

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the 2018 :  
Long-Term Forecast Report : Case No. 18-501-EL-FOR  
of Ohio Power Company and :  
Related Matters. :

In the Matter of the :  
Application of Ohio Power :  
Company for Approval to :  
Enter Into Renewable : Case No. 18-1392-EL-RDR  
Energy Purchase :  
Agreements for Inclusion :  
in the Renewable :  
Generation Rider. :

In the Matter of the :  
Application of Ohio Power : Case No. 18-1393-EL-ATA  
Company for Approval to :  
Amend its Tariffs. :

- - -

PROCEEDINGS

before Ms. Sarah Parrot and Ms. Greta See, Attorney  
Examiners, at the Public Utilities Commission of  
Ohio, 180 East Broad Street, Room 11-A, Columbus,  
Ohio, called at 9:00 a.m. on Friday, January 25,  
2019.

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VOLUME VIII

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2014

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2017

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19  
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2022

Friday Morning Session,  
January 25, 2019.

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

This is a continuation of the hearing in  
Case No. 18-501-EL-FOR, et al.

Good morning, everyone. Let's start with  
brief appearances, starting to my right and working  
our way around the table.

MR. NOURSE: Thank you, your Honor. On  
behalf of Ohio Power Company, Steven T. Nourse,  
Christen M. Blend; the law firm of Ice Miller,  
Christopher L. Miller; the law firm of Porter Wright,  
L. Bradford Hughes and Eric B. Gallon.

MS. WILLIS: Thank you, your Honor. On  
behalf of the customers of the Ohio Power Company,  
Bruce Weston, Consumers' Counsel, by Maureen Willis,  
Christopher Healey, and William Michael.

MR. McNAMEE: For the Staff of the PUCO,  
Tom McNamee.

MR. KURTZ: Good morning, your Honors.  
For OEG, Mike Kurtz and Jody Kyler Cohn.

MS. BOJKO: Good morning, your Honors.  
On behalf of the Ohio Manufacturers' Association

2023

1 Energy Group, Kimberly W. Bojko and Brian W. Dressel.

2 MS. WHITFIELD: Good morning, your  
3 Honors. On behalf of The Kroger Company, Angie Paul  
4 Whitfield and Stephen E. Dutton.

5 MR. COLLIER: Good morning. On behalf of  
6 the Ohio Coal Association, Orla Collier and John  
7 Stock; Benesch Friedlander Coplan & Aronoff.

8 MR. MENDOZA: Good morning. On behalf of  
9 the Sierra Club, Tony Mendoza.

10 MS. PIRIK: Good morning, your Honors.  
11 On behalf of the Mid-Atlantic Renewable Energy  
12 Coalition, Christine Pirik, Terrence O'Donnell, Will  
13 Vorys, and Cristina Luse.

14 MR. DOVE: Good morning, your Honors. On  
15 behalf of the Natural Resources Defense Council,  
16 Robert Dove.

17 MR. DARR: On behalf of IEU-Ohio, Frank  
18 Darr.

19 MR. WHITT: Mark Whitt and Rebekah Glover  
20 on behalf of Direct Energy and Retail Energy Supply  
21 Association.

22 EXAMINER PARROT: Thank you, everyone.

23 Ms. Pirik, are you ready to call your  
24 witness?

25 MS. PIRIK: We are, your Honor.

2024

1 Mid-Atlantic Renewable Energy Coalition would call  
2 Bruce Burcat.

3 (Witness sworn.)

4 EXAMINER PARROT: Please have a seat.

5 - - -

6 BRUCE BURCAT

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

9 DIRECT EXAMINATION

10 By Ms. Pirik:

11 Q. Good morning, Mr. Burcat.

12 A. Good morning.

13 Q. I'm over here. It's hard. But at least  
14 I have a microphone. I don't think your microphone  
15 is on.

16 A. Got it.

17 Q. Could you please state your name and  
18 spelling for the record.

19 A. Sure. It's Bruce Burcat. Last name is  
20 spelled B-u-r-c-a-t.

21 Q. Could you please state where you're  
22 employed and what -- and in what capacity.

23 A. I'm employed by the Mid-Atlantic  
24 Renewable Energy Coalition, and I am it's Executive  
25 Director.

2025

1 Q. And did you cause to be filed prefiled  
2 direct testimony?

3 A. Yes.

4 MS. PIRIK: Your Honor, I would like to  
5 mark as MAREC Exhibit 1, the January 2, 2019,  
6 testimony of Mr. Burcat.

7 EXAMINER PARROT: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. PIRIK: I will also note for the  
10 record, we've provided a copy to the court reporter.

11 Q. Mr. Burcat, do you have in front of you  
12 what has been marked as MAREC Exhibit 1?

13 A. I do.

14 Q. And is that your prefiled testimony that  
15 you filed in this record?

16 A. It is.

17 Q. And was it prepared by you and under your  
18 direction?

19 A. Yes.

20 Q. Do you have any changes or corrections to  
21 your testimony?

22 A. I do not.

23 Q. And if I were to ask you the same  
24 questions today, as the questions that were prefiled,  
25 would your answers be the same?

1           A.     They would be.

2                   MS. PIRIK:   Your Honor, Mr. Burcat is  
3     available for cross-examination, and we would move  
4     the admission of MAREC Exhibit 1 subject to such  
5     cross-examination.

6                   EXAMINER PARROT:   Thank you.

7                   MS. WILLIS:   Your Honor, would now be an  
8     appropriate time to entertain motions to strike?

9                   EXAMINER PARROT:   Go ahead, Ms. Willis.

10                  MS. WILLIS:   Thank you.

11                   Your Honor, I have several motions to  
12     strike.   I will sort of try to keep them categorized  
13     as to the grounds so that we can have some kind of  
14     order.

15                   The first motion to strike begins with  
16     Mr. Burcat's testimony on page 9, starting on line 7,  
17     with the sentence "In the same month" and continuing  
18     through line 13, ending with "the State of Maryland."

19                   And the grounds, your Honor, are that  
20     this testimony relates to two different analyses, a  
21     report commissioned by the Maryland Public Service  
22     Commission and another report by the so-called Power  
23     Plant Research Program.   These reports are hearsay  
24     offered for the truth of the matter asserted.   They  
25     deprive the intervenors of the ability to

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1 cross-examine the witness on the findings of these  
2 reports, and I don't believe the witness is being  
3 offered as an expert on the economic impact studies.

4 There is no citation to the reports  
5 contained in the testimony. And this is not the type  
6 of information that is indisputable or from a  
7 recognized source in the field of economic impact  
8 studies. There is no exception to the hearsay rule  
9 for this information.

10 And, secondly, we would move to strike on  
11 the grounds of relevancy. The information does not  
12 have the tendency to make the existence of any fact  
13 that is of consequence to this Commission more  
14 probable or less probable. AEP has presented an  
15 economic impact analysis that is specific to Ohio.  
16 That analysis relied on the RIMS II model and had  
17 Ohio specific inputs such as property tax, sales  
18 taxes, and income taxes. Two state-specific reports  
19 from Maryland, with no foundation established as to  
20 the similarities between Maryland and Ohio, do not  
21 make it more probable that there will be more --  
22 there will be positive economic impact in Ohio from  
23 AEP's solar project.

24 We would ask that even if you determine  
25 that this evidence is relevant, that it still be

1 excluded because it is cumulative with little  
2 probative value.

3 MS. PIRIK: May I respond?

4 EXAMINER PARROT: You may.

5 MS. PIRIK: Thank you, your Honor.

6 We do understand there have been a number  
7 of motions to strike based on hearsay. The  
8 information that is set forth in Mr. Burcat's  
9 testimony is no different than any of those that are  
10 currently in the record. It is public knowledge. It  
11 is information that can be found publicly on the  
12 internet. It is within his expert knowledge as an  
13 expert witness in this case. You know, these are  
14 official documents that have been submitted that he,  
15 himself, is aware of. This is not hearsay  
16 information. It is totally appropriate and the  
17 Commission can give this whatever appropriate weight  
18 it deems fit in its consideration of the issues.

19 MR. NOURSE: Your Honor, I agree. The  
20 Company joins in opposing the motion. I think this  
21 is an illustrative example that Mr. Burcat is citing  
22 based on his knowledge. He can answer questions  
23 about it. You know, it's an example the State of  
24 Ohio can look to, you know, and understand what to  
25 expect in a similar situation in terms of economic



2029

1 benefits. So I don't think it's -- I don't think  
2 it's hearsay and it should be -- should be included.  
3 It's relevant.

4 MS. BOJKO: Your Honor, OMA supports the  
5 motion to strike. I think the information is not  
6 only improper hearsay, as you've heard, but it is  
7 also irrelevant to the Ohio matter pending before the  
8 Commission. No citation. We have no ability to --  
9 and he did not provide the report to the parties. We  
10 have no ability to view the report and question the  
11 author of the report as Mr. Burcat did not author it.  
12 It is inappropriate. Just because it's available on  
13 the internet doesn't mean it's able to be used in  
14 a -- in a hearing or a trial. That's why the Rules  
15 of Evidence exist.

16 MR. MENDOZA: Your Honor, if I may  
17 briefly? Briefly?

18 EXAMINER PARROT: Go ahead.

19 MR. MENDOZA: Thank you. I would just  
20 note that this Commission is free to take  
21 administrative notice of the work of other state  
22 commissions as it sees fit. I think it's routine to  
23 take notice of U.S. federal government documents. I  
24 don't think there is any good reason why the  
25 Commission could not choose to take administrative

1 notice of the work of its sister agencies. Of  
2 course, it could choose to put whatever weight it  
3 sees fit. And as to the relevancy objection,  
4 relevance is, of course, for the fact-finders to  
5 decide, not for motions to strike.

6 MS. PIRIK: Your Honor, I have just one.  
7 Mr. Burcat relied on this information with regard to  
8 his expert testimony. He is available for  
9 cross-examination. He was available for deposition  
10 if parties wanted to have further discovery on him.  
11 He's here today and ready to answer questions on his  
12 expert testimony.

13 EXAMINER PARROT: All right. Consistent  
14 with the earlier motions in this proceeding, the  
15 motion to strike on the grounds of both relevance and  
16 hearsay is denied.

17 MS. WILLIS: Thank you, your Honor. With  
18 respect to -- I have an additional motion to strike.

19 EXAMINER PARROT: Okay.

20 MS. WILLIS: My second motion to strike  
21 relates to Attachment BB-1. I move to strike it in  
22 its entirety along with Footnotes 16 and 17 which are  
23 I believe foundational and related to BB-1. The --  
24 with respect to the footnotes, the Footnotes 16 and  
25 17, are two Dayton Daily News and New York Times

1 articles. I think that those are not necessarily  
2 reliable sources of information.

3 I know a witness is entitled to rely on  
4 information but it has to be information that is  
5 reliable. Even though it is hearsay, it has to be  
6 reliable and something that is commonly used by  
7 experts in the field. I'm not sure that experts in  
8 the field go to the Times and the Dayton Daily News  
9 for their -- for their information.

10 With respect to the Attachment BB-1, we  
11 look at that, your Honor, this is a -- the materials  
12 in BB-1 is -- show a list of Ohio-based Fortune 500  
13 companies with sustainability reporting. And  
14 Mr. Burcat appears to believe that the facts that --  
15 the fact that companies have sustainability reporting  
16 shows that they have a growing and unmet demand for  
17 renewables.

18 The materials on this exhibit are just  
19 links to -- it's a data dump, if this ever was one.  
20 Links to web pages where companies have provided  
21 information depicting their commitment to  
22 environmental, social, and governance issues. And if  
23 you click on the links, you'll see there's no  
24 standardization of the reporting of sustainability  
25 information. We would venture to say the reporting

1 is, among other things, a very popular marketing tool  
2 for companies.

3 The information is hearsay. It's offered  
4 to prove the truth of the matter asserted. It  
5 doesn't fall within an exception to hearsay and we  
6 move to strike.

7 MS. BOJKO: Your Honor, before you  
8 respond, I will jump in. OMAEG supports the motion  
9 and we would add that the only exception -- experts  
10 are allowed to rely on information but it has to  
11 still fall within an exception and that exception,  
12 which is being implied throughout this hearing, is  
13 the learned treatise docket -- the learned treatise  
14 exception which means that it has to be a reputable  
15 source.

16 It has to be a document that's normally  
17 relied upon by experts and, as Ms. Willis pointed  
18 out, news articles do not fall into learned treatise.  
19 So that's the exception that an expert is allowed to  
20 rely on. Newspaper articles are not, and information  
21 from companies' website are not. Again, it is  
22 hearsay as well as it's inappropriate hearsay and  
23 inadmissible under the Rules of Civil Procedure.  
24 Thank you.

25 MS. WHITFIELD: And, your Honor, on

1     behalf of Kroger, I would join in the motions to  
2     strike of both OCC and OMAEG. Particularly as to  
3     Attachment BB-1, I would also include that it's  
4     misleading in that it actually lists Kroger on there  
5     and makes implication that Kroger's needs are not  
6     being met and are somehow in support of AEP's  
7     application when, in fact, as everybody is aware,  
8     Kroger is opposing, actively opposing the  
9     Application; so to include them on Attachment BB-1,  
10    to indicate that somehow they need these renewable  
11    projects or are in support of these renewable  
12    projects to meet their sustainability goals, is  
13    misleading and improper evidence.

14                 MS. PIRIK: Your Honor, in response,  
15    first of all, we would note we do respect the Bench's  
16    rulings with regard to these types of motions to  
17    strike. And we certainly agree that there should be  
18    consistency throughout and we would note that these  
19    are the same arguments that have been heard and  
20    rejected in previous motions before the Bench.

21                 With regard specifically to the newspaper  
22    information, we would note that OCC earlier presented  
23    a Wall Street Journal article and ask that it be  
24    admitted and it was admitted into the record.

25                 Certainly, Mr. Burcat relied on this

1 information and is knowledgeable in this field and is  
2 available for cross-examination on any information  
3 that is contained in any of those documents and they  
4 were certainly available for all the parties to  
5 review.

6 With regard to the Attachment BB-1, we  
7 would note that once again, as with similar  
8 arguments, it is not an unknown fact that Fortune 500  
9 companies are looking into sustainability  
10 opportunities and these types of internet websites  
11 are certainly something that is within Mr. Burcat's  
12 knowledge and items that he has reviewed. They are  
13 not hearsay. It is not inappropriate for them to be  
14 put in the record. Just as previous rulings, these  
15 will be considered by the Commission and the  
16 Commission will put whatever appropriate weight they  
17 deem necessary.

18 MR. NOURSE: And, your Honor, the Company  
19 concurs with MAREC, and I would just add a couple of  
20 points on the consistency point. Yes, this is  
21 similar to evidence admitted in -- earlier in this  
22 proceeding and it's really conduct of these companies  
23 to publicly state and adopt a sustainability policy  
24 and a renewable policy. That's the companies'  
25 conduct that they, themselves, have put on their own

1 websites and publicly pronounced. It's not the truth  
2 of the matter asserted that is at issue here and it's  
3 not hearsay to begin with, for that reason, and  
4 that's why no exceptions -- you don't even need to  
5 get to the exceptions.

6 And so I think there have been -- so I  
7 agree with the consistency ruling. There have been  
8 similar pieces of information and earlier in the  
9 proceeding and I think we're not done yet with the  
10 other intervenors opposing and supporting and so it's  
11 fair to let everyone put in the same kind of  
12 information. Thank you.

13 MS. PIRIK: Your Honor, I would also make  
14 one final note, if I may. I would just like to note  
15 in response to Kroger's assertions that the documents  
16 in BB-1 are not being asserted with regard to  
17 specific pros or cons of this matter in particular,  
18 and that Kroger is sitting at the table and  
19 presenting their own witnesses, and Kroger is making  
20 their own position in this case known.

21 EXAMINER PARROT: All right. We are  
22 going to allow the Commission to determine what, if  
23 any, weight should be given to this testimony of  
24 Mr. Burcat. And the motion is denied.

