to follow  
7 the example of AEP Ohio. Do you see that?

8 A. I do.

9 Q. So in following the example of AEP Ohio  
10 in Case Nos. 18-1007-EL-UNC and 18-1451-EL-ATA, the  
11 Company did not review the examples or the Company  
12 did not review AEP Ohio's tariff sheets? Is that  
13 fair?

14 A. I think the references to the AEP case  
15 numbers on page 4 of my testimony are in regards to  
16 those proceedings in general. I do not recall  
17 reviewing specific tariff sheets.

18 Q. Did you review the Order issued in these  
19 case numbers that you reference on page 4 of your  
20 testimony?

21 A. I don't recall if I did at the time the  
22 testimony was prepared.

23 Q. And when you state the utilities should  
24 follow the example of AEP Ohio, what of AEP Ohio --  
25 what example did you review to draw this conclusion

1 or to make this statement in your testimony?

2 EXAMINER PRICE: I think in all fairness,  
3 if you are going to ask him about that sentence, you  
4 should read to him the whole sentence, not half the  
5 sentence.

6 MS. BOJKO: Your Honor, he has the  
7 sentence in front of him. I wasn't trying to read it  
8 into the record, I am trying to ask him questions  
9 about it, but I will be happy to read the whole  
10 question.

11 EXAMINER PRICE: I think it's a more  
12 complete question. If you read -- instead of reading  
13 half the sentence to him.

14 MS. BOJKO: Thank you, sir.

15 Q. On page 4, lines 7 through 10, it states,  
16 "Indeed, the Commission encouraged utilities to  
17 follow the example of AEP Ohio" -- I think it should  
18 have said "in Case Nos." -- "in Case Nos.  
19 18-1007-EL-UNC and 18-1451-EL-ATA, in which the  
20 Commission had recently approved a process and  
21 methods for providing federal tax savings in AEP  
22 Ohio's rates." Do you see that?

23 A. I do.

24 Q. And one of the methods for providing  
25 federal tax savings in AEP Ohio rates would include

1 their tariff filing and their credit rider; is that  
2 correct?

3 A. The reference here to process and methods  
4 were more attributable to the Stipulation in those  
5 cases that laid out the mechanics for how the tax  
6 savings would work.

7 Q. Okay. Well, the Stipulations would have  
8 contained tariffs and tariff language; isn't that  
9 correct? If you know.

10 A. I don't know if they did or they didn't.

11 Q. Okay. So you reviewed -- you reviewed  
12 the process and methods of the AEP Ohio proceeding  
13 that you reference with regard to what? The  
14 Stipulations?

15 A. I think in this sentence we are  
16 acknowledging that the Commission encouraged  
17 utilities to follow AEP Ohio's example. I believe  
18 that reference is to the generic COI tax proceeding  
19 that referenced these AEP cases.

20 Q. Okay. Well, following AEP Ohio's example  
21 could include modeling tariff provisions off of AEP's  
22 tariff provisions, corrects?

23 MR. LANG: Objection, your Honor. At  
24 that point she's asking him to speculate as to what  
25 the Commission intended by its Order of following an

1 example. He's already explained his -- what he meant  
2 as he understood it to mean.

3 EXAMINER PRICE: Overruled. He can  
4 explain his -- to what extent he thought they should  
5 follow AEP's example.

6 A. The AEP example in my view was, again,  
7 how the mechanics of the tax dollars would flow back  
8 to customers and how the different components of  
9 TCJA-related savings would be treated. I don't  
10 recall specifically seeing or relying upon any tariff  
11 language in making the statement that's in my  
12 testimony here.

13 Q. And given that, you wouldn't know whether  
14 AEP Ohio tariff language with regard to the tax  
15 credit rider would include the word "solely" or would  
16 not include the word "solely," correct?

17 A. The word "solely" is in our approved  
18 Commission tariff, so I don't think we looked at or  
19 relied upon any language that would have been  
20 presented in the AEP tariff.

21 Q. And you don't know whether AEP's language  
22 contains the word "solely" or does not, correct?

23 MR. LANG: Objection, your Honor.  
24 Objection, your Honor. Asked and answered.

25 EXAMINER PRICE: Sustained.

1 MR. LANG: He said he didn't look at it.

2 Q. (By Ms. Bojko) And, sir, fair to say you  
3 didn't review any other utilities' tax rider tariffs  
4 to determine the language that they used?

5 A. For purposes of the Stipulation, we did  
6 not. We were relying upon our Commission-approved  
7 language in adding the additional case numbers for  
8 clarity.

9 Q. Okay. Could you turn to page 6 of the  
10 Supplemental Stipulation. I would like to go through  
11 some changes from the original stipulation to the  
12 Supplemental Stipulation. And it's true, sir, the  
13 Supplemental Stipulation changes the allocation of  
14 the operational savings to 89.2 percent in Attachment  
15 F.

16 A. I'm sorry, Ms. Bojko, are you on  
17 Section 10 on page 6?

18 Q. I'll rephrase. I wasn't trying to get  
19 you more references, but.

20 It's true that the Supplemental  
21 Stipulation changed the allocation of operational  
22 savings to 89.2 percent for residential customers,  
23 correct? Well, that allocation could be found in  
24 Attachment F to assist you, sir.

25 A. The Supplemental Stipulation did modify

1 the allocation of operational savings. 89.19 percent  
2 to residential unless otherwise noted in the  
3 Supplemental Stipulation.

4 Q. And that would result in a \$20 million  
5 incremental savings over 10 years; is that correct?

6 A. I'm sorry. Savings of what?

7 Q. The change in allocation results in  
8 incremental savings for residential customers of \$20  
9 million, if you know?

10 A. The Supplemental Stipulation does  
11 allocate more operational savings to residential  
12 customers than was assumed in the Original  
13 Stipulation. The exact number and over what time  
14 period, I'm sorry, I don't have that information in  
15 front of me.

16 Q. Okay. And looking at the bottom of  
17 page 6, additionally the Supplemental Stipulation  
18 provided an additional \$1 million to -- allocated to  
19 residential customers; is that correct? Per year.

20 A. The Supplemental Stipulation does include  
21 a provision for an additional \$1 million of  
22 operational savings to residential customers under  
23 the terms and conditions of the Stipulation as stated  
24 here.

25 Q. Okay. If we could go back to page 2 of



1 the Supplemental Stipulation. The Supplemental  
2 Stipulation changes the rate design for the TCJA  
3 savings; is that correct?

4 A. Compared to the Original Stipulation and  
5 as agreed to by the signatory parties, yes.

6 Q. And the allocation factors can be found  
7 in Attachment E; is that correct?

8 A. For the tax savings under the  
9 Supplemental Stipulation, yes, those are in  
10 Attachment E.

11 Q. And on page 2, if you look at Footnote 2,  
12 it explains that the "Supplemental Stipulation  
13 provides greater allocations of tax savings to  
14 residential customers than the Original Stipulation,  
15 resulting in lower total bills for residential  
16 customers"; is that correct?

17 A. Yes, you read that correctly.

18 Q. And do you know what the incremental  
19 savings to residential customers is for this change  
20 in rate design?

21 A. Over which time period?

22 Q. If you know, I was going to ask you 10  
23 years and then over 25 years, but I didn't know if  
24 you would know similar to the last response. If you  
25 know.

1           A.    I don't have those numbers in front of  
2 me.

3           Q.    And it's fair to say that an increase in  
4 tax savings to the residential customers would  
5 mean -- generally speaking would mean a decrease in  
6 tax savings to other classes of customers, correct?

7           A.    Generally, yes, as agreed to by the  
8 signatory parties.

9           Q.    If we look at page 8 of the Supplemental  
10 Stipulation, Item No. 14 at the bottom of page 8,  
11 it's true that the Consumers' Counsel and NOPEC take  
12 no position on whether the Grid Mod I produces a  
13 positive cost/benefit analysis; is that correct?

14          A.    I think that's only part of the provision  
15 there.

16          Q.    Well, it states they take no position on  
17 whether the Grid Mod I produces a positive  
18 cost/benefit analysis. But they agree not to oppose  
19 it, but they say they take no position on the  
20 cost/benefit analysis, correct?

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

22          Q.    And if you look at page 10, there is a  
23 footnote to the signature of the Office of the  
24 Consumers' Counsel and NOPEC; is that correct?

25          A.    There is an asterisk for Office of the

1 Ohio Consumers' Counsel, Northeast Ohio Public Energy  
2 Council, and Ohio Partners for Affordable Energy.

3 Q. Oh, thank you for adding OPAGE. And the  
4 asterisk or footnote states that these parties are  
5 not a signatory party for purposes of supporting the  
6 portions of the Stipulation related to Grid Mod,  
7 correct?

8 A. I think the parties are signatory  
9 parties, although, as noted, they agree not to oppose  
10 certain sections of the Stipulation.

11 Q. Well, it says this party is a signatory  
12 party to all terms and conditions of the stip except  
13 the terms and conditions of Sections V.B through V.I  
14 related to grid modernization, correct?

15 A. You read that correctly, but I still  
16 consider them signatory parties.

17 Q. Okay. Would you think it would be fair  
18 to state that those three entities do not support the  
19 portions of the stip related to Grid Mod, but have  
20 agreed to not oppose them for purposes of this case?

21 MR. ETTER: Objection, your Honor. She's  
22 misreading what the rest of that paragraph says.

23 EXAMINER PRICE: How so?

24 MR. ETTER: Well, she said that that --  
25 she's putting new meaning on the words "not oppose."

1 EXAMINER PRICE: Ms. Bojko? Grounds --  
2 or, I mean, response?

3 MS. BOJKO: I'm not trying to put any  
4 meaning. I am asking the witness, who's sponsoring  
5 the Stipulation, if the footnote means that these  
6 parties do not support the provisions of the stip  
7 related to Grid Mod.