25 MS. WILLIS: Thank you, your Honor.

1 MR. DARR: One more, your Honor, just for  
2 purposes of protecting the record.

3 EXAMINER PARROT: Ms. Willis, were you?

4 MS. WILLIS: Yes, that is the last one.

5 EXAMINER PARROT: Go ahead, Mr. Darr.

6 MR. DARR: Yes, your Honor. In light of  
7 prior objections concerning the testimony of  
8 Professors Buser and LaFayette, I'm going to identify  
9 related testimony, so that if it's moved out in one  
10 place, it's moved out in all places. It should not  
11 be properly relied upon as part of the record in this  
12 case. And I am doing this with the understanding  
13 that you previously ruled, with regard to the Buser  
14 and LaFayette testimony, that issue will be briefed  
15 at a later point in time.

16 Based on the determination that certain  
17 issues would be delayed until the second phase of  
18 this hearing, I move to strike page 7, beginning at  
19 line 20, and continuing through page 9, line 3, as  
20 these matters are specific to the two projects that  
21 are the subject of the second phase hearing.

22 MS. PIRIK: Mr. Darr, I'm sorry. Where  
23 did it end?

24 MR. DARR: 9, page 9, line 3.

25 MS. PIRIK: Your Honor, if I may?



1 EXAMINER PARROT: You may.

2 MS. PIRIK: With regard to this  
3 information, initially I would note that Mr. Burcat,  
4 as he stated in his testimony, is here today to  
5 solely testify with regard to the need issue in Phase  
6 I of this case. He is not -- this information  
7 pointed out by Mr. Darr is not in any way related to  
8 or attempting to discuss the Phase II issues with  
9 regard to rates and costs.

10 This is economic-development information.  
11 It's information to point out the needs with regard  
12 and exactly address the need issue that is the issue  
13 in Phase I. I understand that the opponents would  
14 like to cut short what some of those issues are that  
15 are presented on the table, but certainly in a  
16 generic fashion, such as Mr. Burcat addresses here  
17 within his expert testimony, it is appropriate for  
18 the Phase I portion of this hearing, and I think it  
19 is consistent with previous rulings with regard to  
20 what has been brought forward so far in this case.

21 MR. NOURSE: Your Honor, I agree with  
22 MAREC, and just would add, you know, I think  
23 Mr. Burcat is offering, you know, his own  
24 observations about information and analysis that has  
25 been already admitted in the record and is, you know,

1 complimentary testimony in that sense but it doesn't  
2 take away from his -- his observations about the same  
3 data, so it should be included.

4 MS. PIRIK: Your Honor, one final thing.  
5 I would also note, as previously presented on the  
6 record, one of these project's application has been  
7 submitted in the record as an exhibit in this case.  
8 The information that is specifically on page 8 is  
9 information that is found in the public docket in  
10 these types of cases, and certainly there are other  
11 cases that could have been utilized as examples of  
12 economic development and different types of  
13 statistics, but in this situation, these are the ones  
14 that Mr. Burcat chose to review the public docket  
15 for, and certainly it doesn't go beyond that.

16 EXAMINER PARROT: Thank you, Mr. Darr.  
17 Consistent with the ruling with respect to the  
18 testimony of Mr. Buser and Mr. LaFayette, we are  
19 going to allow the Commission to hear the evidence on  
20 this issue and determine whether or not it's an  
21 appropriate issue for this phase of the case.

22 Your issue -- your objection is noted on  
23 the record.

24 MR. DARR: Thank you, your Honor.

25 MR. COLLIER: Your Honor, I have one more

1 motion to strike.

2 EXAMINER PARROT: Okay.

3 MR. COLLIER: It relates to page 6 and 7  
4 of the testimony. The question beginning at line 16,  
5 "How specifically will solar projects provide a hedge  
6 against escalating costs?", and concludes at line 3  
7 at page 7. This testimony addresses hedge. If you  
8 recall yesterday, when I put Mr. Brown on the stand,  
9 Dr. Brown, you struck his testimony regarding hedge  
10 on the basis it was a Phase II issue. Likewise, this  
11 should be considered a Phase II issue. It should be  
12 struck to be consistent.

13 MS. PIRIK: Your Honor, the information  
14 that Mr. Collier is pointing to is generic  
15 information. It's not specific information unlike  
16 the information that is in Dr. Brown's testimony. It  
17 is -- it's supportive of the economic development  
18 need issue that is the specific focus of Mr. Burcat's  
19 testimony. It is definitely appropriate for Phase I  
20 generic discussion. It doesn't get into the details  
21 and there is no intent to get into the details.

22 MR. NOURSE: Your Honor, just briefly, I  
23 agree with Ms. Pirik, but the testimony of Mr. Burcat  
24 in this question and answer is qualitative, not  
25 quantitative like Dr. Brown, but also many of -- many

1 of the witnesses have talked about, you know, hedge  
2 value conceptually and as it relates to the concept  
3 of rate stability and as a potential economic benefit  
4 under the generic need analysis. And I'm sorry, I  
5 would just add, Dr. Brown even got questions and  
6 answers on the record about the qualitative aspects  
7 of hedging.

8 EXAMINER PARROT: With that, your motion  
9 is denied, Mr. Collier.

10 MR. DARR: One last item, your Honor.

11 EXAMINER PARROT: Yes, Mr. Darr.

12 MR. DARR: Thank you, your Honor. This  
13 really goes to a question of relevance and not a  
14 question with regard to whether it's a Phase I or  
15 Phase II issue. In regard to this proceeding, the  
16 Company, I believe, has indicated that the ITC  
17 benefit will be for purposes of its generic position.  
18 The ITC benefit will be incorporated into the  
19 contract price discussed by Mr. Torpey in his  
20 analysis, plus the timing of the ITC benefit would be  
21 irrelevant for purposes of this proceeding. If that  
22 is the case, then the testimony on -- beginning on  
23 page 9, line 17, and running through page 10 at line  
24 8 is irrelevant.

25 MR. NOURSE: Your Honor, since you're --

1 since Mr. Darr is basing this on an AEP argument, I  
2 would like to go ahead and respond first, Ms. Pirik.

3 So I think Mr. Darr has mischaracterized  
4 our position. And certainly in Mr. Allen's  
5 testimony, he has a section on the timing and the  
6 urgency and as it relates to the tax benefits. So --  
7 and Mr. Torpey, while he submitted testimony in both  
8 cases, in other words, Phase I testimony and Phase II  
9 testimony, the -- the assumptions in the generic  
10 are -- and the fact that the actual REPAs reflect the  
11 actual tax impact based on the actual timing of the  
12 specific project, doesn't take away from the fact  
13 that the -- under the generic analysis and under the  
14 timing of this case that it is a matter of urgency,  
15 again, I think Mr. Allen's testimony laid out our  
16 position on that, and I disagree with the way  
17 Mr. Darr has characterized it.

18 So, again, this witness is again talking  
19 about timing and urgency, and I think it's again  
20 complimentary and similar to the effect of  
21 Mr. Allen's testimony on this same issue that's  
22 already in the record and admitted. Thank you.

23 MS. PIRIK: Your Honor, I would just note  
24 that again this is one of several points that  
25 Mr. Burcat is making in his testimony with regard to

1 the generic need issue that is within his scope of  
2 expertise. This type of information is very factual,  
3 as far as what is out there in the public record and  
4 what the timing of the ITC is. It in no way goes to  
5 the specific arguments that have to do with the REPA  
6 that is clearly in Phase II and there is no attempt  
7 here to go into Phase II arguments.

8 MR. DARR: Briefly, your Honor, if I  
9 attempted to put on the record the total ice cream  
10 eaten in Highland County in 2018, I think there would  
11 be a problem with relevance, and you have got the  
12 same problem here. The Company has conceded the  
13 issue of the ITC is already embedded in the  
14 calculation of the price. Thus, the timing of the  
15 project is irrelevant.

16 MR. NOURSE: Your Honor, again, not to  
17 get into Phase II issues, but the fact is there is a  
18 deadline on the tax benefits, and while the contract  
19 and the RFP contemplated that and incorporated it, it  
20 doesn't take away from the other parts of the  
21 contract that provide for a timeline for a deadline,  
22 for this developer, the developer's involvement and  
23 the ones that have signed the contracts that we'll  
24 deal with in Phase II, have put a timeline on that  
25 and it's not an open-ended contract. It's very much

1 tied into a time frame and there is urgency in moving  
2 forward.

3 EXAMINER PARROT: And as we have with  
4 other witnesses, we are going to allow this witness  
5 also to address the federal Investment Tax Credit as  
6 well.

7 Anything else?

8 MS. BOJKO: Your Honor, I am left with  
9 one of my motions to strike.

10 This is very similar to the motion that  
11 Ms. Willis raised with regard to the Maryland  
12 Commission and assertions of what the Maryland  
13 Commission did or did not do. If you look on page 3,  
14 line 5, starting with "As" and going to line 7,  
15 ending with "plan." Here, Mr. Burcat's testimony is  
16 irrelevant to this proceeding. It is not background  
17 information, although he squeezes it in in the middle  
18 of his background information, it is -- where he's  
19 worked, his employment record, it is a statement of  
20 fact and it is being stated for the truth of the  
21 matter asserted herein, so it is also hearsay. It  
22 goes beyond the description of his work and his  
23 credentials and it specifically discusses the  
24 Delaware Commission's integrated planning process  
25 which is irrelevant to the case before the Commission

1 and it was considered under a different set of laws.

2 MS. PIRIK: Your Honor, if I may? We  
3 would just note again this is part of Mr. Burcat's  
4 history as, you know, as well as the other  
5 information that he puts in his background  
6 information. This is not intended or assumed to be  
7 applicability of Ohio law. It is a public fact that  
8 this information is available in the Delaware, the  
9 State of Delaware. I'm not -- it's not being  
10 presented as -- as for the truth of the matter  
11 asserted herein. And, in fact, it is not part of his  
12 need arguments that are in the -- in the body of his  
13 testimony. So I'm a little perplexed as to why it  
14 would be necessary to strike this type of a statement  
15 that is clearly not -- not intended as OMA would like  
16 to assert.

17 EXAMINER PARROT: And the motion to  
18 strike is denied.

19 MS. BOJKO: Thank you, your Honor.

20 EXAMINER PARROT: Mr. Dove, any  
21 questions?

22 MR. DOVE: No questions, your Honor.  
23 Thank you.

24 EXAMINER PARROT: Mr. Mendoza.

25 MR. MENDOZA: No questions, your Honor.



1 EXAMINER PARROT: Mr. Kurtz.

2 MR. KURTZ: No, questions.

3 EXAMINER PARROT: Ms. Willis. Ms. Bojko.

4 MS. WILLIS: Actually, Ms. Bojko had  
5 offered to go before OCC. We appreciate that.

6 MS. BOJKO: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Bojko:

10 Q. Good morning, Mr. Burcat.

11 A. Good morning.

12 Q. Turning, first, to statements on page 5  
13 of your testimony, describing the need. You state  
14 that the need encompasses more than just the capacity  
15 and energy supplied to consumers. Do you see that on  
16 lines 2 and 3?

17 A. I do.

18 Q. You would agree with me that AEP Ohio has  
19 no capacity need, correct?

20 A. Correct.

21 Q. And that there's no specific energy need  
22 that the projects would satisfy, correct?

23 A. I would say so, yes.

24 MR. DARR: Could I have a clarification  
25 on that question and answer? I'm not sure I

1 understood the response. If we could have it read  
2 back, please. I think there was an implied negative.

3 (Record read.)

4 MR. DARR: Yeah, could you clarify?

5 MS. BOJKO: I'll clarify, I'm sorry.

6 Q. You would agree with me there is no  
7 specific energy need that the projects would satisfy.

8 A. No specific need, yes.

9 Q. Sir, have you ever performed an economic  
10 impact analysis?

11 A. I have not.

12 Q. On page -- let's turn to page 7 of your  
13 testimony. On page 7 of your testimony, you -- line  
14 20, you discuss the local economic impact of AEP  
15 Ohio's proposal, correct?

16 A. Yes.

17 Q. And in this section of your testimony you  
18 are, in fact, talking about the economic impact of  
19 the two specific projects, correct?

20 A. I am talking about a portion of the  
21 economic benefits of the two specific projects.

22 Q. And if you -- and those two specific  
23 projects that you reference in your testimony, on  
24 page 7, are the Highland Solar project and the  
25 Willowbrook Solar project, correct?

1           A.     That is correct.

2           Q.     And it's your understanding, sir, that  
3 those total 400 megawatts?

4           A.     That's correct.

5           Q.     And if you turn to page 8 of your  
6 testimony, here you give specific numbers of the  
7 economic impact that you expect these projects to  
8 have, correct?

9           A.     That's right. I took them right from the  
10 filings.

11          Q.     You took them from the filings in front  
12 of the Commission?

13          A.     Yes, I did.

14          Q.     And you did not perform any independent  
15 economic analysis to arrive at these numbers that you  
16 quote, correct?

17          A.     No, but I'm generally aware of these  
18 types of impacts and not just in Ohio but in multiple  
19 states in the region.

20          Q.     Well, did you specifically verify the  
21 analyses performed in the filings that you cite?

22          A.     I did not. But they certainly appear  
23 reasonable, given what I know from other projects of  
24 these types.

25          Q.     Let's look at one that you cite to. Look

1 at page 8 of your testimony. You talk about the  
2 Hecate Energy project. Do you see that on line 12?

3 A. Yes.

4 Q. And, sir, it's my understanding that the  
5 Hecate is the Highland Solar project that you also  
6 discuss throughout your testimony; is that correct?

7 A. Yeah. I believe it's mainly in this  
8 portion of the testimony, yes, but that is the  
9 project, yes.

10 Q. And in Footnote 9, you reference the  
11 Hecate, Ohio Power Siting Board case; is that  
12 correct?

13 A. That's correct.

14 MS. BOJKO: Your Honor, at this time, I  
15 would like to mark as OMAEG Exhibit 13, I believe.  
16 Is that consistent? Thank you.

17 Q. Sir, do you have in front of you what has  
18 been marked as OMAEG Exhibit 13?

19 A. That's correct, yes.

20 Q. And, sir, is this the application that  
21 you reference on -- in Footnote 9?

22 EXAMINER PARROT: Ms. Bojko, I'm sorry to  
23 interrupt. Is this the same as OCA Exhibit 1?

24 MR. NOURSE: Yes.

25 MS. BOJKO: Yes, but he withdrew it.

1 MR. COLLIER: I haven't withdrawn it.

2 MS. WHITFIELD: He asked for

3 administrative notice of it.

4 MS. BOJKO: I thought I heard he withdrew  
5 it.

6 EXAMINER PARROT: This is an issue we've  
7 tabled for now, in terms of the ruling on the  
8 document, but it has already been marked.

9 MS. BOJKO: I apologize. So we would  
10 just reference it as OCA Exhibit 1?

11 EXAMINER PARROT: Exhibit 1.

12 MS. BOJKO: My apologies.

13 Q. (By Ms. Bojko) I'm sorry, Mr. Burcat. I  
14 am not sure if you answered my question. The  
15 document you have in front of you, that's been marked  
16 as OCA Exhibit 1, is the application of Hecate Energy  
17 Highland LLC for a Certificate of Environmental  
18 Compatibility and Public Need in Case No.  
19 18-1334-EL-BGN, before the Ohio Power Siting Board?

20 A. That is the application.

21 Q. And that's the application you reference  
22 and relied on in drafting your testimony, correct?

23 A. I did, yes.

24 Q. And, sir, this application, the cover  
25 letter is dated October 9, 2018; is that correct?

1           A.     That's what it says, yes.

2           Q.     Which is approximately -- which is  
3 approximately two weeks after AEP filed its Long-Term  
4 Forecast Report; is that correct? Amended Long-Term  
5 Forecast Report that's at issue in this case?

6           A.     I'll take your word for it, subject to  
7 check.

8                   MS. PIRIK: Your Honor, I would just like  
9 to ask for a clarification. I mean, I'm not certain  
10 exactly what the status of OCA Exhibit 1 is, but if  
11 we're going to proceed with cross-examination on an  
12 exhibit that hasn't been admitted yet, I just want to  
13 be sure the record is clear, Mr. Burcat is going to  
14 continue answering questions on an exhibit that may  
15 be withdrawn and then is cross going to be excluded  
16 from the record? I just want to be sure that we're  
17 clear exactly if you are going to go into more  
18 specifics about a document that's never admitted.

19                  MS. BOJKO: Well, your Honor, just  
20 because a document isn't admitted under one witness,  
21 if another witness relies on that in drafting his  
22 testimony and we move to strike that portion of his  
23 testimony for all the reasons that Mr. Darr stated in  
24 our motion in limine and that was denied, I have a  
25 right to cross the witness on an application that he

1     relied on and that is now part of the record,  
2     regardless of whether a prior intervenor was  
3     successful about getting it in through a different  
4     witness.

5                 MS. PIRIK: Your Honor, we are not  
6     questioning -- we have no problem with you asking  
7     questions of this witness on the document. We just  
8     want to be sure that, you know, if, you know, the  
9     cross continues and, you know, at some point we need  
10    to know whether the document is in or out, and what  
11    testimony and cross is actually in or out. That's my  
12    only statement.

13                MR. NOURSE: And, your Honor, I would  
14    just note, you know, I think we'll see where this  
15    goes. I mean, he cited it in his testimony, so at  
16    this point I don't know what we can do about the  
17    current questions that are pending.

18                MR. DARR: My suggestion, your Honor, is  
19    the ship has sailed.

20                MR. NOURSE: I am not sure I would go  
21    that far, but let's see what happens.

22                MR. WHITT: Your Honor, for logistic  
23    purposes, maybe it would make sense if it was marked  
24    as a separate exhibit for this witness even though  
25    it's the same document. I'm afraid it will just be

1 confusing later, when you just talk about OMA Exhibit  
2 1, in which context any ruling would apply, the  
3 previous witness or this witness. Just a suggestion.

4 EXAMINER PARROT: It's already been  
5 marked as OCA Exhibit 1. We are going to see where  
6 this goes. It's not yet -- to be very clear, it has  
7 not yet been admitted. It's been marked but not -- I  
8 believe Mr. Collier had moved for its admission, then  
9 requested administrative notice of the document as  
10 well and that is the issue that's been tabled because  
11 it's an issue that the parties are discussing whether  
12 they can agree to a stipulation of fact. So it's  
13 been tabled on that side of things for now, but we'll  
14 go ahead with Ms. Bojko's questions and see where we  
15 go.

16 Q. (By Ms. Bojko) Sir, this document  
17 unfortunately does not have page numbers, so if you  
18 could bear with me for a minute, there's a -- there's  
19 a Table of Contents that actually has page numbers so  
20 it's quite odd that the document itself does not have  
21 page numbers. Right -- if you -- I was trying to see  
22 if they counted the cover page is what I was trying  
23 to ascertain. If you do not count the cover page and  
24 you go to where the Introduction starts, and you turn  
25 one, two, three pages from the start of the



1 Introduction. It has, as the top, 4906-4-02(A)(1),  
2 is that correct?

3 A. I'm not there yet. Yes, I see that.

4 Q. Okay. In the second paragraph on this  
5 page, it states that the Highland County Ohio solar  
6 project will be connected to the Stuart-Clinton  
7 345-kV line that's owned by Dayton Power & Light,  
8 correct?

9 MR. NOURSE: Your Honor, I just object.  
10 Two things. I note that this witness, when he cited  
11 this document in his testimony, was relying on  
12 different portions of the application, on a  
13 completely nontechnical different -- different aspect  
14 associated with the, you know, payroll and jobs and  
15 economic impact of this project. And that's No. 1.

16 And No. 2, I just note for the record  
17 that this filing is dated October 9, 2018, which is  
18 after the Company filed its Amended Application in  
19 September.

20 MS. BOJKO: Your Honor, my response to  
21 that, first of all, is that the document, even what  
22 Mr. Nourse just admitted he relied on, which was the  
23 economic impact study, relies on the assumptions made  
24 in the application to arrive at that economic impact  
25 study. The assumption that is made in this document

1 to get to the economic impact numbers is that this  
2 facility is located and tied to Dayton Power & Light,  
3 not to AEP Ohio's load -- or AEP Ohio's load zone or  
4 tied to AEP Ohio. That is an important distinction  
5 when the witness is relying on economic impacts. He  
6 is trying to state that the economic impacts apply to  
7 AEP Ohio's service territory. And he cites to this  
8 document for that justification. But this document  
9 clearly says that the economic impacts are associated  
10 with the facility being tied to the Dayton Power &  
11 Light transmission line, not an AEP Ohio transmission  
12 line.

13 MS. PIRIK: Your Honor --

14 MR. NOURSE: Your Honor -- go ahead.

15 MS. PIRIK: You Honor, if I may join in  
16 the objection that AEP has stated. I would also note  
17 this is, you know, far beyond the scope of  
18 Mr. Burcat's testimony. And that was somewhat of our  
19 fear that the document was going to try to be used  
20 for some other purpose than -- than specifically the  
21 testimony provided by Mr. Burcat.

22 MR. NOURSE: Right, your Honor, and while  
23 Ms. Bojko has tried to state several times the fact  
24 that she wants to get into the record, she's not  
25 testifying. She's not under oath. So I think what

1 we need to do with this witness is try to establish  
2 foundation. Ms. Bojko's statement that the  
3 interconnection point has any bearing on the economic  
4 impact of the project I think is false.

5 No. 2, the project is located where it's  
6 located and I think the facts show that it's  
7 substantially encompassed within AEP Ohio's service  
8 territory. And again, regardless, this witness is  
9 making reference to the economic impacts that would  
10 accrue, you know, to the State of Ohio, there's no  
11 statement in his testimony about being limited to AEP  
12 Ohio's service territory. So the fact that Ms. Bojko  
13 wants to get into the record has no bearing to -- to  
14 the completely-different topic that this witness is  
15 citing the document for, and it is, again, located  
16 elsewhere in this document.

17 MR. DARR: If I may, your Honor, I think  
18 that deserves a response. First of all, apparently  
19 Mr. Nourse is testifying as to the validity of his  
20 own study at this point which is an issue with regard  
21 to the transmission LMPs. That was placed in play,  
22 last week, when it became evident that the Dayton  
23 interconnection was not modeled in that study. This  
24 was a fact that apparently was known at least in  
25 October, and very likely should have been known

1 earlier, since it was known to PJM in December of  
2 2017.

3           Given that it is relevant and that the  
4 scope of cross-examination should be a search for  
5 truth and, in fact, the scope of cross-examination  
6 should not be limited, as asserted by Mr. Nourse, and  
7 given that we have a witness who has reviewed the  
8 study, relied on the study, it should be open to  
9 cross-examination as to his understanding of what has  
10 now been admitted into the record, a very specific  
11 review of the Highland and Willowbrook facilities.

12           MS. PIRIK: Your Honor, once again --

13           MR. DARR: And each one of those  
14 points -- allow me to complete this, please.

15           Each one of the points that Mr. Nourse  
16 has asserted as a basis for limiting the  
17 cross-examination is neither supported by the law,  
18 supported by the practice of this Commission, most  
19 importantly -- and most importantly would be  
20 detrimental to the record we are trying to develop  
21 here. If it is for the Commission to decide, and the  
22 Commission should decide on a full record.

23           MR. COLLIER: Your Honor, if I could.

24           MR. NOURSE: First of all, this is  
25 obviously --

1 MR. COLLIER: If I could be heard, your  
2 Honor.

3 EXAMINER PARROT: Okay. Let's stop.  
4 Mr. Collier.

5 MR. COLLIER: OCA Exhibit 1, marked also  
6 as Exhibit 13, is specifically referenced in Footnote  
7 9 of the testimony that you've allowed in now,  
8 including the reference to the source. Ms. Bojko is  
9 challenging the source not only -- well, with regard  
10 to the assertions of not only plant impact, that is  
11 what's the direct and indirect economy impact of a  
12 plant, but also jobs. There is a statement, for  
13 example, that Willowbrook Solar communicated its  
14 intent to use Ohio-based First Solar modules. We are  
15 going to challenge that.

16 We are also going to challenge the  
17 plant -- not only the plant itself, solar panels and  
18 the inverters, but the connection facilities  
19 including the transmission and substation as to  
20 whether this is Ohio based or not. That directly  
21 relates to the question of where the tie-in actually  
22 occurs and what plant and what facilities would be  
23 associated with that tie-in. And since you've  
24 allowed the document in --

25 EXAMINER PARROT: The document is not in

1 anything at this point.

2 MR. COLLIER: It's in his testimony.

3 EXAMINER PARROT: It's cited in his  
4 testimony. The document itself is not part of the  
5 record at this point.

6 Mr. Nourse.

7 MR. NOURSE: Your Honor, just let's be  
8 clear about what's happening here. This is obviously  
9 not the right witness to talk about point of  
10 interconnection. And obviously we had a discussion  
11 this morning, before we started on the record, about  
12 the status of OCA Exhibit 1 and there was a decision  
13 to take it up later and I believe the other day it  
14 was tabled. So that -- that is an issue that's  
15 outstanding and this is obviously an attempt to short  
16 circuit that agreement that we had to deal with it  
17 later.

18 So I would say if we are at that point,  
19 first of all, I asked for foundation about how this  
20 witness would be -- led up to talking about this,  
21 rather than jumping right into that and stating facts  
22 on the record and that's certainly something that  
23 other counsel on the other side of the aisle  
24 frequently do in this case, without naming names, but  
25 if we're going to deal with this document, maybe we

1 should -- perhaps we should take a break or go in --  
2 suspend this witness's testimony and deal with the  
3 issue if it's going to be depositive of this point we  
4 are at at the hearing.

5 Again, to me, I think it's clear what's  
6 going on here and this is clearly not the witness  
7 that -- you know, it isn't -- hasn't been established  
8 he has knowledge about the point of interconnection  
9 or how it bears on the other issues that were at play  
10 before he took the stand.

11 So that's what I think is unfair about  
12 this, your Honor, and there hasn't been any  
13 foundation.

14 MS. PIRIK: Your Honor, if I could, just  
15 a final point. First of all, it's very clear, from  
16 Mr. Burcat's testimony, that he is testifying as to  
17 the economic development benefits as it is associated  
18 with Phase I and the need issue. Anything beyond  
19 that, anything beyond that is for a separate phase of  
20 the proceeding itself.

21 Looking at the document in his testimony,  
22 it in no way -- if a plant is built, the facilities  
23 are built, he is not opining on how the facility is  
24 built, where the interconnection is, where the tie-in  
25 is. He is not opining on anything that would be

1 subject to a separate phase or a separate  
2 understanding.

3 Certainly these type of economic  
4 development issues, as he states in his testimony,  
5 are examples of what similar solar facilities in the  
6 state such as Hardin Solar, Vinton Solar, other solar  
7 projects. He could have quoted any one of those  
8 applications in his testimony. I understand that  
9 these are two projects that are going to be further  
10 considered in another phase. But they are examples  
11 of economic development and those specific points.  
12 To go beyond those points and those economic issues  
13 in his testimony and try to reach in to how  
14 facilities themselves are going to be built for  
15 purposes of some other phase of this proceeding is  
16 clearly inappropriate, beyond the scope of his  
17 testimony.

18 EXAMINER PARROT: Mr. Whitt.

19 MR. WHITT: Your Honor, for Phase I  
20 purposes, under 4935.04, one of the things the  
21 Commission is required to consider is whether all  
22 assumptions made in the forecast are reasonable and  
23 adequately documented.

24 So the mere fact that there appears to be  
25 at least reason to question some of the forecasts and



1 assumptions, makes the application independently  
2 relevant for Phase I regardless of its relevance for  
3 some other purposes in Phase II. That's all that  
4 Direct would add at this time.

5 EXAMINER PARROT: All right. At this  
6 point, let's take a break. I'm going to direct the  
7 parties to continue their efforts to reach a  
8 stipulation on this specific issue. And we will  
9 reconvene in, let's say, 10 minutes or so.

10 MS. BOJKO: Your Honor, point of  
11 clarification.

12 EXAMINER SEE: 15.

13 EXAMINER PARROT: Sorry, 15 minutes.

14 MS. BOJKO: Point of clarification, I'm  
15 fine with working on a stipulation for that fact, but  
16 I'm still intending to use this document through my  
17 cross because he relied upon it for the economic  
18 impact analysis that's in his testimony and that we  
19 moved to strike and you denied. So I think I have a  
20 right to use this -- I just didn't want you to -- I  
21 wanted clarification, even if we reach this  
22 stipulation about the particular fact that we've been  
23 discussing, doesn't preclude me from using the  
24 document --

25 EXAMINER PARROT: I wasn't suggesting

1 that that's the case. The question you asked is on  
2 the issue that we specifically tabled, so I think we  
3 are at a point now where we need to deal with it.

4 MS. BOJKO: Thank you so much. I just  
5 wanted to know that.

6 EXAMINER PARROT: Off the record.

7 (Recess taken.)

8 EXAMINER PARROT: Let's go back on the  
9 record.

10 Mr. Nourse.

11 MR. NOURSE: Thank you, your Honor.

12 In discussion, off the record, with  
13 the -- the parties that were available, and I believe  
14 we touched base with everyone, but my understanding  
15 is that all parties would stipulate to the admission  
16 of OCA Exhibit 1. And I would like to make a comment  
17 after -- either now or after you rule on that  
18 stipulation.

19 EXAMINER PARROT: All right. And  
20 consistent with the agreement of the parties, OCA  
21 Exhibit 1 will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MR. NOURSE: Thank you, your Honor. And  
24 I would just note for the record, the factual  
25 information related to the point of interconnection

1 that's in OCA Exhibit 1 is, as I noted earlier, a  
2 post-filing development that comes after the date of  
3 our Amended Application, and the Company reserves the  
4 right to request rebuttal and/or Phase II additional  
5 testimony in light of that factual update, but as  
6 normal practice, we would, you know, like to take up  
7 the matters of -- such matters at the end of the --  
8 at the conclusion of the evidentiary hearing. Thank  
9 you.

10 MR. DARR: I would request that the  
11 Company be required to file that request to address  
12 the issue raised by the Hecate application in  
13 writing. And that we be allowed to respond in  
14 writing.

15 MR. NOURSE: Your Honor, I think, again  
16 as is customary, we would have a discussion after the  
17 evidentiary hearing on the record. I don't think  
18 there is any precedent for the Company, that bears  
19 the burden of proof, having to make a written motion  
20 to -- to do rebuttal testimony.

21 EXAMINER PARROT: And we can talk about  
22 the issue of rebuttal testimony, as you said,  
23 Mr. Nourse, when we get through the witnesses that we  
24 have currently scheduled.

25 MR. NOURSE: Thank you.

1 MS. BOJKO: Your Honor, part of the  
2 stipulation was that parties could respond to  
3 Mr. Nourse's statement that he just made on the  
4 record, and OMAEG would like to do just that.

5 OMAEG takes issue with the Company's  
6 claim that there was some kind of change after their  
7 Application and Amended Long-Term Forecast Report was  
8 filed in this case. There's information out there  
9 that not only was a significant application drafted  
10 and must have been drafted prior to two weeks ahead  
11 of time, was filed October 9, and then there's also  
12 PJM data that was prepared and that is available that  
13 references dates going back to November 2017 and  
14 December 2017 with regard to the interconnection of  
15 the Highland facility and with regard to it being  
16 connected to Dayton Power & Light.

17 So we would take issue in the  
18 representation that this change occurred after the  
19 Company's Amended Long-Term Forecast filing.