8 EXAMINER PRICE: I'll sustain the  
9 objection.

10 Q. (By Ms. Bojko) You would agree with me,  
11 Mr. Fanelli, that the footnote is intended to state  
12 that the three parties are not supporting the terms  
13 and conditions of Sections V.B through V.I related to  
14 grid modernization.

15 A. I think those three parties agree not to  
16 oppose Sections V.B through V.I of the Original  
17 Stipulation.

18 Q. Well, that's what the last sentence says.  
19 So what does the first sentence say to you?

20 A. I think the two sentences need to be  
21 viewed together. In my view, these parties are  
22 signatory parties; although, for the reasons  
23 described in the second sentence, they are agreeing  
24 not to oppose those specific sections of the Original  
25 Stipulation.

1           Q.    Do you believe that they are signatory  
2 parties to the entire Stipulation, all the provisions  
3 contained therein?

4           MR. LANG:  Objection, your Honor.

5           EXAMINER PRICE:  Grounds?

6           MR. LANG:  Repetitive and asked and  
7 answered.  She's asked him five or six different  
8 questions about the same language.  He has given his  
9 answers and it sounds like she is unhappy with them  
10 so she keeps asking the question again.

11           MS. BOJKO:  Your Honor, that's not the  
12 case at all.  I am trying to explore the meaning of  
13 the footnote or the asterisk paragraph.  He responds  
14 and I follow-up with a different question to ensure  
15 or to seek the -- his understanding of the meaning of  
16 the provision that he is responsible for in the  
17 settlement.

18           EXAMINER PRICE:  I think we've spent a  
19 lot of time on this but we will give you a little bit  
20 more leeway.  I would note Mr. Willis is waiting with  
21 bated breath to testify.  If you care to ask him  
22 OCC's actual position, he might be better suited to  
23 testify to that.

24           MS. BOJKO:  I will, your Honor.  I am  
25 trying to ask what the Companies' belief of the

1 parties' support or nonsupport is.

2 MR. LANG: And, your Honor, he has  
3 answered -- he's answered what the Companies and how  
4 he interprets the provision. If she's asking what  
5 the Companies' understanding is of other parties'  
6 understanding, then that would be improper and we  
7 should move on.

8 EXAMINER PRICE: What's the pending  
9 question after all this discussion?

10 (Record read.)

11 EXAMINER PRICE: You can answer if you  
12 know.

13 THE WITNESS: In my view, all the parties  
14 listed on page 10 are signatory parties. They are  
15 all listed in the signature block under the section  
16 heading "Signatory Parties." The footnote with the  
17 asterisk clarifies that those parties agree not to  
18 oppose Sections V.B through V.I of the Original  
19 Stipulation.

20 EXAMINER PRICE: And, Mr. Fanelli, in  
21 your experience with cases before the Commission, is  
22 it unusual for signatory parties to opt out of  
23 specific provisions of a Stipulation?

24 THE WITNESS: In my experience, I don't  
25 think that's unusual.

1 EXAMINER PRICE: Many parties in this  
2 room have done that before, is that not true?

3 THE WITNESS: I've seen that occur in  
4 other cases.

5 EXAMINER PRICE: Thank you.

6 MS. BOJKO: Your Honor, that's what I am  
7 trying to ask him.

8 Q. (By Ms. Bojko) Mr. Fanelli, is it your  
9 understanding that the three parties listed with an  
10 asterisk have opted out, to use Attorney Examiner  
11 Price's phrase, they've opted out of sections --

12 EXAMINER PRICE: We don't need any  
13 additional -- the language says what the language  
14 says. It's up for us lawyers to interpret what that  
15 means, not a lay witness on the stand.

16 Q. Mr. Fanelli, the Supplemental Stipulation  
17 did not change the provision on page 10, Section C.b.  
18 of the Original Stipulation. I'll give you a chance  
19 to get there.

20 A. Page 10 in the Original Stipulation --

21 Q. Yes.

22 A. -- Ms. Bojko?

23 Q. C.b.

24 A. Capital C, lower case b as in boy?

25 Q. Yes.

1           A.    I see that reference.  Could you please  
2 repeat the question?

3           Q.    I had not asked -- I was waiting for you  
4 to get there, sir, but the Supplemental Stipulation  
5 did not change provision C.b. on page 10 of the  
6 Original Stipulation that allows the Companies to  
7 recover actual capital costs up to \$516 million of  
8 Grid Mod I assets through Rider AMI, correct?

9           A.    There were changes to Section C.b. in the  
10 Supplemental Stipulation.

11          Q.    It did not change the amount to be  
12 recovered of the actual capital costs up to \$516  
13 million, did it?  Page 7 of the Supplemental  
14 Stipulation clarifies what the \$516 million means,  
15 but the Supplemental Stipulation does not change the  
16 Original Stipulation with regard to allowing the  
17 Companies to recover actual capital costs up to \$516  
18 million of Grid Mod I assets through Rider AMI,  
19 correct?

20          A.    While the Supplemental Stipulation does  
21 include a few changes to this particular section,  
22 C.b., that sentence that reads "The Companies will be  
23 authorized to recover their actual capital costs up  
24 to \$516 million of Grid Mod I assets (as detailed  
25 herein) through Rider AMI," that sentence did not



1 change.

2 Q. Well, not only did the sentence not  
3 change, the recovery did not change. The Company is  
4 allowed to collect up to \$516 million, correct?

5 A. Subject to the reviews and audit  
6 materials and conditions that are spelled out in the  
7 Stipulation, there was not a change to the \$516  
8 million number from the Original Stipulation to the  
9 Supplemental.

10 Q. And if you go back to page 10 of the  
11 Original Stipulation, the Companies are also eligible  
12 to recover up to 139 million for the first three  
13 years of deployment for incremental O&M costs,  
14 correct?

15 A. I'm sorry, could I please have the  
16 reference again? Did you say page 10?

17 Q. It's page 10 and 11 is the whole  
18 provision. It's C.b.iv. Bottom of page 11.

19 A. There was no change to Section C.b.iv.  
20 from the Original Stipulation in the Supplemental  
21 Stipulation.

22 Q. Okay. And in the Original Stipulation,  
23 that provision allows the Companies to recover up to  
24 139 million for the first three years of deployment  
25 for incremental O&M costs, correct?

1           A.    139 million is the maximum amount that  
2           can be recovered subject to the other terms and  
3           conditions in the Stipulation related to what costs  
4           can be included in the review and audit process.

5           Q.    And if you turn to page No. 12 of the  
6           Original Stipulation, there's an additional amount  
7           called "caps," so an amount up to that can be  
8           collected in years 4 through 6; is that correct?

9           A.    The amounts listed at the top of page 12  
10          did not change as part of the Supplemental  
11          Stipulation.

12          Q.    Okay. That was my next question but,  
13          first my question was that there are additional  
14          amounts allowed. If there's no approval of Grid Mod  
15          II, there are different -- there are additional  
16          amounts allowed to be recovered from customers for  
17          incremental O&M in years 4 through 6; is that  
18          correct?

19          A.    Yes, those are the amounts -- the caps on  
20          the amounts of incremental O&M that can be recovered  
21          subject to the terms and conditions of the  
22          Stipulation.

23          Q.    And isn't it true that GT customers do  
24          not pay the Grid Mod rider?

25          A.    By "Grid Mod rider" you are referring to

1 our --

2 Q. AMI Rider, I apologize.

3 A. Under the Commission-approved rate design  
4 for Rider AMI, there is not an allocation to  
5 customers served under rate schedule GT.

6 MS. BOJKO: Thank you. Thank you for  
7 that clarification.

8 I have no further questions, your Honor.

9 EXAMINER PRICE: Thank you.

10 Kroger?

11 MS. WHITFIELD: Yes, thank you, your  
12 Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Whitfield:

16 Q. Mr. Fanelli, just clarification really  
17 quickly on Ms. Bojko's questions. So on page 10 of  
18 the Original Stipulation, just to be clear, you're  
19 not disputing that the Company -- that the  
20 Stipulation authorizes the Company to recover their  
21 actual capital costs up to \$516 million for Grid Mod,  
22 correct?

23 A. The Stipulation says the Companies will  
24 be authorized to recover their actual capital costs  
25 up to 516 million of Grid Mod I assets through Rider

1 AMI.

2 Q. And that potential \$516 million recovery  
3 is over a three-year period, correct?

4 A. No. The spend is over a three-year  
5 period. The recovery would be, as stipulated in the  
6 Stipulation, over the lives of the assets.

7 Q. All right. If you would look now at your  
8 original testimony marked Company Exhibit 2 filed on  
9 November 9 at page 9. In that -- let me know when  
10 you are there.

11 A. I'm there.

12 Q. Now, in that testimony you testified that  
13 the grid modernization investments under Grid Mod I  
14 would benefit customers. Do you see that?

15 A. I'm sorry. Is there a particular line?

16 Q. Sure. It starts on -- the question  
17 starts on line 16 on page 9. Do you see in that  
18 testimony where are you supporting the argument that  
19 grid modernization investments under Grid Mod I  
20 benefits customers?

21 A. Will benefit customers and the public  
22 interest through various Grid Mod investments?

23 Q. Yes.

24 A. Yes, I see your reference.

25 Q. Okay. And some of those alleged benefits

1 to the customers and the public interest in your  
2 testimony include improved system reliability,  
3 facilitated faster restoration, allowing customers to  
4 make more informed choices about energy usage, and  
5 better enable the Companies to make future grid  
6 modernization investments. Do you see those?