20 EXAMINER PARROT: Noted.

21 MR. NOURSE: And, your Honor, again, what  
22 I was talking about was the filing this team made  
23 within AEP, whether there's information that was out  
24 there in another -- in another part of the large  
25 organization that's AEP corporation and the fact we

1 have a Code of Conduct and don't always share  
2 competitively-sensitive information with everyone in  
3 the Company, I would say that's not -- not pertinent  
4 here, and what I was addressing was the witness that  
5 testified on the LMP issues had used the facts that  
6 were prior to the filing known to him and that's what  
7 was modeled, and so this is a new factual development  
8 that precipitates the need to update that part of the  
9 testimony.

10 EXAMINER PARROT: Ms. Bojko, are you  
11 ready to continue?

12 MS. BOJKO: I am, your Honor. Thank you.

13 EXAMINER PARROT: Go ahead.

14 MS. BOJKO: Your Honor, the point was  
15 well taken before the break that maybe I should back  
16 up a little bit and talk to Mr. Burcat about the  
17 referenced application to the Ohio Power Siting  
18 Board, so I will do just that. I am not sure if we  
19 had a question pending, but I'll back up a little  
20 bit.

21 Q. (By Ms. Bojko) Mr. Burcat, you now have  
22 in front of you, and I took the time, at the break,  
23 to actually write page numbers on the document to  
24 make it easier to reference. So if you could turn to  
25 page 26 of OCA Exhibit 1 which is the Highland Ohio

1 Power Siting Board application.

2 A. I'm there.

3 MS. BOJKO: Oh, and your Honors, just for  
4 your reference, 1 -- page 1 actually starts on the  
5 introduction page, so that we can be consistent with  
6 how Mr. Burcat's testimony references this document  
7 as well as my questions.

8 EXAMINER PARROT: And the copy we have  
9 that was already previously marked is OCA Exhibit 1  
10 has page numbers on it, and they line up,  
11 fortunately, with what sounds like you've just done  
12 so we're good.

13 MS. BOJKO: Perfect.

14 Q. (By Ms. Bojko) Mr. Burcat, could you turn  
15 to page 26, please.

16 A. I'm at page 26.

17 Q. Okay. Thank you.

18 This is entitled, this page, "Economic  
19 Impact of Project." And is this the section of the  
20 application that you specifically reference in your  
21 testimony?

22 A. Yes, yes, it is.

23 Q. And at the top of this section it talks  
24 about the Ohio Power Siting Board application  
25 requirement and it states that "The applicant shall

1 provide information regarding the economic impact of  
2 the project"; is that correct?

3 A. That's what it says.

4 Q. And it lays out the criteria and one of  
5 those criteria is that "The applicant shall provide  
6 an estimate of the construction and operation  
7 employment and estimate the number that will be  
8 employed from the region"; is that correct?

9 A. That's basically what it says, yes.

10 Q. And, sir, in this section of the report,  
11 is it fair to say that that is where your numbers  
12 come from that are included in your testimony on  
13 page 8, lines 1 through 9? As well as it goes  
14 through 14, I guess.

15 A. Yes.

16 Q. And, sir, in your testimony you also  
17 reference Exhibit C; is that correct?

18 A. I do.

19 MS. BOJKO: Your Honor, at this time, I  
20 would like to mark as OMAEG Exhibit 13, a document  
21 that is Exhibit C to the Highland -- or Hecate Energy  
22 Highland LLC application in front of the Power Siting  
23 Board.

24 EXAMINER PARROT: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1           Q.    (By Ms. Bojko) Sir, do you have in front  
2 of you what's been marked as OMAEG Exhibit 13?

3           A.    I do.

4           Q.    And is this the Exhibit C, Economic  
5 Report, that you reference in your testimony?

6           A.    That's correct.

7           Q.    And if you look at the Summary of  
8 Findings on page 1 of the report, going over to page  
9 2, this is also where you would have obtained some of  
10 the data that you refer to and relied on in your  
11 testimony; is that correct?

12          A.    That is correct.

13          Q.    And you are aware, sir, that the analysis  
14 that was used for the economic report, the economic  
15 impact analysis, was an IMPLAN regional modeling  
16 system?

17          A.    Yes, I am.

18          Q.    And if you know, IMPLAN is an  
19 input/output modeling mechanism used to calculate an  
20 economic impact study; is that correct?

21          A.    My understanding that's -- that's  
22 generally correct, yes. I've seen these used in  
23 other -- other forums.

24          Q.    And isn't it true that in economic -- or  
25 Exhibit C, the economic report that was attached to



1 the Hecate application, OMAEG Exhibit 13, isn't it  
2 true that this report actually modeled Hecate --  
3 Hecate Energy Highland LLC's proposed solar  
4 development in Highland County, Ohio?

5 A. Where are you referring to?

6 Q. The title?

7 A. Just generically.

8 Q. Yeah, generically, the title says it's  
9 for Highland County, Ohio.

10 A. Yes, that's where it's located, so yes.

11 Q. And that's what an IMPLAN model does, it  
12 actually looks at where the facility is going to be  
13 located and does an economic impact study on the  
14 local facility; is that correct?

15 A. I'm not going to be as specific as that  
16 because I do think they -- my understanding is they  
17 may also consider other factors, but, yeah, I mean,  
18 most of the information in here is specific to  
19 Highland.

20 Q. And prior to the break, I had asked you a  
21 question that's regarding page 3, that the Hecate  
22 facility is planned to be connected to the Dayton  
23 Power & Light transmission system; is that correct?

24 A. Page 3 of the?

25 Q. Application.

1           A.    Application.

2           Q.    OCA Exhibit 1.

3           A.    You asked me that question.

4           Q.    And is that true, sir, to your knowledge  
5 or your understanding, is this application and  
6 economic report based upon the Highland project being  
7 connected to the Dayton Power & Light system?

8           A.    I can't answer that. I can't recollect  
9 that specifically.

10          Q.    But you do see that as part of the  
11 application on page 3, correct?

12          A.    I am not sure I am seeing exactly that,  
13 so can you --

14          Q.    Sure. It's the second paragraph. "The  
15 Project will be located in Highland County, Ohio, 25  
16 miles east of Cincinnati." And then it goes on to  
17 state it will tap the Stuart-Clinton 345-kV line  
18 owned by Dayton Power & Light?

19          A.    Maybe I misunderstood your initial  
20 question there. I think you were referring to this  
21 Attachment C and if that studies this, and I am not  
22 sure those two interplay in that particular point in  
23 this. So what was your question to start?

24          Q.    My question was -- I first asked if  
25 the -- well, the question before you is whether it's

1 your understanding, through the application filed by  
2 Hecate Highland LLC, that the solar project is going  
3 to be connected to the Dayton Power & Light  
4 transmission system.

5 A. Oh, yeah, it says it right there.

6 MS. BOJKO: Your Honor, at this time, I  
7 would like to have marked as OMAEG Exhibit 14, a data  
8 response to OCC-RPD-03-018.

9 EXAMINER PARROT: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. (By Ms. Bojko) Mr. Burcat, you're  
12 familiar with -- or it's your understanding that an  
13 RFP was issued for the AEP 400 megawatts, and solar  
14 developers, such as members of MAREC, responded to  
15 RFPs issued by AEP Ohio?

16 A. Sure, I'm familiar with that RFP or the  
17 fact that the RFP went out. I am not familiar with  
18 all the details of it.

19 Q. And the fact that the RFP went out --  
20 I've handed you what's been marked as OMAEG Exhibit  
21 14. Is this a document that you recognize as being  
22 part of that RFP, questions and answers to the RFP?

23 A. I don't recognize it because I didn't  
24 review this document.

25 Q. Are you aware that the RFP requested

1 developers to submit proposals based on projects  
2 being located in the AEP Ohio service territory?

3 A. I'm not specifically aware of that. I  
4 know this particular project is located in the AEP  
5 territory.

6 Q. Are we talking about -- which particular  
7 project?

8 A. I'm sorry. I am not aware of this  
9 particular clause in the -- I guess that's a better  
10 way to answer -- in the RFP.

11 Q. Let's turn to page 9 of your testimony,  
12 please, sir. Beginning on line 6, you discuss local  
13 manufacturing; is that correct?

14 A. You're saying page 9 of my testimony?

15 Q. Yes, sir, beginning on line 6. Line 4 is  
16 the question and your answer is on line 6.

17 A. Yes, I do talk about that.

18 Q. And you talk about a report commissioned  
19 by the Maryland Commission. Did you author that  
20 report, sir?

21 A. I did not.

22 Q. And just to be clear for the record, that  
23 wasn't a report produced by the Maryland Commission.  
24 It was not a Commission order; is that correct?

25 A. It was produced on behalf of the

1 Commission.

2 Q. And do you know who produced it?

3 A. Yeah. I believe it was Levitan which is  
4 a consulting firm.

5 Q. And on line 6, you reference the  
6 Bureau -- Bureau of Labor Statistics regarding the  
7 growth of jobs in wind and solar; do you see that?

8 A. That's correct.

9 Q. And you are not involved in conducting  
10 the studies referenced here and cited to from the  
11 Bureau of Labor Statistics, correct?

12 A. No.

13 Q. And the jobs and the economic impacts  
14 that you cite, with regard to the benefits of  
15 renewable in Ohio, are not dependent on the renewable  
16 facilities being developed by a utility, are they?

17 A. I am not sure I fully understand that  
18 question. Can you repeat it?

19 Q. Sure.

20 The economic impacts or the benefits and  
21 advantages to local manufacturing, that you discuss  
22 in your testimony on page 9, would be true regardless  
23 of who owns, operates, or develops the renewable  
24 facility, correct?

25 A. Yes, I would say so.

1           Q.    And the Bureau of Labor Statistics study  
2   that you cite does not specify how many of the jobs  
3   being added in the wind and solar energy industries  
4   are related to the development of such facilities by  
5   regulated utility companies, is it?

6           A.    I don't recall seeing that.

7           Q.    The study also does not discuss the  
8   number of jobs related to a regulated utility  
9   developing the wind and solar, correct?

10          A.    I think you asked me that question, but  
11   the answer, again, is yes.

12          Q.    Does the report distinguish between  
13   nonregulated utilities and competitive suppliers of  
14   generation?

15          A.    I don't believe it does, but I can't say  
16   that I went into it in that much detail.

17          Q.    Turn to page 10, please.  You state, on  
18   page 10, that having in-state renewables makes Ohio a  
19   more attractive location for businesses, correct?

20          A.    Yes.

21          Q.    And you would agree there are a number of  
22   factors a business would consider in deciding whether  
23   to locate or expand operations in the State of Ohio,  
24   correct?

25          A.    I would think so, but certainly this has

1 become an increasing reason for these companies to  
2 locate in particular places, the atmosphere for  
3 sustainability goals that they are trying to achieve.

4 Q. Well, a company can obtain their  
5 sustainability goals by purchasing green energy from  
6 a competitive retail electric supplier, correct?

7 A. Well, I mean, that's -- that's one way to  
8 do it. They can purchase directly from a developer  
9 and but, you know, there's other ways to do it as  
10 well.

11 Q. Sure. These companies that you discuss  
12 could actually put behind-the-meter on-site renewable  
13 generation, correct?

14 A. I mean, they have different ways to do it  
15 so the answer is, yes, they could do that.

16 Q. And in fact, they have in Ohio, correct?

17 A. Some have done that.

18 Q. Another factor that a business would  
19 consider would be the total cost of electricity,  
20 correct?

21 A. Yes.

22 Q. And if a customer had to pay more for  
23 electric supply, you would agree that such increased  
24 payment might be a deterrent to the business locating  
25 in Ohio, correct?

1           A.    No.

2           Q.    You believe that cost of energy is not --  
3    I thought you said you believed cost of energy is a  
4    factor in choosing the state where they locate.

5           A.    Sure, it is.  But if it's -- there's a  
6    lot more that goes into it than that.  There's  
7    sustainability goals.  In this situation my testimony  
8    covers the fact that these -- these types of  
9    procurements that we're addressing here provide a  
10   long-term, stable benefit.

11                A lot of these companies find, as one of  
12   their top reasons for entering into a long-term  
13   contract or getting resources that way, are to hedge  
14   against long-term price volatility.  So there's a  
15   number of reasons why they would do this.  It may not  
16   be specific to a -- a price, and the price could be  
17   volatile over time, so they are looking at the  
18   long-term overall picture, and I don't think your  
19   question was specific enough on that issue.

20           Q.    I'll try again then.

21           A.    Okay.

22           Q.    You're aware that Ohio is a deregulated  
23   state.

24           A.    Absolutely.

25           Q.    And that companies purchase their



1 generation supply or can purchase their generation  
2 supply from a competitive supplier, correct?

3 A. They can do that.

4 Q. And even nonshopping customers end up  
5 obtaining their energy supply through a competitive  
6 bid auction that is supplied by competitive  
7 suppliers, correct?

8 A. You're talking through the Standard  
9 Service Offer?

10 Q. Yes.

11 A. Yeah, I mean, that's the way it's done.  
12 It's a short-term market.

13 Q. Sure. And you are aware that customers  
14 can enter into long-term contracts with CRES  
15 providers, correct, fixed long-term contracts?

16 A. They can do that if they choose, yes.

17 Q. And entering into a fixed long-term  
18 contract would prevent them from the price volatility  
19 that you just mentioned in your response to me.

20 A. And some of the customers do do that,  
21 yes. I would point out that there are many customers  
22 who do not have this benefit, and there isn't a  
23 product out there, I mean, we're talking about, at  
24 the most, three-year long products on Standard  
25 Service Offer.

1           And there are many customers who can't  
2   put solar panels on their home. They can't do many  
3   other things with regard to renewable energy and  
4   there's certainly been studies out there that shows  
5   the benefits and why these customers very much want  
6   renewable energy. And so, with this particular --  
7   these -- the 900 megawatts that we are talking about  
8   here, provides them an avenue, through their utility,  
9   to achieve those goals.

10           MS. BOJKO: Your Honor, I move to strike  
11   everything after "I would point out." There was no  
12   question pending and the prior question actually  
13   asked about generation and competitive options for  
14   generation. I was not talking about renewable at  
15   all. So his question is nonresponsive -- or his  
16   response is not responsive to my question.

17           MS. PIRIK: Your Honor, I think  
18   Mr. Burcat was -- was trying to qualify his answer  
19   and I think it was totally appropriate for him to  
20   continue in that.

21           MR. NOURSE: And I would note the  
22   question was about long-term price stability versus  
23   volatility and obviously the context of this  
24   discussion was renewable energy.

25           MS. PIRIK: And, again, the question was

1 about long-term, it was never defined what  
2 "long-term" meant, and Mr. Burcat was trying to  
3 qualify his answer to explain what he termed.

4 EXAMINER PARROT: And his answer will  
5 stand.

6 Go ahead, Ms. Bojko.

7 Q. (By Ms. Bojko) Sir, you are certainly not  
8 suggesting here today that a customer cannot enter  
9 into a long-term contract with a CRES provider, are  
10 you?

11 A. Yes, I am. Certain customers, yes, for  
12 sure.

13 MS. PIRIK: Again, your Honor. I am  
14 going to object. OMAEG continues to ask a question  
15 about long-term contracts but they are not defining  
16 really what that means. Mr. Burcat is trying to be  
17 more clear in his answers.

18 A. I am talking about the 10- to 20-year  
19 contracts that are part of the RFP.

20 Q. Sir, I am talking about generation  
21 supply. I am not talking about solar PPAs or REPAs.  
22 I am asking you if you are aware that a customer can  
23 enter into a long-term contract with a generation  
24 supplier, a retail electric supplier, for their  
25 generation service.

1           A.    A residential customer, small commercial  
2 customers could not possibly do that.

3           Q.    They cannot enter into long-term  
4 contracts for --

5           A.    10 to 20 years, yes.

6           MR. MENDOZA:  Objection, asked and  
7 answered to that last question.

8           Q.    So the definition of "long-term  
9 contract," to you, is 10 to 20 years, and you are  
10 talking about renewable generation supply?