7 A. I see that reference.

8 Q. Okay. And just to be clear, your  
9 supplemental testimony that was filed January 25, I  
10 believe, does not change or eliminate those alleged  
11 benefits you've set forth on page 9 of your original  
12 testimony, correct?

13 MR. DARR: Can I hear that question  
14 again, please?

15 EXAMINER PRICE: Can we have the question  
16 back, please.

17 (Record read.)

18 Q. Maybe to make this a simpler question,  
19 I'll restate it for you. Your supplemental  
20 testimony, in support of the Supplemental  
21 Stipulation, did not eliminate any of those alleged  
22 benefits that you enumerate on page 9 starting on  
23 line 18 of your original testimony, correct?

24 A. The benefits of Grid Mod I, noted on your  
25 reference on page 9 of my original testimony, are

1 still in place under the Supplemental Stipulation.

2 Q. Okay. And you're certainly familiar with  
3 Case No. 14-1297-EL-SSO, correct?

4 A. Yes.

5 Q. You've testified in that case?

6 A. Yes.

7 Q. And if I referred to that as "ESP IV," is  
8 that something that you would refer to it as?

9 A. Yes.

10 Q. Okay. And you are aware, through ESP IV,  
11 that the Companies obtained the Distribution  
12 Modernization Rider or Rider DMR, right?

13 MR. LANG: Objection, your Honor,  
14 relevance.

15 EXAMINER PRICE: We'll give her a little  
16 leeway. See where this goes.

17 THE WITNESS: May I please have the  
18 question reread?

19 EXAMINER PRICE: You may.

20 THE WITNESS: Thank you.

21 (Record read.)

22 A. The Companies' Distribution Modernization  
23 Rider was authorized in the ESP IV case.

24 Q. And you would agree, would you not, that  
25 the Companies pointed to very similar benefits, as

1 what you enumerated on page 9 of your testimony in  
2 support of this stipulation here, in its support for  
3 Rider DMR, wouldn't you?

4 THE WITNESS: Could I please have the  
5 question reread? I'm sorry.

6 EXAMINER PRICE: You may.

7 THE WITNESS: Thank you.

8 (Record read.)

9 A. Is there a specific document or reference  
10 from the ESP IV case?

11 Q. Sure. I can --

12 MS. WHITFIELD: Your Honor, may I  
13 approach?

14 EXAMINER PRICE: You may.

15 MS. WHITFIELD: Your Honor, I don't know  
16 if I asked. Can we approach?

17 EXAMINER PRICE: You did ask and you may.

18 MS. WHITFIELD: I unfortunately only have  
19 three copies of what I have marked as Exhibit 1. I  
20 will get the court reporters a copy. And for  
21 purposes of the record, Exhibit 1 is the Fifth Entry  
22 on Rehearing rendered October 12, 2016, in the ESP IV  
23 case.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Do you see where it says "Fifth Entry on

1 Rehearing," Mr. Fanelli? It's on the cover sheet.

2 A. I see that.

3 Q. Okay. All right. If you would turn to  
4 page 52 and paragraph 119, it reads "Staff and  
5 FirstEnergy contend that Rider DMR will not only  
6 further grid modernization technologies throughout  
7 the state of Ohio, it will also bolster the several  
8 policies set forth in Revised Code 4928.02,  
9 specifically by improving reliability by reducing the  
10 number and length of outages, provide new options to  
11 customers, and allow new suppliers to enter the  
12 market." Did I read that correctly?

13 MR. LANG: And, your Honor, objection  
14 again. The Fifth Entry on Rehearing is a Commission  
15 Order. It says what it says. Questioning this  
16 witness on what's in this Fifth Entry on Rehearing as  
17 opposed to what's in the Stipulation is -- continues  
18 not to be relevant.

19 EXAMINER PRICE: Response?

20 MS. WHITFIELD: Your Honor, it is, in  
21 fact, relevant to one of the prongs to whether the  
22 Stipulation should be approved. You have to -- they  
23 have to show that this Stipulation, as a package,  
24 benefits ratepayers and the public interest. And if  
25 what they are pointing to as benefits to this



1 Stipulation were also benefits that they pointed to  
2 for Rider DMR under which they have collected almost  
3 \$400 million or will have collected almost  
4 \$400 million at the end of this year, I think that's  
5 a relevant fact that the Commission should consider  
6 in determining whether to approve the Stipulation.

7 EXAMINER PRICE: His objection is  
8 sustained. Grid modernization is a massive  
9 undertaking. You are going to have similar benefits  
10 across different cases.

11 MS. WHITFIELD: Thank you, your Honor.

12 Q. (By Ms. Whitfield) Under the DMR Rider in  
13 2017, the Companies have collected \$132.5 million,  
14 correct?

15 MR. LANG: Objection, your Honor.

16 EXAMINER PRICE: Grounds?

17 MR. LANG: It has nothing to do with this  
18 case.

19 EXAMINER PRICE: Sustained.

20 MS. WHITFIELD: Your Honor, I would just  
21 say they -- he cites in his testimony that the grid  
22 modernization plans that he is seeking approval in  
23 the Stipulation come directly out of ESP IV. He  
24 cites the ESP IV case. If you look at his --

25 EXAMINER PRICE: I understand that, but

1 it doesn't make your reference relevant. His  
2 objection is sustained. Make your question relevant.  
3 His objection is sustained.

4 Q. (By Ms. Whitfield) Under -- the Companies  
5 had an option, in ESP IV, to seek a two-year  
6 extension of the DMR, correct?

7 MR. LANG: Objection, relevance.

8 EXAMINER PRICE: I'll allow this one.  
9 See where it goes. You can answer if you know.

10 A. That was not something that was included  
11 in the Stipulation in this proceeding.

12 Q. Okay. I'm just asking of your knowledge,  
13 on behalf of the Companies here, are you aware if  
14 they had the option to extend the DMR for a two-year  
15 period?

16 A. I am aware that the Companies had the  
17 ability to seek a two-year extension of Rider DMR,  
18 but that didn't factor in in any way to the  
19 Stipulation here.

20 Q. Okay. And that -- you previewed my next  
21 question. Just to be clear, nothing in this  
22 Stipulation changed or affected the Companies' right  
23 to seek that two-year extension, correct?

24 MR. LANG: Can I have the question read  
25 back, please?

1 EXAMINER PRICE: You may.

2 (Record read.)

3 A. The text of Rider DMR is not part of the  
4 Stipulation.

5 Q. And, in fact, on Friday of last week, the  
6 Companies filed an Application to extend the DMR for  
7 another two years, did they not?

8 MR. LANG: Objection, relevance.

9 EXAMINER PRICE: Sustained.

10 MS. WHITFIELD: I have no further  
11 questions, your Honor.

12 EXAMINER PRICE: Thank you.

13 We've covered everybody in the public  
14 section. At this time we will go into confidential  
15 section. If we could --

16 MS. FLEISHER: Your Honor, I didn't know  
17 if you wanted to handle, before we move into  
18 confidential, two issues. I think we are still --

19 EXAMINER PRICE: I'm sorry. You need to  
20 use your microphone. I can't hear you.

21 MS. FLEISHER: Sorry. Before we move  
22 into confidential, I didn't know if we should keep  
23 with the public, the resolution for ELPC Exhibit 29,  
24 I would also like to briefly make an offer of proof  
25 on the questions regarding the settlement

1 discussions.

2 EXAMINER PRICE: We will deal with both  
3 of those when we come back and deal with exhibits at  
4 the end of the confidential section.

5 MS. FLEISHER: Sure. Thank you, your  
6 Honor.

7 EXAMINER PRICE: Okay. At this time, the  
8 room is clear. The Company can -- only the Company  
9 can verify the room is cleared of nonparties for the  
10 confidential session.

11 MR. KNIPE: I will go through the  
12 signatures. We have Madeline signed.

13 EXAMINER PRICE: Let's go off the record.

14 (Discussion off the record.)

15 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER PRICE: Redirect.

MR. LANG: If we could have a very brief  
break?

EXAMINER PRICE: You may.

1 Let's go off the record.

2 (Discussion off the record.)

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

5 MR. LANG: Your Honor, the Companies have  
6 no redirect.

7 EXAMINER PRICE: Thank you. Thank you,  
8 Mr. Fanelli. You are excused.

9 THE WITNESS: Thank you, your Honor.

10 MR. LANG: And, your Honor, at this time,  
11 the Companies would move Companies' Exhibits 1  
12 through 4 for the record.

13 EXAMINER PRICE: Any objection to the  
14 admission of Companies' Exhibits 1 through 4?

15 Seeing none, they will be admitted.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: Ms. Fleisher.

18 MS. FLEISHER: Thank you, your Honor.  
19 Would you rather do offer of proof first or exhibits?

20 EXAMINER PRICE: Offer of proof second.

21 MS. FLEISHER: Okay. ELPC would move  
22 into evidence Exhibits 1 through 31C. I believe  
23 excepting the exhibit marked as 28 which I think was  
24 administratively noticed.

25 EXAMINER PRICE: Let's break these up.

1 Any objection to the admission of Exhibits 1 through  
2 22 and 23C through 27C?

3 MR. LANG: And, your Honor, those --  
4 those the Companies had agreed to.

5 EXAMINER PRICE: Yes. So those will be  
6 admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER PRICE: Any objection to ELPC  
9 Exhibit 29?

10 MR. LANG: Yes, your Honor.

11 EXAMINER PRICE: Okay. We will come back  
12 around to that. Any objection to admission of ELPC  
13 Exhibit 30?

14 MR. LANG: No, your Honor.

15 EXAMINER PRICE: And Exhibit 31, ELPC  
16 Exhibit 31C?

17 MR. LANG: Confidential, no, your Honor.

18 EXAMINER PRICE: Those exhibits will all  
19 be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER PRICE: Would you like to state  
22 your objection to admission of ELPC Exhibit 29?

23 MR. LANG: And, your Honor, the objection  
24 to 29, these are the apparently different spreadsheet  
25 excerpts, and the objection is that they were not

1 used with the witness, were not shown to be relevant  
2 to this witness or his testimony.

3 Understanding that the Commission does  
4 generally accept EIA data, we actually were not able  
5 to get to the point of laying a foundation that it  
6 was that other than the representations of counsel.  
7 But primarily on relevance we would object.

8 EXAMINER PRICE: Ms. Fleisher?

9 MS. FLEISHER: Certainly, your Honor.  
10 And I am really just asking your Honors to take  
11 administrative notice of this. As I have noted,  
12 that's fairly common practice with federal government  
13 data, especially EIA data. The Ohio Rules of  
14 Evidence do provide for official publications to be  
15 self-authenticating.

16 EXAMINER PRICE: Is this an official  
17 publication?

18 MS. FLEISHER: Well, I think the fact  
19 this is data gathered by EIA in its normal course of  
20 business and regularly compiled. It happens to be  
21 compiled in spreadsheets but it's published -- this  
22 is EIA's job is to compile and publish data. So I  
23 would argue certainly that it is, your Honor. And if  
24 this can't come in, then a lot of other stuff that  
25 the Commission often administratively notices may --



1 EXAMINER PRICE: I totally disagree with  
2 that. That's vastly overstating the case. Most  
3 things that come in from EIA are, as you identified,  
4 reports, periodic reports, the Short-Term Energy  
5 Outlook, the Long-Term Energy Outlook, or market  
6 prices. This is simply raw data that you pulled down  
7 from -- somebody pulled down from the EIA website.

8 MS. FLEISHER: Well, actually, your  
9 Honor, it's the same data that they collect through  
10 Form 861 which is exactly where they get those market  
11 prices, so it's the same -- it's collected in the  
12 same way from the same entities, and it's reported --  
13 the market prices are reported in the same way.

14 The Companies' cost/benefit analysis  
15 relies on EIA market price data that they presumably  
16 also pulled from the EIA website. And they haven't  
17 provided any reason to question its authenticity just  
18 because it happens to be a different landing page on  
19 the EIA website. What's good for the goose is good  
20 for the gander, your Honor.

21 EXAMINER PRICE: They presented a witness  
22 who actually sponsored the material, and you are able  
23 to ask questions of that witness. The Supreme Court  
24 has held that we should allow administrative notice  
25 when the opposing parties have had an opportunity to

1 prepare for and respond to the data.

2 By introducing this on cross, with a  
3 witness who had never seen it before, rather than  
4 through your own witness, you precluded the Company  
5 from having an opportunity to respond and rebut the  
6 data; therefore, we will not take administrative  
7 notice of this document.

8 MS. BOJKO: Your Honor, may we have  
9 clarification? We didn't receive any documents from  
10 ELPC and her list only went to 27C. Could she please  
11 explain what 28 is so we can -- and 30? I mean, can  
12 you send around links or something? We have no way  
13 to access these documents.

14 MS. FLEISHER: Sure. Well, 28 was  
15 administratively noticed.

16 MS. BOJKO: I know, but what was it?

17 MS. FLEISHER: It was 08-935, attached to  
18 the Application. And 30, if I'm recollecting right,  
19 was discovery response ELPC Interrogatory 1-15 which  
20 you should have received in due course in that case.

21 MS. BOJKO: In this case though?

22 MS. FLEISHER: In this case.

23 MS. BOJKO: And how about 31? We just  
24 didn't get the titles, so we have no documentation.

25 MS. FLEISHER: 31C is the response to, I

1 think I said it ELPC Set 9 RPD-3 Attachment 1  
2 Confidential.

3 MS. BOJKO: Thank you.

4 EXAMINER PRICE: Ms. Fleisher, you would  
5 like to make your offer of proof?

6 MS. FLEISHER: Certainly, your Honor. As  
7 we were proceeding before, I was asking Mr. Fanelli  
8 some questions regarding whether, in the course of  
9 settlement discussions, the Companies heard,  
10 considered, responded to feedback regarding the  
11 investments contemplated and spending contemplated in  
12 Grid Mod I. And it's ELPC's position that these  
13 questions would end up producing evidence and would  
14 have produced evidence relevant to the first prong of  
15 the stipulation standard regarding whether there was  
16 serious bargaining by the parties.

17 The Ohio Supreme Court has made clear  
18 that it's relevant to that whether parties were  
19 excluded from settlement discussions, particularly  
20 entire classes of parties, and it's ELPC's position  
21 that the answers to those questions would have  
22 provided evidence that, in fact, all parties, except  
23 Staff, were excluded from discussion of the spending  
24 proposed for Grid Mod I and were not able to have any  
25 input into the spending proposed for Grid Mod I after

1 the initial stipulation was signed and after it was  
2 agreed upon by Staff and the Companies.

3 EXAMINER PRICE: Do you have deposition  
4 transcripts to support your proffer?

5 MS. FLEISHER: I do not, your Honor.

6 EXAMINER PRICE: Don't you need the  
7 transcript to explain that you would have asked him  
8 the question, he would have answered the question,  
9 thusly to support your proffer?

10 MS. FLEISHER: Well, your Honor, the --

11 EXAMINER PRICE: You are guessing what he  
12 might have said, but.

13 MS. FLEISHER: Yes. Well, it's my  
14 understanding that the purpose of the proof is to  
15 preserve the issue for appeal and so that -- if, you  
16 know, higher authorities agree that it's relevant  
17 within the scope, we can come back down and examine  
18 Mr. Fanelli, but I can, I think, attest based on -- I  
19 don't know, on my own personal knowledge and --

20 EXAMINER PRICE: No. You can't attest on  
21 your own personal knowledge. You're counsel.

22 MS. FLEISHER: Okay. I can attest based  
23 on the discovery responses, at least, that  
24 FirstEnergy provided, as to whether they -- as to  
25 whether the contents of the Grid Mod I investments

1 were the result of the settlement discussions, that  
2 Mr. Fanelli's answer would be -- answers would, in  
3 fact, be relevant to whether parties were able to  
4 participate in -- in those discussions.

5 EXAMINER PRICE: Mr. Lang, response?

6 MR. LANG: Yes, thank you, your Honor.  
7 We're actually unsure how to respond. Certainly  
8 agree with your point that the proffer is inadequate  
9 because it lacks any evidentiary support that would  
10 have to be put into the record to preserve the issue  
11 for appeal.

12 But, you know, to the extent there is a  
13 suggestion from counsel that parties were excluded  
14 from negotiations, you know, from, you know, from the  
15 discussions that were held beginning in 2018 through  
16 the discussions that were held as recently as a few  
17 weeks ago in 2019, you know, the Companies certainly  
18 disagree with that representation that's being made  
19 by counsel.

20 But with regard to the -- you know, with  
21 regard to the representations, we just -- you know, I  
22 guess our position would be that's not a -- that's  
23 not a proffer of evidence. That's just a  
24 representation by counsel. We have responded to that  
25 with our own, and we can leave it at that.

1 MS. FLEISHER: Then -- well, your Honor,  
2 with all due respect, then I would like to request  
3 the ability to re-call Mr. Fanelli and cross him with  
4 the questions that your Honors declined to let me  
5 ask, so as to support an offer of proof.

6 EXAMINER PRICE: You had a chance to  
7 depose him, did you not?

8 MS. FLEISHER: Yes, your Honor.

9 EXAMINER PRICE: Since you had a chance  
10 to depose him and didn't ask him those questions on  
11 deposition, I am not going to allow you to do that.

12 Anybody else care to weigh in?

13 MS. LEPPLA: Yes, your Honor. I would  
14 support ELPC's position in this case. While we may  
15 have had the opportunity for deposition, there is no  
16 reason she shouldn't be allowed to voir dire him at  
17 minimum. The questioning was stopped so she wasn't  
18 able to get that on the record. And if she has the  
19 opportunity to re-call the witness, that would  
20 support her offer of proof. Additionally, she did  
21 mention discovery responses that she received from  
22 the Company to support that and --

23 EXAMINER PRICE: But she hasn't put those  
24 in the record either, has she? I'm not coming back  
25 to you. I'm asking her. She's supporting you.

1 MS. LEPPLA: Your Honor, she could have  
2 impeached him with those, but, unfortunately, she was  
3 stopped from questioning the witness. OEC supports  
4 ELPC on this.

5 MS. BOJKO: Your Honor, OMAEG supports.  
6 I think the Supreme Court decision states that you  
7 are allowed to ask many factors about the settlement.  
8 When the meetings occurred, who was at attendance.  
9 You are not allowed to ask about the content of those  
10 settlement discussions.

11 EXAMINER PRICE: Right. She was asking  
12 contents. She was asking what the Companies'  
13 position was in settlement negotiations. I think  
14 we've heard plenty. I am going to accept your  
15 proffer, however inadequate I think it is. If the  
16 Commission chooses to go a different way on the  
17 relevance on the question, whether your questions  
18 were relevant, then Mr. Lang will have his chance to  
19 seek reversal of the Commission Order based on the  
20 inadequate proffer, but I think we need to move on.  
21 We got your proffer, and we need to move on to our  
22 next witness.