11          A.    I am talking about the Settlement  
12 Agreement that was entered into a few years ago and  
13 the Commission's decision allowing for AEP to issue  
14 an RFP and go through that process and there were  
15 specifics.  And long-term contracts were pretty much  
16 defined in that document; the ones we are talking  
17 about, I assume, in this proceeding.

18          Q.    Yeah, that's not my question, so let's  
19 back up a little bit.

20                You are familiar with Senate Bill 3 and  
21 deregulation in the State of Ohio?

22          A.    I am not totally familiar with it, but I  
23 am extremely familiar with the three-year terms for  
24 Standard Service Offer -- Service Offer, the way it's  
25 procured here, and I'm not completely familiar with

1 all the details, but your question to me was very  
2 specifically about long-term contracts and a  
3 customer, and a "customer" can be defined many  
4 different ways, sure, a customer with tremendous  
5 buying ability, with tremendous ability to finance  
6 something going forward and give assurances that, you  
7 know, they are going to pay for these contracts could  
8 enter into long-term contracts for any kind of fuel  
9 source basically in the state. The reality is that  
10 many customers in the state are left out and -- and  
11 we've seen, with the Navigant study here that was  
12 presented, that consumers want these types of  
13 contracts.

14 Q. Okay. I am going to focus on generation  
15 and deregulation in the State of Ohio. You mentioned  
16 three-year Standard Service Offers. Are you  
17 attempting to refer to electric security plans being  
18 only three years in length?

19 A. What I am referring to is that generally  
20 no one is going out more than three years to do  
21 long-term contracts if you are in Standard Service  
22 Offer.

23 Q. Okay. If you are on Standard Service  
24 Offer, you are not shopping for your electric; is  
25 that correct?

1           A.    Right.  And --

2           Q.    And it's your understanding, sir, that  
3 customers, except for maybe PIPP customers in certain  
4 areas, are allowed to shop for their generation  
5 through a CRES supplier, correct?

6           A.    What I am saying is there is absolutely  
7 no product out there for somebody who can't put a  
8 solar panel on their roof or can't, you know,  
9 participate in any other programs like that and get  
10 the long-term security that would happen under these  
11 types of contracts, you know, the better -- the  
12 better good of the customer base has absolutely no  
13 opportunity to do what you are trying to suggest.

14          Q.    I'm not suggesting anything.  I am asking  
15 you if customers have a right to shop in the State of  
16 Ohio for their generation service, and I'm  
17 understanding that you are not sure about that  
18 question.

19          A.    They can shop but they are limited.

20          Q.    They are limited.  Are you familiar with  
21 Apples to Apples website of the Public Utilities  
22 Commission of Ohio that lists the numerous offers  
23 from retail electric suppliers?

24          A.    I am.  And I actually took a look at  
25 that, and the longest offer out there is for three

1 years.

2 Q. And when we -- going back to our  
3 businesses locating in the State of Ohio, you would  
4 agree with me that extra charges on a customer's  
5 distribution bill would be a factor that they would  
6 want to consider before locating to the State of  
7 Ohio, correct?

8 A. All I can say is it could be, but I would  
9 say that most customers are not going to look at  
10 that, especially if it has a very minimal impact on  
11 bills.

12 Q. It doesn't go to the total cost of energy  
13 to locate a facility in the State of Ohio?

14 A. Oh, now you are talking about on larger  
15 customers? Is that what your question is?

16 Q. I said "businesses" when we started.  
17 They could be small commercial or they could be large  
18 customers.

19 A. Yeah, I mean if it's minimal impact on  
20 their bill, they may not care at all. And they want  
21 renewable energy.

22 Q. You don't think customers care about  
23 above-market charges on their bills, such as the OVEC  
24 Rider, which is related to a coal facility?

25 A. Well, that's a whole another ball of wax.

1           Q.    It's true customers would look at their  
2   total cost of energy just as they would look at their  
3   total cost of materials before locating to a state,  
4   correct?

5           A.    Yes, I think that's a reasonable  
6   assumption.

7           Q.    And you would agree, if renewables was a  
8   factor for these businesses to consider, it would not  
9   matter who owned the renewable asset as long as they  
10   could take advantage of the renewable asset.

11          A.    I'm -- I'm not sure I agree with the  
12   premise there. I would say I don't know.

13          Q.    So we talked about options for private  
14   contracting of renewable generation. We talked about  
15   CRES providers so far. And we also talked about  
16   on-site distributed generation resource, correct?  
17   Those are all options for the customers?

18          A.    Yes. I would say those are different  
19   options, yes.

20          Q.    You testified on page 7 -- you stated in  
21   your testimony on page 7 that you've appeared before  
22   legislative committees in the State of Ohio, correct?

23          A.    Well, that's not the page but.

24          Q.    Oh, I'm sorry, page 4, line 7.

25          A.    Repeat the question, please. It was



1 related to my testimony.

2 Q. On page 4, line 7, you state you've  
3 appeared before legislative committees in Ohio,  
4 correct?

5 A. I have.

6 Q. And you are familiar with Senate Bill 310  
7 which was legislation that dealt with energy  
8 efficiency and renewable standards in Ohio?

9 A. I'm familiar with it, yeah. Not in  
10 detail. I'm familiar with it.

11 Q. Well, are you aware Senate Bill 310  
12 passed in 2014?

13 A. I am aware of that.

14 Q. And are you familiar with the fact that  
15 Senate Bill 310 froze the renewable portfolio  
16 standard requirements and eliminated the in-state  
17 requirement?

18 A. Froze it for two years and they  
19 eliminated the in-state requirement.

20 Q. And MAREC actually testified on that  
21 legislation, did it not?

22 A. They sure did.

23 Q. And MAREC opposed the limitation -- the  
24 elimination of the in-state requirement, correct?

25 A. Yes. We didn't think that was good state

1 policy.

2 Q. And in that testimony, you supported  
3 having the ability for competitive suppliers to enter  
4 into the market and enter into long-term contracts,  
5 correct?

6 A. I think we -- yes. This is going back  
7 some, so I'm just going to be fairly vague. My  
8 memory is vague on it, but. I didn't specifically  
9 testify on that bill. So I know, back then, my --  
10 the President of my organization did testify. So it  
11 is possible that he testified because that is a  
12 policy that we find to be an important policy for any  
13 state to have, especially a deregulated state.

14 MS. BOJKO: Your Honor, may I, at this  
15 time, mark OMAEG Exhibit 15 to be the referenced  
16 testimony that I believe Mr. Burcat was just  
17 referring to which is MAREC's testimony in front of  
18 the House Public Utilities Committee on May 14, 2014,  
19 as an opponent to Senate Bill 310.

20 EXAMINER PARROT: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Mr. Burcat, do you have in front of you  
23 what's been marked as OMAEG Exhibit 15?

24 A. I do.

25 Q. Is this the testimony --

1 MS. PIRIK: Your Honor, could we receive  
2 a copy of it?

3 MS. WHITFIELD: I'm sorry.

4 MS. BOJKO: My apologies.

5 Q. Sir, do you have in front of you what's  
6 been marked as OMAEG Exhibit 15?

7 A. I have that, yes.

8 Q. Does this appear to be the testimony you  
9 just referenced from the President of MAREC regarding  
10 Senate Bill 310?

11 A. It appears to be.

12 Q. In this testimony, MAREC explained to the  
13 General Assembly that almost all of Ohio counties  
14 have renewable energy projects in 2014 and that the  
15 alternative energy portfolio standards are well on  
16 its way to being met, under business as usual,  
17 without Senate Bill 310, correct?

18 A. Where are you suggesting that? I haven't  
19 seen this document in four years -- five years.

20 Q. On page 2, the second full paragraph is  
21 the discussion about "86 of Ohio's 88 counties have  
22 renewable energy installations and many others have  
23 renewable energy supply chain companies." Do you see  
24 that?

25 A. I do see that.

1 Q. And then for the second part of my  
2 question -- it's on the bottom of page 3, MAREC  
3 stated that almost all of Ohio counties have  
4 renewable energy projects and that AEPS, which is the  
5 Alternative Energy Portfolio Standard, is well on its  
6 way to being met, under business as usual, without  
7 Senate Bill 310. Do you see that?

8 A. That's correct.

9 Q. So in 2014, MAREC explained that 86  
10 counties had renewable energy installation, correct?

11 A. 2014, that's correct.

12 Q. Sir, are you aware of what AEP Ohio's  
13 position would have been on this issue back in 2014?

14 A. Quite frankly, I don't remember.

15 Q. Do you recall whether AEP opposed the  
16 in-state renewable requirement?

17 A. I don't remember that.

18 Q. So you also wouldn't recall whether they  
19 opposed the freeze to the renewable portfolio  
20 standards.

21 A. I don't remember if they did. I am  
22 pretty sure I know where FirstEnergy was on all of  
23 these questions but I can't remember AEP.

24 Q. Turning back to your testimony, sir,  
25 page 5, lines 13 and 14. Here, you state that the

1 Commission expressed support for in-state renewables.

2 Do you see that?

3 A. Yes.

4 Q. Do you know whether the Commission stated  
5 a position on Senate Bill 310 and the elimination of  
6 the in-state requirement during the Senate Bill 310  
7 debate?

8 A. I don't remember.

9 Q. And you would agree with me, sir, that if  
10 renewable portfolio standards were increased for the  
11 State of Ohio, such a development could have similar  
12 benefits as the ones you identify for the projects in  
13 this case?

14 A. Can you repeat the question, please?

15 Q. Sure. You would agree that if the  
16 renewable portfolio standards were increased, so the  
17 CRES providers and the utility companies were  
18 required to obtain a higher level of renewable  
19 energy, you would agree with me that similar benefits  
20 to those that you list in your testimony would occur.

21 A. I think it depends on the projects that  
22 they are -- they're doing. Realize that, you know,  
23 these particular projects are in states that we are  
24 talking about where the projects that are -- and the  
25 additional 500 megawatts for wind would be in state

1 as well. So I would say that it's probably not  
2 necessarily the case that the State of Ohio would  
3 benefit as much if those projects were out of state.

4 Q. You would certainly agree with me from  
5 that comment that if the in-state requirement would  
6 have remained in the leg -- in the law or would be  
7 put back in the law, that that would have a positive  
8 benefit or those positive benefits that you highlight  
9 in your testimony, correct?

10 A. Yeah. I mean, for the State of Ohio, you  
11 know, there's benefits for also accepting  
12 out-of-state renewable energy as well and those go to  
13 other things. So, I mean, I am commenting in this  
14 particular case, the benefits that I've listed out,  
15 the benefits the companies have listed out in their  
16 applications, the generic benefits that we know about  
17 when a project is built in certain areas would be  
18 similar to what we're suggesting here, what I  
19 suggested in my testimony.

20 But there are other benefits from  
21 accepting renewables from out of state. I mean,  
22 you're -- you know, there may be more supply to pull  
23 in from and things like that, so you may have other  
24 competitive issues, but you don't have -- what's key  
25 here is you don't have a long-term commitment with

1 stable renewable energy prices because they do not  
2 fuel cost. You don't have that type of procurement.

3 This is -- and I will tell you, I was --  
4 I testified in the case that helped come to a  
5 settlement for these 900 megawatts and we strongly  
6 suggested this as a strong economic driver for the  
7 State of Ohio.

8 Q. I think I asked you whether you would  
9 agree with me whether an in-state requirement for  
10 renewables in the State of Ohio would be something  
11 that would provide similar benefits to those that you  
12 described in your testimony. Are you -- I don't  
13 think you've answered that question. Do you think an  
14 in-state requirement --

15 A. Not necessarily without a -- you know,  
16 long-term-commitment product.

17 Q. So now you are going back and modifying  
18 MAREC's testimony in front of Senate Bill 310, where  
19 they addressed the importance and the benefits that  
20 would be obtained through an in-state requirement?

21 MS. PIRIK: Your Honor, I am going to  
22 object. I mean, we're here today to talk about  
23 Mr. Burcat's testimony as is in this statement, and  
24 Ms. Bojko is asking him to go back and perhaps change  
25 testimony that was done four years ago in a

1 different -- totally different legislative  
2 proceeding.

3 MS. BOJKO: Your Honor, that's not what I  
4 am doing. I am asking if he is disagreeing with  
5 MAREC's position. It goes to the credibility of the  
6 witness. You can challenge prior positions of a  
7 witness. It's been done many times before, by  
8 counsel, with regard to climate change and things of  
9 those nature, so we're taking his prior statements or  
10 his organization's prior statements and challenging  
11 those.

12 EXAMINER PARROT: The objection is  
13 overruled.

14 THE WITNESS: Can you repeat the  
15 question, please?

16 MS. BOJKO: I will have to have that one  
17 reread, please.

18 (Record read.)

19 A. No, I don't believe that's the case.  
20 That was five years ago. I'm not saying that we've  
21 changed our viewpoints on in-state versus  
22 out-of-state, but we think there should be a  
23 reasonable balance on those types of things. I don't  
24 believe this is changing. I just think times have  
25 changed. This is five years later. That's not even



1 an issue here in Ohio anymore. And it actually was  
2 one of the reasons why we felt it important because  
3 we felt that AEP had the opportunity to do these  
4 types of contracts. And we thought through  
5 participation in their case and working on a  
6 settlement with the rest of the parties in that case  
7 was the way to achieve our goals that we did describe  
8 in this testimony, but with the realization that  
9 that's not the lay of the land right now, and so we  
10 felt that was the most appropriate way to go, and I  
11 think AEP is doing the appropriate thing here and  
12 offering a product that's very beneficial to its  
13 customers.

14 Q. Well, you referenced AEP testimony, sir.  
15 You've also filed testimony in the FirstEnergy  
16 electric security plan case, correct?

17 A. There's been several. Which one are you  
18 talking about?

19 Q. The one that started in 2014,  
20 14-1297-EL-SSO.

21 A. We filed very similar testimony in that  
22 case as -- similar to the AEP case.

23 Q. Well, in that case, isn't it true you  
24 state, as part of your testimony, the benefit of  
25 required inclusion of a competitive renewable energy

1 solicitation is important?

2 A. That's exactly what AEP did in this case.  
3 They did an RFP --

4 Q. Is AEP --

5 A. They did an RFP for competitive  
6 procurement for long-term -- long-term purchase power  
7 agreements or what we call REPAs in this case.

8 Q. Fair enough. You're suggesting that the  
9 RFP was a competitive solicitation --

10 A. Absolutely.

11 Q. -- and that met your standards.

12 A. Absolutely.

13 Q. Isn't it true, providing a subsidy to one  
14 developer, over another, will hurt your other members  
15 of your MAREC, other solar developers that want to  
16 come to the State of Ohio?

17 A. No. They have absolutely the same  
18 ability to participate either in that market or deal  
19 directly with residential customers who want -- or  
20 other customers who want facilities directly at  
21 their -- you know, behind-the-meter at their  
22 locations.

23 Q. And you believe that the market is such  
24 that your members could, in fact, enter into  
25 agreements with a counterparty and develop solar just

1 as they -- AEP could?

2 A. Do I believe our members could enter into  
3 agreement with, let's say, a large corporation to do  
4 a long-term contract like this or REPA with one of  
5 those particular parties? Yeah, they can do that.

6 Q. Let's go to page 6 of your testimony,  
7 lines 2 to 4. Here, you state "The Company's  
8 proposal would remedy against the exposure of supply  
9 cost escalation as natural gas pricing continues...."  
10 Do you see that?

11 A. Yep.

12 Q. You are aware that AEP Ohio does not  
13 provide any generation to customers in the state of  
14 Ohio except for procuring SSO supply that's  
15 competitively bid?

16 A. And that supply that's competitively bid  
17 is -- is definitely exposed to the escalations in --  
18 what they are getting for those customers are  
19 short-term procurements and they are definitely --  
20 every time they have to go out, they are definitely  
21 part of the risk for those customers, it could be  
22 natural gas pricing, the polar vortex, ultimately  
23 this has an upward -- upward-type pressure on prices,  
24 and as that particular sentence that you just cited,  
25 there's proof to that fact. It may not hit the

1 customer's bottom line during this procurement but,  
2 because of all the risk factors and the higher  
3 pricing, it's going to hit the customer's bottom line  
4 the next time they go out, unless they, you know,  
5 hedge it to some degree.

6 Q. Who? Unless who hedges it?

7 A. Unless AEP hedges it and goes out and  
8 procures this type of energy in renewable energy,  
9 what we are talking about in this proceeding,  
10 REPA-type contracts.

11 Q. Do you think the renewable energy from  
12 this proceeding is going to serve SSO load?

13 A. Is going to serve, yes, it will. To a  
14 degree, it will.

15 Q. In response to my prior question, you  
16 believe that statement on page 6 is related to  
17 Standard Service Offer, correct?

18 A. Your question on page 6 --

19 Q. The sentence that I referenced on page 6,  
20 you believe that sentence is referring to supply  
21 being AEP Standard Service Offer?

22 A. It refers to any kind of supply that's  
23 out there that's -- has exposure to volatile gas  
24 pricing or other -- other fossil fuel pricing.

25 Q. Sir, you are aware, in this case, AEP's

1 proposal is that for at least the first four year of  
2 a solar REPA, it's estimated to be a net charge to  
3 customers, correct?

4 A. Yeah, I am aware there will be a net  
5 charge as in any REPA or purchase power agreement as  
6 I usually call it, is -- it's -- for renewable energy  
7 is -- often might start out with a mildly higher  
8 price over the early -- early years but ultimately  
9 turns into a very significant benefit to the  
10 ratepayers who are getting that service.

11 Q. "That service" meaning you believe they  
12 are going to actually receive the renewable energy  
13 supply.

14 A. Well, they're certainly getting the  
15 benefits of that by -- this is -- this is very  
16 technical because you are not necessarily going to  
17 have that supply going directly to your house or  
18 anything like that, but it's put onto the grid and,  
19 you know, and it basically reduces other supply  
20 that's out there that may be related to fossil fuel  
21 generation and other things, so they get the benefit  
22 of what they are looking for which is a reduction in  
23 use of fossil fuel generation.

24 Q. Have you done a study on what will be  
25 displaced by the installation of these solar

1 projects?

2 A. Not in this particular case, but there is  
3 certainly a lot of information out there that you can  
4 certainly look up and find that support that.

5 Q. But you didn't do a study for purposes of  
6 your testimony.

7 A. No. I am fully aware of it though.

8 Q. And are you aware that for at least the  
9 first six years of the REPA under the Company's  
10 proposal there will be a net charge to customers.

11 A. Yeah. I mean, I guess that's their --  
12 that's their projection.

13 Q. And you know that these net charges will  
14 exist on customer's bills regardless of whether  
15 natural gas prices rise or fall.

16 A. Well, if natural gas prices rise, they're  
17 offset by those additional costs.

18 Q. The nonbypassable charge will not remain  
19 on customers' bills?

20 A. They will be, but the nonbypassable  
21 charge will be -- will be overcome by the obvious  
22 fact if natural gas goes in the direction it's  
23 headed, ratepayers will ultimately have a significant  
24 benefit, and I can't recall exactly the study that  
25 the Company did, but they showed millions of dollars

1 of savings to ratepayers over time.

2 Q. Well, but isn't it true, for at least the  
3 first four years under the solar project, if a  
4 customer is in a fixed-price contract with their CRES  
5 supplier, they will see an additional charge on their  
6 bill?

7 A. Well, to the extent that the projections  
8 are correct, they will see an additional charge but  
9 it is a minimal charge. Overall it is a benefit to  
10 customers.

11 Q. Have you done the calculations of the --  
12 you stated "minimal charge." Have you done the  
13 calculations to know the impact on Ohio businesses?

14 A. I have not.

15 Q. Let's turn to page 10 -- well, it  
16 actually starts on page 9 and goes over to page 10,  
17 the question regarding the federal tax credit. Do  
18 you see that?

19 A. I'm getting to it. Yeah, I'm there.

20 Q. You are referring -- in this question and  
21 answer, you are referring to the federal Investment  
22 Tax Credit as it relates to Willowbrook and the  
23 Highland projects that you reviewed?

24 A. As it relates to solar projects in  
25 general.

1           Q.    And it's your understanding or you  
2 believe -- an assumption you had to make to draw that  
3 conclusion was that the solar projects, those  
4 specific projects, would begin construction in order  
5 to take advantage of the tax credits, correct?

6           A.    Well --

7           Q.    Would begin construction in the time  
8 period set forth in the tax credit requirements.

9           A.    Well, there are different levels of  
10 credit depending on when the tax -- how much the tax  
11 credit will be. So my assumption was and I think  
12 it's the Company's assumption as well, is that the  
13 sooner you get this done, the better value to  
14 ratepayers overall.

15          Q.    But ratepayers would only get that value  
16 assuming construction began within the time  
17 parameters of the tax credit.

18          A.    Well, these tax credits go on for a  
19 while. But when they begin construction, for  
20 instance, in -- if they begin construction this year,  
21 they get the full 30-percent tax credit and it drops  
22 to 26 in the following year and so on and so on.

23          Q.    Well, isn't it true for the federal  
24 income tax credit for the solar ITC, that they have  
25 to have been placed in service, they have to start



1 construction during 2021 to receive certain parts of  
2 their benefits?

3 A. No. I mean, that's one year where they  
4 would receive some benefit but, you know, the hope  
5 would be that they could start construction at the  
6 end of this year, but if they couldn't, you know, we  
7 would certainly think that it would behoove the State  
8 and others in making these decisions that the project  
9 gets built when it's, you know, no less than a  
10 26-percent benefit which would be starting  
11 construction in 2020 and they have really until the  
12 end of that year to do it.

13 Q. Well, isn't it true, sir, that the wind  
14 ITC, you either have to start construction during  
15 2019 or you get zero percent tax credit?

16 MS. PIRIK: Your Honor, I am going to  
17 object to relevance. She's talking about the wind  
18 ITC.

19 A. It's the PTC by the way, not the ITC.

20 Q. Well, there's both but.

21 EXAMINER PARROT: Which are you referring  
22 to, Ms. Bojko?

23 MS. BOJKO: I said the wind ITC. There  
24 is a wind ITC, there is a solar ETC, there is a wind  
25 PTC.

1 EXAMINER PARROT: Go ahead.

2 A. The wind ITC, as far as I understand, is  
3 really pretty much only involved in offshore wind.  
4 And then there is the PTC that's -- they are using  
5 for onshore wind projects.

6 Q. But both of those, the start of  
7 construction has to be during 2019 or the credit goes  
8 to zero, correct?

9 A. I don't have it in front of me but I  
10 think there's at least another year to it, but it  
11 does -- it has been going down just like the ITC goes  
12 down over the years. I just don't have it in front  
13 of me like I do in my testimony on ITC.

14 Q. Well, you would believe if Mr. Allen,  
15 Company witness Allen, put it in his testimony that  
16 it ended in 2019, you wouldn't have any reason to  
17 question that, would you?

18 A. That that would be the end of -- is that  
19 starting construction?

20 Q. Start of construction during 2019.

21 A. If that's what he has in his testimony,  
22 then I would accept that subject to check.

23 Q. And in this section of your testimony you  
24 cite a study by the Solar Energy Industries  
25 Association. Do you see that? It's Footnote 14.

1 A. Yes.

2 Q. You did not conduct this study, did you?

3 A. No.

4 Q. And you would agree with me, sir, that  
5 the tax credits you reference have been available  
6 since 2015, correct?

7 A. That's correct. These -- it's been a  
8 long history with tax credits. They have been  
9 on/off, on/off, changed. But the current -- current  
10 level tax credits have been in since 2015.

11 Q. So they've been available to AEP since  
12 2015 to take advantage of, but they didn't propose  
13 this project until 2018.

14 A. Well, I'm not sure they -- they would  
15 have proposed the project back then. There could  
16 have been other reasons but, yeah, I would say my  
17 understanding is that this is -- this is the project  
18 that they are proposing now, and I can't really  
19 testify to what they might have done or thought about  
20 doing two, three years ago.

21 Q. But it was available to them, correct?

22 A. It would have been available to them at  
23 that point.

24 Q. Let's look at page 10 of your testimony.  
25 You cite a number of sources in the footnotes. Do

1     you see that?

2             A.     I do.

3             Q.     And you did not personally write or  
4     produce any of those sources, correct?

5             A.     I did not.

6             Q.     And you did not write the report from the  
7     GA Institute at Footnote 15, did you?

8             A.     No, I did not.

9             Q.     And you did not write the article that  
10    you also cite to with the GA Institute, did you?

11            A.     I did not.

12            Q.     And you didn't write the article from the  
13    Dayton Daily News in Footnote 16, did you?

14            A.     I did not.

15            Q.     And you did not write the article from  
16    The New York Times in Footnote 17, 18, did you?

17            A.     No.

18            Q.     You provided a list of companies in  
19    Attachment BB-1, correct?

20            A.     Yes.

21            Q.     And you don't work for any of those  
22    companies, do you, sir?

23            A.     I do not.

24            Q.     And -- and you cannot speak, from  
25    personal experience, about what Fortune 500 companies

1 consider in deciding where to build new facilities,  
2 could you?

3 A. I know, from being in the industry for a  
4 number of years, having worked for 15 years for a  
5 utility commission, that companies have expressed, on  
6 a number of occasions, their concern about a state's  
7 policy as it relates to sustainability and whether or  
8 not that's something that -- that's -- that has been  
9 a consideration in those situations. In some cases,  
10 I am not going to say all cases, but these companies,  
11 more and more are having very significant concerns  
12 about this and, you know, they like to go to states  
13 with good policies on this since a lot of these  
14 companies have that as part of their social  
15 responsibility reporting.

16 Q. I was actually referring to Attachment  
17 BB-1.

18 A. Right.

19 Q. And I asked if you actually had personal  
20 experience or knowledge or did you discuss with the  
21 companies that you cite the reports that you cite.

22 A. No, I did.

23 Q. And did you ask those companies whether  
24 they support AEP Ohio's proposal to charge a  
25 nonbypassable charge, an off-market charge, and put

1 it on their bills for these two projects?

2 A. That was not the purpose of this chart.  
3 This chart was strictly there to show that point I  
4 just made that these companies have social  
5 responsibility goals and they often site or expand or  
6 move their businesses as it relates to the fact that  
7 a state is encouraging the development of renewable  
8 energy. It is not specific to these projects in the  
9 least.

10 Q. And you are aware that these companies  
11 have actually purchased renewable energy from the  
12 competitive market to meet their sustainability  
13 goals, correct?

14 A. I'm aware that some of these companies,  
15 because not all of them are doing renewable energy,  
16 they have other societal goals and other ways to get  
17 their energy efficiency and things like that, but I  
18 am aware that a lot of them do go out and do their  
19 own purchasing.

20 Q. And you would agree with me these  
21 announcements were made prior to AEP Ohio filing  
22 their application.

23 A. When you say these announcements, you  
24 mean the web page reporting?

25 Q. Yes.

1           A.    Well, I can't say 100 percent but I will  
2   agree that, you know, a majority of these are reports  
3   from either 2017 or discussions up until the time, at  
4   the max, when we filed the testimony.

5           Q.    And you would agree with me that those  
6   companies who you listed who had sustainability  
7   goals, will have those goals regardless of whether  
8   the Application of AEP is approved before the Ohio  
9   Commission.

10          A.    I would agree with that with the caveat  
11   that as I indicated before and I am not specifically  
12   mentioning any of these companies, that it has been  
13   definitely publicly stated that these -- a number of  
14   companies, I am not saying these companies, do have  
15   concerns when it relates to a State's policy and  
16   whether or not they are locating in a state that has  
17   some of the same corporate responsibility goals that  
18   they have.

19          Q.    Did you poll the customers, the  
20   commercial customers that you list or the Fortune 500  
21   companies that you list, did you poll them to ask if  
22   they wanted the competitive market to own the  
23   renewable generation or the utility to own the  
24   renewable generation?

25          A.    I did not.

1 MS. BOJKO: Thank you, your Honors. I  
2 have no further questions.

3 EXAMINER PARROT: Ms. Willis.

4 MS. WILLIS: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Willis:

8 Q. Good afternoon, Mr. Burcat. Mr. Burcat,  
9 are you licensed to practice law in Ohio?

10 A. I am not.

11 Q. And are you testifying in this proceeding  
12 as an attorney in providing legal opinions?

13 A. I am not.

14 Q. You are testifying on behalf of the  
15 Mid-Atlantic Renewable Energy Coalition; is that  
16 correct?

17 A. That is correct.

18 Q. And can you tell me a little bit about  
19 MAREC's membership? What -- who are members of  
20 MAREC?

21 A. I don't think I can do them all off the  
22 top of my head but they are -- most of the companies  
23 are utility-scale wind and solar companies that  
24 include some offshore wind companies and it also  
25 includes some turbine manufacturers. We have a



1 couple of public interest groups who are part of our  
2 membership. And we actually even have some law firms  
3 that are part of our membership because they want to  
4 do public interest work and work with us.

5 Q. And when you say public interest  
6 organizations, can you tell me who those would be?

7 A. Yeah. The two -- there's two both on my  
8 board.

9 Q. Okay.

10 A. One is PennFuture. It's Pennsylvania  
11 Citizens for -- Pennsylvania Citizens -- it's  
12 PennFuture is their name. You'll find it if you want  
13 to look it up. And the American Wind Energy  
14 Association.

15 Q. And when you mention law firms, can you  
16 tell me what law firms are members of MAREC if you  
17 know?

18 A. Yeah. We have one law firm that's --  
19 they are not as engaged because we use them, you  
20 know, when we -- to do filings or whatever. They  
21 give their time and all of that, so, to us. One is  
22 Parker Poe in North Carolina. They have offices  
23 around the south. And one is -- basically the other  
24 one is -- it's a firm that actually does some  
25 business in Ohio, but they are primarily in West

1 Virginia. Oh, Steptoe & Johnson.

2 Q. Okay. Thank you. And you've mentioned  
3 utility-scale wind companies.

4 A. Yes.

5 Q. Can you explain what you mean by that?

6 A. These are companies -- there's no  
7 definition exactly to that, but they are companies  
8 that go in and build not behind-the-meter type  
9 projects. They are usually very large scale, maybe  
10 as small as 20 or 30 megawatts but as high as  
11 300 megawatts and probably more likely, you know, in  
12 the 80- to 150-megawatt range and that's basically  
13 what they do, so they are very large. They usually  
14 tie to the transmission systems. And so that's what  
15 we do with wind. Those are the types of wind farms.  
16 Some of them, as I said, do offshore wind as well.  
17 It's a whole different ballgame.

18 Q. Now, you mentioned manufacturers. Are  
19 you talking about wind turbine manufacturers?

20 A. We have both Vestas and Siemens as  
21 members of our association.

22 Q. And is your organization -- does your  
23 organization include service companies?

24 A. Well, you know, we did, and I've always  
25 considered the law firms as service companies but we

2111

1 don't really have the service companies that you  
2 might be expecting like -- although you could also  
3 argue that the turbine manufacturers fall into that  
4 category as well but, you know, we've had other  
5 members that did other types of services and are  
6 members of our organization.