23 MR. ROYER: Your Honor, I would like to  
24 move admission of STC Exhibits 1 through 3.

25 EXAMINER PRICE: I'm sorry, Mr. Royer.

1           Okay. Any objection to the admission of  
2   STC 1, 2, or 3?

3           MR. LANG: Yes, your Honor.

4           EXAMINER PRICE: Which ones?

5           MR. LANG: I believe all of them.

6           EXAMINER PRICE: Okay. Grounds?

7           MR. LANG: Each of the exhibits is, or at  
8   least purports to be, a printout from different  
9   websites. The witness was not familiar with them,  
10   was not questioned on them and, therefore, a proper  
11   foundation was not laid for their admission and there  
12   was -- to the extent that, you know, they were not  
13   used for purposes of cross-examination, there was no  
14   relevance established.

15           And the third one I think -- I think STC  
16   3 is supposedly this page from the Smartmart  
17   advertising a smart thermostat and, again, the -- I  
18   don't believe the witness was questioned at all on  
19   this particular document and, again, so foundation  
20   was not laid and is not relevant.

21           EXAMINER PRICE: We will admit STC 1 and  
22   2, and the Commission will assess the weight to give  
23   those exhibits, but I agree there was absolutely no  
24   foundation on STC 3, and it will not be admitted.

25           (EXHIBITS ADMITTED INTO EVIDENCE.)



1 MR. ROYER: Thank you, your Honor.

2 EXAMINER PRICE: Thank you.

3 IGS.

4 MS. BOJKO: Your Honor, I had exhibits.

5 EXAMINER PRICE: Oh, I'm sorry. I keep  
6 racing ahead here.

7 MS. BOJKO: I'm sorry?

8 EXAMINER PRICE: I keep racing ahead.

9 MS. BOJKO: OMAEG 2, you've already  
10 agreed to take administrative notice of.

11 EXAMINER PRICE: That's correct.

12 MS. BOJKO: With that, I am not going to  
13 move Exhibit 1.

14 EXAMINER PRICE: Okay.

15 MS. BOJKO: Thank you.

16 EXAMINER PRICE: Ms. Whitfield.

17 MS. WHITFIELD: Yes, your Honor. I am  
18 not going to move Kroger Exhibit 1 until the end of  
19 the hearing.

20 EXAMINER PRICE: Then I wasn't racing  
21 ahead.

22 IGS, call your witness, please.

23 MS. ALLEN: Thank you, your Honor. At  
24 this time, IGS would like to call Mr. Brandon  
25 Childers.

1 (Witness sworn.)

2 EXAMINER ADDISON: Thank you. Please be  
3 seated and, if you could, turn on your microphone.

4 THE WITNESS: Okay.

5 EXAMINER ADDISON: Thank you.

6 MS. ALLEN: May I approach, your Honors?

7 EXAMINER ADDISON: You may.

8 MS. ALLEN: At this time, I would like to  
9 mark the direct testimony of Brandon Childers as IGS  
10 Exhibit 1.

11 EXAMINER ADDISON: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 - - -

14 BRANDON CHILDERS

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

17 DIRECT EXAMINATION

18 By Ms. Allen:

19 Q. Good evening, Mr. Childers. Do you have  
20 the document before you that I just marked as IGS  
21 Exhibit 1?

22 A. Yes.

23 Q. Is this your prefiled direct testimony in  
24 this case?

25 A. Yes, it is.

1 Q. Was this testimony drafted by you or at  
2 your direction?

3 A. Yes, it was.

4 Q. Do you have any corrections or changes to  
5 make to it today?

6 A. Not at this time.

7 Q. And if I asked you the same questions  
8 today, would your answers be the same?

9 A. Yes, they would be.

10 MS. ALLEN: Okay. With that, I offer  
11 Mr. Childers for cross-examination.

12 EXAMINER ADDISON: Thank you, Ms. Allen.  
13 OEG, any questions?

14 MR. KURTZ: No questions.

15 EXAMINER ADDISON: IEU-Ohio?

16 MR. DARR: No questions, your Honor.

17 EXAMINER ADDISON: OCTA?

18 MS. PETRUCCI: No questions.

19 EXAMINER ADDISON: Direct Energy?

20 MS. GLOVER: No questions.

21 EXAMINER ADDISON: IGS? Sorry. OCC?

22 MR. ETTER: No questions, your Honor.

23 EXAMINER ADDISON: NOPEC?

24 MR. STINSON: No questions, your Honor.

25 EXAMINER ADDISON: Thank you.

1 I was just going to follow the  
2 cross-examination order from our last witness. So,  
3 Ms. Fleisher, you are up.

4 MS. FLEISHER: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Fleisher:

8 Q. Mr. Childers, try to get you out of here  
9 quickly. Can you turn to your testimony on page 6,  
10 line 96.

11 A. I'm there.

12 Q. And here you see where it says, your  
13 testimony is "CRES providers and other solutions  
14 providers could employ a variety of demand side  
15 management solutions to better shape a customer's  
16 load." Do you see where that is?

17 A. Yes.

18 Q. Are you testifying that marketers or  
19 other solutions providers will, in fact, do so? Once  
20 FirstEnergy deploys AMI meters in its territory?

21 A. My testimony is to lobby for market  
22 constructs that align wholesale price signals with  
23 retail rates, and that construct would enable the  
24 deployment and ability to deploy those  
25 behind-the-meter technologies, but it is not

1 necessarily saying specifically that it would, but  
2 it's enabling that ability.

3 Q. Okay. So is it correct that you are also  
4 not offering any projection of how many customers  
5 would sign up for a demand-side management solution  
6 with a CRES -- CRES provider or other third party?

7 A. At this point, my testimony does not  
8 contain any sort of projection. It is intended to  
9 articulate the need to align price signals with  
10 retail rates such that that can be enabled for the  
11 competitive marketplace.

12 Q. Okay. And sorry to be repetitive, but  
13 you are also not projecting how many customers would  
14 sign up for any sort of competitive rate offer based  
15 on AMI data, correct?

16 A. My testimony is not projecting how many  
17 customers would sign up for that option. However, I  
18 feel strongly that the only measurement isn't the  
19 number of customers that sign up, but it is to align  
20 with the principles of cost causation and send  
21 efficient price signals so that it allows customers a  
22 choice to do that in the competitive marketplace.

23 MS. FLEISHER: Your Honor, I move to  
24 strike the response starting with "However." That  
25 was not responsive to my question.

1 EXAMINER ADDISON: Thank you,  
2 Ms. Fleisher. I am going to deny the motion to  
3 strike at this point, but I will provide Mr. Childers  
4 with the same warning we gave to Mr. Fanelli. Please  
5 listen to counsel's question and try to answer a  
6 question as directly as possible.

7 THE WITNESS: Okay.

8 EXAMINER ADDISON: Your counsel -- your  
9 counsel can bring up anything on redirect that she  
10 feels necessary.

11 THE WITNESS: Okay. Sounds good.

12 EXAMINER ADDISON: Thank you.

13 Q. (By Ms. Fleisher) And you are not  
14 providing any testimony about the amount of energy  
15 savings or peak-demand reduction that might be  
16 achieved by customers who participate in a  
17 demand-side management solution, correct?

18 A. My written testimony does not have any  
19 such specifics, but there are a number of studies and  
20 citations showing that a smart thermostat can curtail  
21 consistently between .5 and 1.2 kilowatts of demand.

22 Q. Okay. And -- are you offering any  
23 testimony about likely customer energy savings or  
24 peak-demand reductions resulting from any other  
25 marketer offerings utilizing AMI data?

1           A.     That is highly dependent on the market at  
2     that time.  So it would be misleading to provide  
3     specific testimony and commitment on that.

4           Q.     Can you go to page 8, line 124 of your  
5     testimony.

6           A.     Okay.  I'm there.

7           Q.     Okay.  And is it a fair summary to say  
8     that you are testifying that marketers, once AMI is  
9     deployed, may be able to offer a customized, fixed  
10    price offer, which would reward customers with  
11    attractive load profiles with better pricing?

12          A.     I am testifying that by setting up these  
13    constructs that I've mentioned in here, access to  
14    data, aligning wholesale prices with retail price  
15    signals, that the enablement for being able to price  
16    an individual customer, based on their specific  
17    usage, would be enabled, yes.

18          Q.     Okay.  And what's an attractive load  
19    profile?

20          A.     Ultimately what the intent of the word  
21    "attractive" meant was customers with better  
22    behavior.  And when I say "better behavior," I mean  
23    using energy at appropriate times that naturally  
24    would align to costs when they are lower, would,  
25    therefore, yield better pricing.

1           Q.    And does IGS offer any enabled  
2 technologies to allow customers to try to achieve  
3 that sort of load profile?

4           MS. ALLEN:  Objection.  Can we have the  
5 question clarified a little bit better?  Where?  
6 When?  What customers?  Territory?

7           EXAMINER ADDISON:  I'll ask.  Can you  
8 answer the question as posed by Ms. Fleisher?

9           THE WITNESS:  Can you repeat?

10          EXAMINER ADDISON:  Yes.

11          (Record read.)

12          A.    Currently, IGS offers block and index,  
13 and index-based products to commercial customers that  
14 have this construct already in place, the alignment  
15 between wholesale price signals and the ability to  
16 charge them.  We have run peak-shaving products in  
17 certain markets and taken a position in the base  
18 residual auction on behalf of the customers, enrolled  
19 them, had a 90-percent participation rate, namely  
20 with a smart thermostat, and offered them \$5 for  
21 participation in an event.  We discontinued that  
22 program due to the demand response -- some of the  
23 demand response program at the time that allowed us  
24 to monetize the thermostat.  So we have experience in  
25 it and we do have products that enable customers, but



1 it's on the commercial side because the price signals  
2 aren't available today.

3 Q. And just to make sure the record is  
4 clear, when you talk about what happened with  
5 summer -- summer demand response, are you referring  
6 to the changes in PJM market rules that basically  
7 disqualified summer demand response generally from  
8 participating as a product?

9 A. That's correct.

10 Q. And you've mentioned smart thermostats as  
11 a way for customers to manage their demand. Is it  
12 true that IGS has utilized FirstEnergy rebates under  
13 its energy efficiency program to incentivize smart  
14 thermostat offerings for your customers in Ohio?

15 A. Yes. We have utilized rebates for our  
16 customers and we are generally supportive of rebates  
17 as long as they are nondiscriminatory and provide a  
18 good experience for retailers in the competitive  
19 marketplace to take advantage of.

20 Q. Do FirstEnergy's current energy  
21 efficiency programs provide a smart thermostats  
22 rebate that you or any other third-party marketer  
23 solution provider can access?

24 A. Yes, I believe so.

25 Q. And what's the amount of that rebate?

1           A.     It is my recollection that it's \$30.

2           Q.     And how many of those rebates has IGS  
3 utilized for its customers?

4           MS. ALLEN:  Objection.  That was deemed  
5 irrelevant in the motion to compel.

6           MS. FLEISHER:  Your Honors, I just point  
7 out that Mr. Fanelli in his testimony talked a lot  
8 about the market providing, you know, support for  
9 tempering rates and innovative products, and to the  
10 extent it was not relevant before, I think he's made  
11 it newly relevant to figure out if that's going to  
12 happen.

13           EXAMINER ADDISON:  Ms. Allen.

14           MS. ALLEN:  We're just one provider in  
15 the marketplace.  Other CRES providers, solution  
16 providers, retail box stores.  IGS's number in a  
17 vacuum doesn't have any relevance in this case.

18           MS. FLEISHER:  It does if FirstEnergy  
19 argues, based on Mr. Childers' testimony, that IGS  
20 will provide smart thermostats for customers.

21           EXAMINER ADDISON:  Thank you,  
22 Ms. Fleisher.

23                   May I have the question read back,  
24 please?

25                   (Record read.)

1 EXAMINER ADDISON: I'll allow the  
2 question.

3 A. I don't have that information.

4 Q. Do you know whether FirstEnergy has  
5 determined that a rebate above \$30 would be cost  
6 effective for purposes of its energy efficiency  
7 program?

8 A. I can't speculate if FirstEnergy has  
9 determined that.

10 Q. Do you know what energy efficiency  
11 programs FirstEnergy will be offering in the coming  
12 years?

13 A. I'm not familiar with it.

14 Q. So you can't project how many smart  
15 thermostats might be incentivized through  
16 FirstEnergy's upcoming energy efficiency programs,  
17 correct?

18 A. I cannot, and my testimony isn't germane  
19 necessarily to that aspect of the Stipulation.

20 Q. Okay. And can you project how many smart  
21 thermostats IGS customers may purchase with or  
22 without any utility incentive over the next three  
23 years?

24 A. I would not be able to do that because  
25 it's a function of how much marketing investment we

1 make and how much expenditures we choose to incur for  
2 customers' acquisition costs, among other reasons.

3 MS. FLEISHER: That's all I have, your  
4 Honors. Thank you.

5 EXAMINER ADDISON: Thank you,  
6 Ms. Fleisher.

7 Mr. Royer?

8 MR. ROYER: No questions.

9 EXAMINER ADDISON: Ms. Leppla?

10 MS. LEPPLA: No questions, your Honor.

11 EXAMINER ADDISON: Ms. Bojko?

12 MS. BOJKO: No questions, your Honor.

13 EXAMINER ADDISON: Ms. Whitfield?

14 MS. WHITFIELD: No questions, your Honor.

15 EXAMINER ADDISON: Thank you.

16 Ms. Allen, redirect?

17 MS. ALLEN: Yes, please. Just a moment.

18 EXAMINER ADDISON: Let's go off the  
19 record.

20 (Recess taken.)

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

23 Just as a preliminary matter, Mr. Lang,  
24 did the Companies have any questions?

25 MR. LANG: No, your Honor.

1 EXAMINER ADDISON: Mr. Lindgren, any  
2 questions from the Staff?

3 MR. LINDGREN: No questions, your Honor.

4 EXAMINER ADDISON: Thank you very much.  
5 I apologize for skipping over you.

6 Ms. Allen, redirect?

7 - - -

8 REDIRECT EXAMINATION

9 By Ms. Allen:

10 Q. Real quick, do you remember --  
11 Mr. Childers, do you remember when counsel asked  
12 to -- a question about discontinuing a product based  
13 on changes in the PJM's market rules?

14 A. Yes. I believe you're referring to our  
15 discontinuance of the demand response -- summer  
16 demand response in ComEd.

17 Q. Okay. Do those changes in the PJM market  
18 preclude IGS from offering time-varying products if  
19 the Stipulation is approved?

20 A. No. That was one way in which you can  
21 capitalize on monetizing the asset. There is the  
22 opportunity to arbitrage energy when energy prices  
23 spike high, namely, the locational marginal pricing  
24 applicable to where the thermostat is deployed. You  
25 can still do peak load contribution reduction to

1 reduce a customer's capacity costs. So there are a  
2 variety of other mechanisms to monetize whether it's  
3 technological or behavioral changes at the customer  
4 site.

5 MS. ALLEN: Great. Thank you. That's  
6 all.

7 IGS would like to move for the admission  
8 of IGS Exhibit 1.

9 EXAMINER ADDISION: We'll hold off and  
10 take recross first, Ms. Allen. Thank you very much.

11 MS. FLEISHER: Thank you, your Honor.

12 - - -

13 RECROSS-EXAMINATION

14 By Ms. Fleisher:

15 Q. I do have a question which is does IGS  
16 currently offer any product that -- I am going to try  
17 to summarize -- that arbitrages spiking energy prices  
18 as you described in your answer to Ms. Allen?

19 MS. ALLEN: Objection. In Ohio?

20 MS. FLEISHER: In any jurisdictions  
21 because he mentioned a product offered in ComEd  
22 territory, I think that's fair game.

23 EXAMINER ADDISON: I agree. I will allow  
24 the question. You may answer.

25 A. If we're referring to in ComEd, they

1 currently do not settle residential customers on  
2 their hourly energy usage; so, no, we don't have the  
3 capability to.

4 MS. FLEISHER: That's all, your Honor.

5 EXAMINER ADDISON: Thank you, very much.

6 EXAMINER PRICE: I have a question.

7 EXAMINER ADDISON: Can I go first?

8 EXAMINER PRICE: I'm sorry.

9 EXAMINER ADDISON: No, you're good.

10 Mr. Lang, any questions?

11 MR. LANG: No, your Honor.

12 EXAMINER ADDISON: Mr. Lindgren?

13 MR. LINDGREN: No, your Honor.

14 EXAMINER ADDISON: OEG?

15 MR. KURTZ: No.

16 EXAMINER ADDISON: IEU-Ohio?

17 MR. DARR: No, your Honor.

18 EXAMINER ADDISON: OCTA?

19 MS. PETRUCCI: No questions, your Honor.

20 EXAMINER ADDISON: Direct Energy?

21 MS. GLOVER: No, thank you.

22 EXAMINER ADDISON: OCC?

23 MR. ETTER: No questions.

24 EXAMINER ADDISON: OPEC?

25 MR. STINSON: No questions.

1 EXAMINER ADDISON: OEC?

2 MS. LEPPLA: No, your Honor.

3 EXAMINER ADDISON: Ms. Whitfield?

4 MS. WHITFIELD: No, your Honor.

5 EXAMINER ADDISON: Ms. Bojko?

6 MS. BOJKO: No questions, your Honor.

7 EXAMINER ADDISON: Mr. Royer?

8 MR. ROYER: No questions.

9 EXAMINER ADDISON: Now you can ask your  
10 question.

11 - - -

12 EXAMINATION

13 By Examiner Price:

14 Q. I just have a couple of questions. There  
15 has been a lot of discussion in this hearing about  
16 does IGS offer this product, does IGS offer that  
17 product. How many jurisdictions, how many states  
18 does IGS operate in, have both choice programs and  
19 smart meter deployment?

20 A. When you refer to "smart meter  
21 deployment," do you mean a full AMI deployment or any  
22 of the existence of any smart meters?

23 Q. You can answer it both ways.

24 A. We operate in Texas which obviously has a  
25 large deployment. Obviously you are privy to those



1 in Ohio. And ComEd has pushed significantly towards  
2 deploying their meters and they currently do so on  
3 capacity but not energy on the wholesale side. BGE  
4 is another market where smart meter deployments are  
5 there. But that's it.

6 Q. So four basically.

7 A. Yeah.

8 EXAMINER PRICE: Thank you. That's all I  
9 had.

10 THE WITNESS: Yeah.

11 EXAMINER ADDISON: Thank you. I have no  
12 additional questions. Mr. Childers, you are excused.

13 THE WITNESS: Thank you. Appreciate it.

14 EXAMINER ADDISON: Thank you.

15 Ms. Allen.

16 MS. ALLEN: Yes. I would like to move  
17 for the admission of IGS Exhibit 1.

18 EXAMINER ADDISON: Are there any  
19 objections to the admission of IGS Exhibit 1?

20 Hearing none, it will be admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 MS. ALLEN: Thank you.

23 EXAMINER PRICE: Mr. Lindgren, do you  
24 have a witness for us today?

25 MR. LINDGREN: Yes, your Honor. The

1 Staff calls to the stand, Krystina Schaefer.

2 (Witness sworn.)

3 EXAMINER PRICE: Please be seated and  
4 state your name and business address for the record.

5 THE WITNESS: My name is Krystina  
6 Schaefer. I'm employed by the Public Utilities  
7 Commission of Ohio at 180 East Broad Street,  
8 Columbus, Ohio 43215.