7 Q. Do you have any members that are involved  
8 in the solar industry?

9 A. Yes.

10 Q. And who would those members be and can  
11 you categorize those type of members?

12 A. It's utility scale. Now, utility-scale  
13 solar, I would put into a little different  
14 classification. They certainly do the really large,  
15 you know 300-, 200-megawatt, 100-megawatt projects.  
16 As you see here, there is two companies doing a 100-  
17 and 300-megawatt project, that would be in that  
18 category. And then we've got some who go, you know,  
19 where the economic opportunity is, where they can get  
20 locations where they can develop, if they are on  
21 brownfields, you know, but they can't get enough of a  
22 land base there, you know, their projects, you know,  
23 they satisfy some goals in the state and their  
24 projects could be smaller, let's say 20 or  
25 30 megawatts.

1           Q.    Now, some of your members, as you've  
2 described them, would have an interest in developing  
3 renewable projects whether they are wind or solar,  
4 correct?

5           A.    They all have -- all but the -- yeah,  
6 they all have an interest in doing that.

7           Q.    And some of your members would have been  
8 issued permits for wind farms or solar operations,  
9 correct?

10          A.    That's correct.

11          Q.    Now, Ms. Bojko marked, as OMAEG Exhibit  
12 15, the 2014 testimony on Senate Bill 310.

13          A.    Sure.

14          Q.    And if you go to -- I think she  
15 referenced the fact that the testimony claimed that  
16 88 of Ohio's -- out of 88 of Ohio's counties, 86  
17 currently have solar generation, and if I look to the  
18 very last page of OMAEG Exhibit 15, I see a map  
19 depicting the renewable energy projects in Ohio.

20          A.    Yes.

21          Q.    Do you see that?

22          A.    Yes.

23          Q.    And do you know whether this -- as we sit  
24 here today, is this an accurate map or depiction of  
25 the renewable energy projects that you are aware of

1 in Ohio?

2 A. It can't be. I mean, there has been more  
3 development over the past four or five years. And I  
4 will say a lot of development is not at the -- or not  
5 a lot -- some of the development is not at the -- you  
6 know, the types of developments that my members would  
7 necessarily do. It could be rooftop solar and things  
8 like that.

9 Q. Does MAREC maintain, on its website, a  
10 more-current renewable energy projects map for Ohio?

11 A. No. Our individual companies usually do  
12 that, so you would look up our individual companies  
13 and their links to that.

14 Q. And do you know where this map, the  
15 renewable energy project map came from?

16 A. I have no idea.

17 Q. Okay. And when you look at that  
18 "Renewable Energy Projects in Ohio" map, are any of  
19 the projects on -- shown on this map associated with  
20 MAREC members, if you know?

21 A. Yeah, there is definitely, I am just  
22 looking for them because it's kind of hard to read  
23 it, but there's certainly a couple of wind farms.  
24 All the wind farms that have been developed in Ohio  
25 have been MAREC members. Avangrid and EDPR have

1 developed a couple. And I believe there are one or  
2 two more grandfathered projects that have come on  
3 line. Paulding Wind Farm, if you look at the  
4 left-hand corner.

5 Q. Yes.

6 A. That's EDPR's wind farm. That's up and  
7 running for about three our four years. Blue Creek  
8 Wind Farm is Avangrid's wind farm in Ohio. And there  
9 may be one or two others here that have been built  
10 because they were grandfathered as far as their --  
11 their permitting through the OPSB.

12 Q. Now, you indicate that as Executive  
13 Director, you are responsible for handling duties in  
14 many states including Ohio, correct?

15 A. Correct.

16 Q. And you do define MAREC's footprint in  
17 Footnote 1 of your testimony, correct?

18 A. Yes, yes. The states and D.C.

19 Q. Now, you indicate, on page 2 of your  
20 testimony, lines 22 through 23, that you provided  
21 testimony in a PUCO proceeding pertaining to the  
22 Alternative Energy Rider proposed by Ohio Edison,  
23 Case No. 11-5201. Do you see that reference?

24 A. Yeah, I did do that, yes.

25 Q. And in that case you were recommending

1 that in calculating a 3-percent cost cap for  
2 renewables that the Commission factor in the benefits  
3 of price suppression, correct?

4 A. Correct.

5 Q. And the PUCO did not adopt your  
6 recommendation; is that correct?

7 A. That's correct.

8 Q. Now, you also mentioned prefiled written  
9 testimony for -- you also mentioned the fact that you  
10 prefiled written testimony and stood for  
11 cross-examination in Case 14-1693, correct?

12 A. In that case -- is that the AEP case --

13 Q. Yes.

14 A. -- that preceded this case?

15 Q. Yes.

16 A. Yes. Yes.

17 Q. And in that case there was a stipulation  
18 reached which you referred to earlier during  
19 questioning by counsel.

20 A. Correct.

21 Q. And as part of that stipulation, MAREC  
22 signed on to the stipulation.

23 A. That's correct.

24 Q. Now, in that case, that's the case you  
25 refer to as the PPA Rider case; is that correct? And

1 I am looking at page 5, Footnote 2.

2 A. Yes.

3 Q. And in the PPA Rider case that you  
4 reference, is it your understanding that this was an  
5 affiliate power purchase agreement proposed along  
6 with the OVEC purchase power agreement?

7 A. In the initial filing, yes.

8 Q. And those riders were agreed to by a  
9 number of parties through the stipulation that MAREC  
10 joined and signed.

11 A. That's correct.

12 Q. Now, are you aware that the PPA Rider and  
13 the Affiliate Rider were for 3,111 megawatts of  
14 capacity?

15 A. I don't remember the exact number but it  
16 was a pretty significant number like that.

17 Q. Now, is it your understanding -- or, if  
18 you know, are you aware of what percent of AEP's  
19 connected retail load 3,111 megawatts represents?

20 A. I don't offhand know.

21 MS. WILLIS: May I approach the witness,  
22 your Honor?

23 EXAMINER PARROT: Yes.

24 MR. NOURSE: Your Honor, I would just  
25 object to the relevance of getting into the



1 preliminary phase of the PPA Rider case that, you  
2 know, got completely changed and is not reflected in  
3 the, you know, the outcome of the case. I don't see  
4 the relevance there.

5 MS. WILLIS: Your Honor, the witness  
6 testifies in his testimony and we are going to get  
7 there, in fact, quotes from excerpts from the 14-1693  
8 Order and says the excerpts from the Order are  
9 consistent with his approach in this case, so I'm  
10 actually tying it to his testimony where he makes  
11 that -- makes that claim.

12 EXAMINER PARROT: Okay. We'll see where  
13 it goes.

14 MS. WILLIS: Thank you.

15 EXAMINER PARROT: Proceed, Ms. Willis.

16 MS. WILLIS: I have got one extra copy  
17 for the Bench. I am a sorry. I'm one short.

18 Q. (By Ms. Willis) Can you turn to page 23  
19 of that Opinion and Order. And let me go back for a  
20 moment. You've read this Order; is that correct?

21 A. A few years ago.

22 Q. In fact, you have quotes from this Order,  
23 do you not, in your testimony?

24 A. I do. I do. I mean, you know, I read  
25 the Order a few years ago. I didn't go through every

1 page of this Order.

2 Q. If you could take a moment to refresh  
3 your recollection, and I am going to specifically  
4 refer you to page 23, the line at the very -- or at  
5 the top, the very first full sentence at the top of  
6 that page. "According to Mr. Vegas, the 3,111  
7 megawatts included in the affiliate PPA and the OVEC  
8 PPA, which represents over a third of AEP Ohio's  
9 connected retail load, is a significant and  
10 reasonable amount of generation to use as a financial  
11 hedge to stabilize rates, as required by the  
12 Commission in the ESP 3 Case." Do you see that  
13 reference?

14 A. I see that reference.

15 Q. Now, Mr. Burcat, you indicate that  
16 in-state renewables will provide Ohio with  
17 substantial environmental benefits, and I'm referring  
18 to page 5 of your testimony, lines 6 through 7. Do  
19 you see that reference?

20 A. Yes.

21 Q. And you did not specifically quantify how  
22 much environmental benefits could be achieved through  
23 the projects proposed by AEP; is that correct?

24 A. That's correct.

25 Q. And you didn't quantify -- let me strike

1 that.

2 Would you agree with me, Mr. Burcat, that  
3 in-state renewables, provided by market participants  
4 like MAREC members, would provide environmental  
5 benefits of clean air and water?

6 A. In state -- say that again. In-state  
7 participants would qualify?

8 Q. I'm sorry. I can reread it.

9 You would agree that in-state renewables,  
10 provided by market participants like MAREC members,  
11 would provide environmental benefits of clean air and  
12 water?

13 A. If MAREC members -- let me maybe see if I  
14 can understand exactly what you are saying. When you  
15 say "market participants," are you saying through  
16 this type of market device or through -- through some  
17 kind of -- through the current --

18 Q. Through the current Ohio market, MAREC  
19 members that are members of the current Ohio market.

20 A. Sure. If they located -- if they were  
21 able to locate within the Ohio footprint, they would  
22 certainly have some benefits related to clean air and  
23 water.

24 Q. And you would also agree, Mr. Burcat,  
25 that in-state renewables provided by market

1 participants as we've described, like MAREC members,  
2 would provide direct and indirect economic benefits  
3 to the Ohio economy at large, correct?

4 A. Sure, sure.

5 Q. Now, let's go back to your testimony on  
6 page 5 and there you are referencing the AEP PPA  
7 Rider case, and I am looking at lines 11 through 18.

8 A. Uh-huh.

9 Q. And you state in that section that the  
10 PUCO's Order, from AEP's PPA rider case, affirm your  
11 direct testimony recommendation; is that correct?

12 A. Well, this is where I will use my lawyer  
13 hat, not to try to determine Ohio law, but I think  
14 what I was saying there was not that they affirmed  
15 our testimony. What I am saying is they put language  
16 in their Order that certainly strongly supported the  
17 type of language that we feel is appropriate in this  
18 current case.

19 Q. Now, in your testimony, again we are at  
20 page 5, lines 11 through 18, you have excerpts from  
21 the PUCO Order, and it's the Order that I handed to  
22 you --

23 A. Yes.

24 Q. -- to look at.

25 A. That's correct.

1 Q. And we established earlier that you're  
2 familiar with that Order, that at one time you read  
3 through that Order.

4 A. One time I read through the Order. I  
5 can't say I'm familiar with any, you know,  
6 significant part of this, but I am certainly familiar  
7 with regard to what I testified to here.

8 Q. Sure. So what you testified to are  
9 excerpts from the Order and, from your footnote  
10 there, excerpts from page 82; is that correct?

11 A. Yes.

12 Q. And can we turn to page 82 of that Order.

13 A. Sure.

14 Q. If we could. Now, the first excerpt that  
15 you cite comes from the section of the PUCO's Order  
16 entitled "Benefits of the Stipulation," correct? I'm  
17 sorry. I will give you a moment.

18 A. I see that.

19 Q. Okay. If we read the very first sentence  
20 of that section, we see that the PUCO is addressing  
21 whether the PPA Rider is in the public interest,  
22 correct?

23 A. That's correct.

24 Q. And would you agree with me that the  
25 discussion that is in this section relates to

1 satisfying the prongs of the stipulation test, if you  
2 know?

3 A. Yes. I mean, they were certainly writing  
4 a decision based on the stipulation with most of the  
5 parties and so they were going through that part of  
6 the case that related to the stipulation and why it's  
7 in the public interest.

8 Q. And if we look at the very bottom of the  
9 page, we see the excerpt that you quoted in your  
10 testimony, that renewable energy plays an integral  
11 role in promoting a reliable and cost-effective grid,  
12 correct?

13 A. Correct.

14 Q. I want you to look at the several  
15 sentences in the PUCO holding just following the  
16 testimony you quote. Take a moment to look at the  
17 several sentences and they carry over on to the next  
18 page and if you could take your time to review that  
19 paragraph that concludes on 83 from the carryover of  
20 82.

21 A. Yep, I've seen it.

22 Q. And doesn't the PUCO say there, it "will  
23 continue to look to the markets as the primary  
24 drivers of an adequate supply of energy from any  
25 source, including renewable energy"?

1           A.    I'm not sure I'm reading that.  Can you  
2 point that out to me where they say that.

3           Q.    Yeah.  At the very last sentence on the  
4 page -- on page 82.  "Additionally, the Commission  
5 will continue to" -- I am a sorry.

6           A.    At the end of page 82?

7           Q.    Yes.

8           A.    Oh, okay.  I was on page 84.  Okay, yes,  
9 "support."

10          Q.    Yes.  It's the -- let me go back.

11                There's a sentence that you can see on  
12 the end of page 82, prior to the very last sentence,  
13 that says "The Commission will continue to look to  
14 the markets as the primary drivers of an adequate  
15 supply of information from any source, including  
16 renewable energy."  Do you see that?

17          A.    Yeah.  And I -- I see it and I agree  
18 that's certainly one way to look at this and if there  
19 are any market procurements that get to these goals  
20 that the Commission has talked about, I think  
21 that's -- that's not necessarily a bad -- or I think  
22 it's a positive way to look at it, but they go  
23 further on and talk about these particular -- the  
24 900-megawatt procurement as being a good thing too.

25          Q.    Sure.  And if we -- if we look at the

1 very next sentence as well, the Commission is also  
2 talking about that the fact that it's a good thing  
3 to -- to continue to support bilateral contracts that  
4 lead to the development of renewable projects,  
5 correct?

6 A. That's correct. And it's actually what  
7 these particular contracts are as well.

8 Q. Now, if we look at page 83 at the bottom  
9 of the page of that Opinion, we see the source of  
10 your testimony excerpt about the PPA proposal  
11 offsetting the price volatility impact that any  
12 single source may have on electric rates, correct?

13 A. You say at the bottom of the page or the  
14 paragraph?

15 Q. I'm sorry. In the paragraph.

16 A. I think I am missing it.

17 EXAMINER PARROT: At the bottom.

18 Q. I'm sorry. It's at the very bottom of  
19 the page.

20 A. I was back up at the top.

21 Q. I'm sorry. You can take a moment. I am  
22 just --

23 A. Where it says "In addition to the benefit  
24 of rate stability"?

25 Q. Yes.



1           A.    Okay.  I see that now.

2           Q.    And that's the cite of what you quote in  
3 your testimony.

4           A.    Right, right.  I was not seeing it in  
5 that other paragraph.

6           Q.    Okay.  Now, there, the Commission was  
7 addressing the PPA proposal before it; is that  
8 correct?

9           A.    Yes.

10          Q.    Okay.  And the PPA -- so the Commission  
11 was discussing the Company's specific PPA proposal  
12 for 3,111 megawatts of capacity, correct?

13               MR. NOURSE:  Objection.  You know, again,  
14 this section of the Order speaks for itself, but it  
15 certainly is addressing the renewable issues involved  
16 with the stipulation.

17               EXAMINER PARROT:  Overruled.  Go ahead.

18          A.    I was going to go there anyway.  If you  
19 read that sentence where it says "In addition to the  
20 benefit of rate stability, the PPA proposal will  
21 facilitate generation fuel supply diversity and work  
22 to offset the price volatility impact that any single  
23 fuel source may have on electric rates."  That was  
24 not the case with the 3,111 megawatts minus the  
25 900 megawatts that we are talking about today.

1           They are clearly distinguishing that in  
2     saying 900 megawatts here is helping for price  
3     stability and also diversity of fuels because those  
4     are the current fuels that the Company had at that  
5     time. So I don't see how that would be a price --  
6     diversity issue. So I think the Commission was  
7     really specifically talking about the renewable  
8     energy in that particular paragraph.

9           Q. And if we go to the prior paragraph, do  
10    you see the statement that says "The 3,111 megawatts  
11    of capacity under the affiliate PPA and the OVEC PPA  
12    is a significant amount that will provide value as a  
13    financial hedging mechanism that supports stable  
14    retail rates." Do you see that reference?

15          A. I do, yes.

16          Q. Okay. Now, let's go back to your  
17    testimony on page 7. Beginning on line 7, you  
18    express the concerns of inter -- or you address the  
19    concerns of intervenors regarding anti-competent --  
20    the anti-competitive, alleged anti-competitive nature  
21    of the renewable projects?