9 EXAMINER PRICE: Please proceed,  
10 Mr. Lindgren.

11 MR. LINDGREN: Thank you.

12 - - -

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

16 DIRECT EXAMINATION

17 By Mr. Lindgren:

18 Q. Ms. Schaefer, do you have a copy of your  
19 prefiled testimony in front of you?

20 A. Yes, I do.

21 MR. LINDGREN: Your Honor, I would ask to  
22 have that marked, the testimony marked as Staff  
23 Exhibit 2.

24 EXAMINER PRICE: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. LINDGREN: Thank you.

2 Q. Was this testimony prepared by you or at  
3 your direction?

4 A. Yes, it was.

5 Q. Thank you. Do you have any changes or  
6 corrections to this testimony?

7 A. I do not.

8 Q. And if I were to ask you all the  
9 questions contained in this exhibit, would your  
10 answers be the same?

11 A. Yes, they would.

12 MR. LINDGREN: Thank you. I have no  
13 further questions and the witness is available.

14 EXAMINER PRICE: Companies?

15 MR. LANG: Thank you. No questions.

16 EXAMINER PRICE: OEG?

17 MR. KURTZ: No questions.

18 EXAMINER PRICE: IEU-Ohio?

19 MR. DARR: No questions.

20 EXAMINER PRICE: OCTA?

21 MS. PETRUCCI: No questions.

22 EXAMINER PRICE: IGS?

23 MS. ALLEN: No questions.

24 EXAMINER PRICE: OPAA?

25 NOPEC?

1 MR. STINSON: Oh, no questions, your  
2 Honor.

3 EXAMINER PRICE: Consumers' Counsel?

4 MR. ETTER: No questions, your Honor.

5 EXAMINER PRICE: Direct Energy?

6 MS. GLOVER: No questions.

7 EXAMINER PRICE: Ms. Fleisher?

8 MS. FLEISHER: A few questions, your  
9 Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Fleisher:

13 Q. Ms. Schaefer, Mr. Fanelli's direct  
14 testimony states that the cost/benefit analysis  
15 supporting Attachment B was "developed in  
16 collaboration with Commission Staff." That's on page  
17 10 of his testimony if you want to check. Can you  
18 describe how Staff participated in preparation of the  
19 cost/benefit analysis?

20 A. Just to start, I don't have his testimony  
21 in front of me, but generally speaking there was two  
22 cost/benefit analyses presented as part of the  
23 16-0481 Application, I believe, which is the  
24 three-scenario Grid Mod application and then the  
25 platform case, and so there was discussions based

1 around the assumptions used for those that were  
2 incorporated into the current case cost/benefit  
3 analysis.

4 Q. And did Staff review all of the  
5 assumptions going into the cost/benefit analysis  
6 supporting the Stipulation currently before the  
7 Commission?

8 A. Yes. I'm not supporting the CBA  
9 directly, but generally we agreed with all those  
10 assumptions, yes. We thought they were reasonable.

11 Q. All right. Turning to your testimony,  
12 page 5, line 12.

13 A. I'm at "With customer authorization,  
14 third parties will also be able to access customer  
15 energy usage data."

16 Q. Great. Okay. I am actually looking at  
17 the next sentence going from line 12 to line 15. Do  
18 you see that one?

19 A. Yes.

20 Q. Okay. And you refer to customers having  
21 the opportunity to manage their energy -- energy  
22 usage, correct?

23 A. Yes.

24 Q. Okay. Would you agree that one of the  
25 most significant types of energy usage that customers

1 would be able to control would be their energy used  
2 for cooling?

3 A. Assuming they have central air, yes.

4 Q. Okay. And for customers with electric  
5 heating, then electric heating would also be subject  
6 to customer energy management, correct?

7 A. I think for residential customers, yes,  
8 in general.

9 Q. Okay. And on a hot summer day which --  
10 what type of usage do you think a customer would be  
11 most likely to manage?

12 A. Their cooling load.

13 Q. Okay. And you also refer to customer  
14 opportunities to understand their energy usage. Can  
15 you describe your understanding of how a customer  
16 would be able to view and understand the energy usage  
17 data from an AMI meter?

18 A. Within the context of the Grid Mod I  
19 investment?

20 Q. Correct.

21 A. Yeah. I think there's a few ways. I  
22 think one that jumps out is -- let me pull up the  
23 actual reference in the Stipulation here. The  
24 opportunity to enable a home area network. So for me  
25 personally, I am an AEP Ohio customer. Being able to

1 see real-time data I think is very helpful to be able  
2 to understand what your usage is actually doing in  
3 any given moment.

4 So the Companies, per the Stipulation,  
5 will accommodate home area network devices, you know,  
6 through the collaborative process, the process we're  
7 actually connecting those devices to the meter will  
8 be established, but there's that opportunity that  
9 will exist in the future.

10 I think another piece is not only will  
11 the AMI meters be installed but the wholesale  
12 settlement systems and processes will be updated so  
13 customers' data will be settled on an hourly basis  
14 but also they will have individual peak load  
15 contribution factors so they'll presumably have a  
16 better understanding of the actual contribution to  
17 that PLC if marketers are able to provide benefits  
18 for reducing the PLC in the retail market.

19 Q. Okay. And to break that down into two  
20 parts, so you referred to home area network devices.  
21 And is it correct to say that those are devices,  
22 separate devices from an AMI meter, that you would  
23 need to be able to see real-time energy usage data?

24 A. For real-time, yes. Though the  
25 Companies' committed to provide enhanced access to

1 data for every customer with a smart meter. You just  
2 have the delay because it has to go back to the  
3 utility and then basically be, you know, able to be  
4 viewed through the application.

5 Q. Okay. And you mentioned you are an AEP  
6 Ohio customer.

7 A. Yes.

8 Q. So do you have a home area network device  
9 that AEP Ohio calls an Energy Bridge?

10 A. I do.

11 Q. And how did you receive that home area  
12 network device?

13 A. Have I received it?

14 Q. How did you?

15 A. Through the mail.

16 Q. From whom?

17 A. I'm guessing from AEP Ohio. I didn't  
18 look at the return address.

19 Q. How -- did they just send it to you out  
20 of the blue, or did you request one?

21 A. I e-requested it through the app, the  
22 mobile app.

23 Q. Did you pay anything for that?

24 A. Not directly.

25 Q. Okay. And when you or any customer is



1 viewing real-time energy usage data, is that  
2 disaggregated by type of usage -- that's, I'm sorry,  
3 an energy-efficiency term. Let me ask it in a  
4 layperson's way.

5 Can you see how much of that usage is  
6 from your air conditioning or from your refrigerator,  
7 or from your hot water heater, et cetera, et cetera?

8 A. I can't directly. The functionality  
9 exists based on the standards that the Energy Bridge  
10 is set up with. So you can go to Amazon and buy a  
11 plug, for instance, if I have a -- I live in a very  
12 old home. I have a portable space heater. If I want  
13 to see that specific load, I could use a plug.  
14 There's also smart lights that you can buy. They  
15 just have to communicate with the right communication  
16 protocols.

17 Generally, you can see, based on the load  
18 profile, what's what. But that's kind of just  
19 through guessing a little bit and through the time of  
20 the day. So I can see when my coffeemaker goes off  
21 in the morning and my hair dryer, but it's not  
22 actually granularly -- given to me in that granular  
23 of a manner. It's just inference.

24 Q. Okay. And when you say "generally, you  
25 can see," you mean you, Ms. Krystina Schaefer,

1 Staff -- on Staff at the Public Utilities Commission  
2 of Ohio?

3 A. Yes.

4 Q. Okay. And can you see that if you're --  
5 or can you control that usage if you're not at home?

6 A. Not all of it, no.

7 Q. Okay. What usage can you control if you  
8 are not at home?

9 A. I also have the thermostat that was  
10 offered through the energy efficiency portfolio plan.  
11 And so I have the app where I can control that  
12 remotely.

13 Q. All right. Can you go to page 6 of your  
14 testimony, line 2. Are you there?

15 A. Yes.

16 Q. Okay. And here you referred to the  
17 utilities' time-varying rate offering remaining until  
18 "sufficient CRES offerings exist." Do you see that?

19 A. Yes.

20 Q. Okay. Is it your testimony that there  
21 will be sufficient CRES offerings once one of the  
22 conditions on pages 17 to 18 of the Stipulation is  
23 met? And feel free to take a moment to look at  
24 those.

25 A. I'm sorry, can you repeat the question?

1           Q.    Sure.  And let me take you to the  
2   Stipulation just so you have that in front of.  So if  
3   you go to the Stipulation, bottom of page 17, top of  
4   page 18, and you recall that the -- that specifies  
5   two conditions that basically trigger the potential  
6   for FirstEnergy to withdraw a time-varying rate  
7   offering for SSO customers, correct?

8           A.    Uh-huh.

9           Q.    Okay.  And do you think if one of those  
10   two conditions is met, that that means that there are  
11   sufficient CRES offerings and FirstEnergy should  
12   withdraw its time-varying rate offering?

13          A.    It's hard to say what Staff's position  
14   would be without seeing the types of offerings that  
15   would exist in the marketplace at that time.

16          Q.    And what factors would Staff consider in  
17   assessing whether there was sufficient CRES  
18   offerings?

19          A.    I mean, the Stipulation is fairly  
20   straightforward where it says at least three  
21   suppliers offering products utilizing AMI data or at  
22   least three different types of products.  I think  
23   from Staff's perspective, since the basis for the  
24   initial SSO offering from the Companies would be  
25   designed to achieve, at least in an approximate way,

1 the energy and capacity savings detailed in the CBA,  
2 we would look to see if there was some incentive --  
3 incentives within the retail offerings to reduce  
4 usage during peak periods or reduce the PLC values  
5 for individual customers, but it's hard to say  
6 without looking at what the retail offerings would  
7 exist in that future filing.

8 Q. Okay. Would Staff consider levels of  
9 enrollment in marketer offerings?

10 MR. LINDGREN: Objection, relevancy  
11 grounds and calls for speculation.

12 MS. FLEISHER: Happy to address, your  
13 Honor. I think Mr. Fanelli alluded to the idea that  
14 the market would provide the benefits from AMI  
15 deployment, and FirstEnergy wouldn't have to. And I  
16 think we're -- customers will certainly be left in  
17 that position if the -- a utility time-varying rate  
18 offer is withdrawn, and so I think it's important to  
19 know the conditions under which that offer may be  
20 withdrawn.

21 EXAMINER PRICE: I'll allow it. Let's  
22 have the question back again, please.

23 (Record read.)

24 A. Something Staff would likely consider.

25 Q. And would Staff consider actual customer

1 energy savings or peak-demand reductions achieved?

2 A. I'm not sure what information we would  
3 have from the marketer. Are you talking about what  
4 the retail market offers had achieved with that  
5 respect?

6 Q. I guess I'll break it down. Would Staff  
7 consider the energy savings and peak-demand  
8 reductions achieved through the utility's rate offer?

9 A. I think we may. More likely would look  
10 at the details of the CRES offerings though.

11 Q. And so, that corollary, would Staff  
12 consider any available data as to actual customer  
13 energy savings or peak-demand reduction savings on  
14 marketer offerings?

15 A. We would likely consider it, likely.

16 Q. And would Staff consider the market  
17 penetration of different types of enabling devices as  
18 that's referred to -- or enabling technologies, I'm  
19 sorry, as referred to in the Stipulation?

20 A. Enabling devices that would be offered by  
21 the EDU or by the CRES marketers or CRES providers?

22 Q. Do the same thing again, would Staff  
23 consider the number of enabling technologies deployed  
24 by the utility?

25 A. I think so. I think that was part of the

1 consideration in the reasonableness of the  
2 assumptions in the CBA in the current case. I  
3 believe the current EE portfolio plan has over 60,000  
4 smart thermostats through two different programs  
5 which is roughly 9 percent of the AMI meters that  
6 would be deployed as part of Grid Mod I, so I think  
7 it would be considered if the information was  
8 available in the future case as well.

9 Q. Okay. And has Staff actually seen  
10 evaluation results as to whether FirstEnergy has  
11 provided 60,000 smart thermostat rebates through its  
12 portfolio plans?

13 A. I do not work directly on the EE programs  
14 or cases, but I believe there was a delay based on  
15 the timing of when the Stipulation was approved.

16 Q. So that number you are citing is from  
17 where?

18 A. From the Stipulation -- I don't know -- I  
19 don't recall the case number, but from the  
20 Stipulation for the current EE program for calendar  
21 years 2017 through 2019.

22 Q. Okay. And have you looked at  
23 FirstEnergy's annual reports of the actual results of  
24 its energy efficiency program?

25 A. I've reviewed a lot of information on the

1 docket but I don't recall if I looked at that  
2 specifically.

3 Q. Okay. So you would not have gotten any  
4 sort of smart thermostat level number from the annual  
5 report filings, correct?

6 A. No.

7 MS. FLEISHER: Can I have one moment,  
8 your Honor?

9 EXAMINER PRICE: You may.

10 Q. I guess maybe one quick follow-up  
11 question, Ms. Schaefer. In the course of your  
12 discussion of the cost/benefit analysis with  
13 FirstEnergy, did FirstEnergy ever represent to you  
14 that they had provided 60,000 smart thermostat  
15 rebates in their territory?

16 MR. LANG: Objection, your Honor. To the  
17 extent -- I'm not sure about the basis of this, but  
18 to the extent that discussions were -- to the extent  
19 the question gets into settlement discussions, I  
20 would object to asking about settlement discussions.  
21 I am just not sure whether Ms. Schaefer, in order to  
22 answer the question, needs to go to that, needs to  
23 respond based on settlement discussions, knowledge  
24 outside of that, but to the extent it's settlement, I  
25 would object.

1 EXAMINER PRICE: Ms. Schaefer, you can  
2 answer the question to the extent you are not  
3 disclosing information you learned during settlement  
4 negotiations.

5 A. The information is publicly available on  
6 the Docketing Information System. That wasn't one of  
7 the references used for their assumptions. It's just  
8 something Staff considered separate from settlement  
9 discussions in terms of the reasonableness.

10 MS. FLEISHER: Okay. Thank you, your  
11 Honors. That's all I have.

12 EXAMINER PRICE: Thank you.

13 Mr. Royer?

14 MR. ROYER: No questions.

15 EXAMINER PRICE: Ms. Leppla?

16 MS. LEPPLA: No questions, your Honor.

17 EXAMINER PRICE: Ms. Bojko?

18 MS. BOJKO: No, thank you.

19 EXAMINER PRICE: Ms. Whitfield?

20 MS. WHITFIELD: No, thank you, your  
21 Honor.

22 - - -

23 EXAMINATION

24 By Examiner Price:

25 Q. I have a couple of questions before we go



1 on to redirect. Mr. Lindgren can clean up any mess I  
2 make. This question is peak load contribution.  
3 Smart meters will allow the individual's peak load  
4 contribution, individual residents -- residential  
5 customers' individual peak load contributions to be  
6 calculated; is that correct?

7 A. The AMI meters will provide the data but  
8 you actually need to update the PJM settlement  
9 process so that can be monetized by CRES providers in  
10 the marketplace.

11 Q. What do you mean by "monetized by CRES  
12 providers"?

13 A. Unless the Companies update the PJM  
14 settlement systems and processes, it will still be  
15 calculated on a generic load profile instead of the  
16 individual customer contribution to peak. So for a  
17 residential customer, you would just be billed on  
18 whatever the average profile is versus being able to  
19 change your behavior and actually get, you know,  
20 whether it's through a CRES or through the SSO, get  
21 an actual financial incentive for changing your  
22 behavior.

23 Q. But the Company has agreed to make those  
24 changes, correct?

25 A. Yes.

1           Q.    So if the Commission approves this plan,  
2   in the future, the individual residential customers  
3   will be able to have their own specific peak load  
4   contribution rather than the generic one that is  
5   currently used?

6           A.    Yes.

7           Q.    And they will have an incentive to use  
8   less energy because they will be able to reduce their  
9   costs by reducing their peak load contribution; is  
10   that true?

11          A.    I think, you know, this goes to what the  
12   future filing and then the future CRES provider  
13   marketer -- sorry, CRES provider offerings would  
14   provide but, yes. I think both reduction in the PLC  
15   value, so the capacity payments, but also your actual  
16   energy use if you are using energy during off-peak  
17   periods.

18          Q.    And the smart meters will also -- you  
19   were discussing individual loads that can be reduced  
20   in off-peak periods. Another one would be plug-in  
21   vehicle charging, electric charging; is that true?

22          A.    Yes.

23          Q.    And I guess last -- go ahead.

24          A.    I would just add, right now there's no  
25   time-of-use rates but also if you are not settling

1 based on the time of use, then there's not really  
2 much of an actual benefit that will be provided in  
3 the long run.

4 Q. Right. Thank you. And so I have one  
5 more question. Are all smart meters bidirectional,  
6 so if we -- if you have a customer with distributed  
7 generation, solar panels, are all smart meters  
8 designed so that the information can flow both ways?

9 A. It would depend on the specific meter  
10 specifications, I would think. I don't know  
11 generically.

12 Q. Do you know if FirstEnergy's, the ones  
13 that FirstEnergy intends to deploy, will all be  
14 bidirectional?

15 A. I believe they are using the newer Itron  
16 meters, so I think so, but, again, that's somewhat  
17 speculative.

18 Q. You don't know for sure?

19 A. No.

20 Q. Assuming for the sake of argument they  
21 are all bidirectional, that will also promote net  
22 metering in the State, would it not?

23 A. I would think so, yeah.

24 EXAMINER PRICE: Thank you.

25 Mr. Lindgren, redirect?

1 MR. LINDGREN: May we have a moment to  
2 confer?

3 EXAMINER PRICE: You may.  
4 Mr. Lindgren.

5 MR. LINDGREN: We have no redirect, your  
6 Honor.

7 EXAMINER PRICE: Thank you, Ms. Schaefer.  
8 You are excused.

9 MR. LINDGREN: Your Honor.

10 EXAMINER PRICE: Yes.

11 MR. LINDGREN: I would move for the  
12 admission of Staff Exhibit 2.

13 EXAMINER PRICE: Any objections to the  
14 admission of Staff Exhibit 2?

15 Seeing none, it will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: Do we have anything to  
18 address before we adjourn for the evening?

19 We will reconvene tomorrow morning at 9  
20 o'clock which, at that time, we will take ELPC  
21 Witness Volkmann.

22 We are adjourned. Let's go off the  
23 record.

24 (Thereupon, at 5:42 p.m., the hearing was  
25 adjourned.)

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, February 5, 2019, and carefully compared with my original stenographic notes.

\_\_\_\_\_  
Karen Sue Gibson, Registered  
Merit Reporter.

\_\_\_\_\_  
Carolyn M. Burke, Registered  
Professional Reporter.

(KSG-6689)

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**Case No(s). 16-0481-EL-UNC, 17-2436-EL-UNC, 18-1604-EL-UNC, 18-1656-EL-ATA**

Summary: Transcript in the matter of the Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company hearing held on 02/05/19 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.