22          A. Sure.

23          Q. Okay. Then you state there, and I am  
24    looking at page 7, line 12, that this concern may be  
25    relevant at very high levels of penetration. Do you

1 see that?

2 A. That's correct.

3 Q. And can you define for me what those high  
4 levels of penetration are?

5 A. Yeah. What I would say is that when  
6 we're talking about 900 megawatts of wind and solar,  
7 given the size and the scope of AEP's service  
8 territory in Ohio, it's a pretty small piece. And I  
9 would also say that -- I would just say that the --  
10 yeah, and in this particular case we are talking  
11 about the 400 megawatts of solar, you know, that's  
12 certainly an even much smaller amount.

13 Q. Can you tell me at what -- what high  
14 level penetration that this would be a concern?

15 A. What I can tell you is this level of  
16 perpetration is clearly not a concern, but I would  
17 also say that this discussion, this testimony was  
18 twofold, that, you know, we're -- there is not an  
19 anti-competitive procurement as well because this is  
20 being competitively procured.

21 So any solar generator, any wind  
22 generator, any company dealing in this -- in this  
23 field who has any interest in -- had any interest in  
24 participating in the RFP, and we're not talking about  
25 going in and dealing with the rooftop folks or, you

1 know, they have their own line of businesses and  
2 things like that, but we are talking about this  
3 product that is a long-term product. You know, it  
4 was clearly a competitive procurement that was done  
5 by the Company and so, you know, we definitely see  
6 this as a competitive procurement so, you know, yes,  
7 it's not a very large piece of the -- it's a fairly  
8 small piece of the market in Ohio and AEP's  
9 territory, but from a competitive standpoint it's not  
10 a competent -- it is a competitive market tool to go  
11 out and do an RFP for this. And that was explicitly  
12 stated in the Commission's Order, you know, when I  
13 was reading through that when you had me. There was  
14 a statement about competitively procured through an  
15 RFP process in the Commission's Order.

16 Q. Now, you testified on page 8, lines 18 --  
17 I'm sorry. Page 7, lines 18 and 19, that "a fixed  
18 REPA price that is market competitive would not  
19 constitute a market subsidy at all." Do you see  
20 that?

21 A. Yes.

22 Q. How do you define a market subsidy there?

23 A. I would think it would be some kind of  
24 pricing mechanism or, you know, for instance, you  
25 know, there is -- there are subsidies in the

1 renewable portfolio or the AEPS here in Ohio where  
2 there is an additional cost related specifically to  
3 that. What this is talking about is specifically the  
4 REPA, and since the REPA -- there is not an extra  
5 cost in there, it just so happens in the early years  
6 of the REPA, the cost is more expensive by a limited  
7 amount. In the later years, we're looking at huge  
8 savings. So, to me, that's not a -- that's clearly  
9 not a subsidy.

10 Q. Would you consider add-ons where the risk  
11 of the -- let me strike that.

12 Would you consider an add-on to the REPA  
13 an above-market or a subsidy, an add-on to the REPA  
14 a -- any increment above the REPA contract cost to be  
15 a subsidy?

16 A. No. I think I've answered that question  
17 before but in the long run this -- cost of this  
18 energy and the other attributes are going to be lower  
19 than the market costs and you could argue that it's  
20 -- it goes the other way.

21 Q. Do you consider the ITC and the PTCs to  
22 be market subsidies?

23 A. Well, they are certainly credits just  
24 like every other energy resource has. I mean, coal  
25 and nuclear lived on subsidies and incentives, so,

1    yeah, I would have to say that's more like a subsidy  
2    or an incentive but that's -- that's not what we are  
3    doing here. This is completely different. But since  
4    the Federal Government is offering the ITC and the  
5    PTC and they are phasing down and phasing out, it  
6    doesn't make sense to sit and wait on these types of  
7    projects.

8           Q.    Would you -- would you consider the AEPS  
9    renewable energy requirements in Ohio to be a market  
10   subsidy?

11          A.    I mean, I would say there would be an  
12   incentive to go ahead and do that, do those projects  
13   if -- if -- or at least have -- because you don't  
14   have to necessarily do a project. This would be just  
15   purchasing RECs in a lot of cases from out of state.

16                What I will say with regard to that, and  
17   with his position, I have not read over his testimony  
18   that was provided, but I am sure that Eric Thumma,  
19   our President, said it in 2014, these types of  
20   arrangements, these purchase power agreements, are --  
21   they get the projects done. You know, they have  
22   viable, low-cost projects that are -- the Company has  
23   before it right now. They have gone through the RFP  
24   process. They get these things done and they get  
25   their projects done.

1           And I think one of the most important  
2 factors in all of that is that if you have the  
3 utility as the off-taker or the standard service  
4 office -- offer provider as the off-taker in these  
5 things, the financing costs for these projects go way  
6 down. And if you competitively bid the projects in  
7 those situations, the cost to the consumer goes down,  
8 and that's why you see, in the long run, there is  
9 millions of dollars of savings for ratepayers.

10           MS. WILLIS: Your Honor, I am going to  
11 move to strike the testimony after he -- he answered  
12 my question. My question was are renewable -- are  
13 the renewables standard a market subsidy. He did  
14 address that. I'll give him that. But he then did  
15 go and go on with some rather long testimony with  
16 respect to the whole project, to AEP being behind the  
17 project, nothing related to what I asked him, so I  
18 would move to strike.

19           MS. PIRIK: Your Honor, I think in the  
20 answer to the question, when you are talking  
21 subsidies, there are certain ways to view subsidies.  
22 Mr. Burcat is trying to clarify exactly what his  
23 focus is and what his viewpoint is when it comes to  
24 that answer.

25           MS. WILLIS: And he certainly did that in

1 the first couple of lines, but then he went forward,  
2 in a long diatribe, to tell us what -- how great the  
3 AEP project being proposed here is.

4 MS. PIRIK: You are correct. He did try  
5 to clarify his answer.

6 EXAMINER PARROT: Ms. Willis, this  
7 question was directed to the AEPS requirements.

8 MS. WILLIS: Yes.

9 EXAMINER PARROT: So I am going to grant  
10 the motion to strike beginning with "What I will say  
11 with regard to" and everything from that point on.

12 MS. WILLIS: Thank you, your Honor.

13 Q. (By Ms. Willis) Now, on page 10 of your  
14 testimony, you quote the Solar Energy Industries  
15 Association. And I am looking at Footnote 14. Do  
16 you see that reference?

17 A. Yes.

18 Q. And are you familiar with that  
19 association?

20 A. I am very familiar.

21 Q. And can you tell me about that  
22 association?

23 A. Yes. It's a -- I would say it's akin to  
24 the American Wind Energy Association where it has  
25 sort of the national focus on solar issues, whether



1 they be solar issues at the utility scale or behind  
2 the meter or other solar applications and even  
3 getting into storage these days. They are sort of  
4 the go-to organization on the national basis.

5 Q. All right. Can we call it SEI, would you  
6 accept that, call it SEI?

7 A. "SEIA." Yeah, SEIA.

8 Q. SEIA, okay. And you would agree that  
9 SEIA is well known within the renewables field,  
10 correct?

11 A. Absolutely.

12 Q. And SEIA produces a lot of data.

13 A. It does.

14 Q. And it produces data on just about  
15 anything related to solar; is that -- is that fair?

16 A. Yeah. I'm not with them day-to-day, but  
17 I would say they produce a lot of data that relates  
18 to solar, but I am not going to say anything solar.

19 Q. Are you aware whether or not SEIA  
20 produces state-specific data?

21 A. You would say yes, they do. I mean, I've  
22 looked up other states. I can't say they produce  
23 Ohio State.

24 Q. And as an expert in the renewable field,  
25 you would rely on information that SEIA produces,

1 correct?

2 A. "Rely" is a little strong. I would say I  
3 would use it as a source of any other information  
4 that had a good level of, you know, I think has a  
5 good level of credibility, but I don't just  
6 necessarily accept it as a --

7 Q. Sure.

8 A. -- absolute.

9 MS. WILLIS: Your Honor, at this time, I  
10 would like to mark, for identification purposes as  
11 OCC Exhibits 19 and 20, two documents. One -- the  
12 first one, Exhibit 19, entitled "Solar Spot --  
13 Spotlight-Ohio" by the Solar Energy Industries  
14 Association. The second document entitled "Solar  
15 Spotlight-Pennsylvania" by SEIA. And I would like to  
16 show them to the witness.

17 EXAMINER PARROT: The documents have been  
18 marked.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 A. I see it.

21 Q. Is this information shown on Exhibits 19  
22 and 20 the type of information you are familiar with?

23 A. Not necessarily specific --

24 MS. PIRIK: Your Honor, I'm sorry. So we  
25 have two documents, neither of which that we

1 currently have are marked. So which one is 19 and  
2 which one is 20?

3 MS. WILLIS: I'm sorry. I thought I made  
4 it clear. 19 is the Solar Spotlight in Ohio, and 20  
5 is the Solar Spotlight in Pennsylvania.

6 MS. PIRIK: Thank you.

7 MS. WILLIS: If I may have his answer  
8 reread. I think I lost the answer.

9 THE WITNESS: I am not sure I had  
10 finished.

11 EXAMINER PARROT: Yeah, go ahead.

12 A. Maybe ask the question again and I can  
13 actually finish.

14 Q. I think the question is, Mr. Burcat, is  
15 this information that -- this information shown on  
16 Exhibits 19 and 20, the type of information you are  
17 familiar with?

18 A. I would say yes. I mean, I would say  
19 this does not surprise me, seeing these numbers. I  
20 would tell you -- well, it may not be something you  
21 want to hear. I will just hold off for a minute.

22 Q. Is the information here, consistent with  
23 your understanding of solar development in Ohio and  
24 Pennsylvania?

25 A. I would say for me the information is not

1 inconsistent with what I know about Ohio and  
2 Pennsylvania. They -- both these states are two of  
3 my more difficult states on the development of solar.  
4 And there are a number of reasons for that, policy is  
5 a big reason, but, you know, location and other  
6 things are issues as well. But I think what both of  
7 these things say that Ohio can do a heck of a lot  
8 better because Pennsylvania is really suffering on  
9 its solar development.

10 Q. And let's talk about, Pennsylvania and  
11 Ohio, those are areas within the MAREC footprint; is  
12 that right?

13 A. Yeah, they are.

14 Q. Okay. And if we look at the -- and when  
15 we compare the "Solar Spotlight-Ohio" to the "Solar  
16 Spotlight-Pennsylvania," would I be correct to say  
17 that the solar jobs in the State of Ohio are much  
18 greater than the jobs in the State of Pennsylvania,  
19 solar jobs?

20 A. According to this chart, they are higher.

21 Q. And would I also be correct to say that  
22 the growth projections and ranking for Ohio are much  
23 greater than those in Pennsylvania?

24 A. Yeah. And I would point out that, you  
25 know, having worked very closely with these types

1 of -- I would say that's correct. That's what they  
2 are saying, but having worked closely with these  
3 types of organizations like SEIA and AWEA and others,  
4 you know, they look at a number of factors as to why  
5 things will increase. And one of the things that  
6 very well could be factored in here is that there's  
7 9 -- there's 400 megawatts -- because this is a  
8 two-thousand -- I see it's December 2018. So they  
9 could very clearly be putting in, which would be a  
10 huge increase in the number of solar developments, so  
11 they could be putting that in there as part of it.

12 Q. And you are thinking -- you are looking  
13 at the 2018 estimate? Is that the column you are  
14 looking at?

15 A. I don't know if that's the case. I am  
16 looking at the bottom of this. It was put together  
17 in December of 2018.

18 Q. Okay.

19 A. Bottom corner.

20 Q. Okay. But -- sure. Would I be correct  
21 to say that the Pennsylvania annual solar  
22 installations are double the solar installations of  
23 Ohio but reflect very little utility-scale solar  
24 installations?

25 A. Yeah, and there is certainly reasons for

1     that, policy reasons for that.

2             Q.     And if we look at Ohio, you are aware of  
3     those notable projects, are you not?

4             A.     To be quite Frank, you know, projects  
5     these days, the really notable projects these days  
6     that you are seeing around the country are -- for  
7     solar now, are going in excess of 100 megawatts. So  
8     I'm not really that familiar with these projects;  
9     these are not large projects --

10            Q.     Okay.

11            A.     -- in today's standard.

12            Q.     Okay. Thank you.

13                   Now, let's go to B -- your schedule BB-1.

14            A.     Okay.

15            Q.     And let's talk for a moment about  
16     sustainability reporting.

17            A.     Sure.

18            Q.     And you have listed, on the left-hand  
19     side, a number of Ohio-based companies, Fortune 500  
20     companies. Do you know which one of those Ohio-based  
21     Fortune 500 companies are located in the AEP service  
22     territory?

23            A.     I could not tell you.

24            Q.     Okay.

25            A.     Maybe AEP.

1 Q. Okay. Well, let's go to Owens Corning.

2 A. Okay.

3 Q. And that -- I take it you are familiar  
4 with the sustainability link that you listed for  
5 Owens Corning?

6 A. I am. I went through that, sure.

7 Q. And do you have a copy of the  
8 sustainability report from Owens Corning with you?

9 A. I do not. And I -- you know, obviously  
10 this is a pretty large group of companies, all having  
11 different reporting going on, but I'm not, you know,  
12 exactly certain what their report says or anything  
13 like that at this point.

14 MS. WILLIS: May I approach?

15 A. I just know they have a report.

16 MS. WILLIS: May I approach?

17 EXAMINER PARROT: Yes.

18 Q. Now, if you would take a moment,  
19 Mr. Burcat, to look at what I handed you which is --  
20 at this time I am not going to mark it, but it is a  
21 multipage document, and if you could tell me if that  
22 is the sustainability report that you list in your  
23 BB-1.

24 A. Yeah. Again, I looked at these reports  
25 and they all are different. They are all produced

1 differently.

2 Q. Sure.

3 A. So I'll point out that they are not  
4 uniform, but I do remember seeing this because I very  
5 much remember seeing the highlighted piece.

6 Q. Okay. If we turn -- I'm sorry.

7 A. I remember seeing the highlighted part on  
8 page 3.

9 Q. Sure. And that's the part I want to talk  
10 to you about.

11 A. Yeah.

12 Q. Would you agree with me that in the Owens  
13 Corning sustainability report that it indicates that  
14 Owens Corning has purchased over 1.1 million  
15 megawatt-hours of renewable energy, in the first full  
16 year of operation of the new wind capacity enabled by  
17 their purchase power agreements?

18 A. Yes, I see that.

19 MS. WILLIS: And, your Honor, at this  
20 time, I would like to have marked as OCC Exhibit No.  
21 21, multipage document with the heading "JPMorgan  
22 Chase & Company" on it.

23 EXAMINER PARROT: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. (By Ms. Willis) And I'll give you a



1 moment, Mr. Burcat, to take a look at that document.

2 A. I've basically gone through it a little  
3 bit.

4 Q. Okay.

5 A. But primarily the highlight portions.

6 Q. Okay. Thank you. I appreciate that.

7 Is this the sustainability report, if you  
8 know, that you have provided as a link in BB-1, if  
9 you know?

10 A. I'm not sure this is the exact report as  
11 the link. I think they have a link that discusses  
12 these items a little more generally. This may have  
13 been an attachment within that link.

14 Q. Okay.

15 A. But it's definitely consistent with what  
16 I'm -- I understand about JPMorgan.

17 Q. And when we look at what has been marked  
18 as OCC Exhibit No. 21, we see that JPMorgan is  
19 indicating that it will facilitate \$200 million in  
20 clean financing through 2025, correct?

21 A. Yes.

22 Q. And that this commitment will help scale  
23 the impact of sustainability efforts among its  
24 approximately 22,000 corporate and investor clients  
25 in the U.S. and across the world?

1           A.    Correct.

2           Q.    And also this report notes that it has  
3   executed wind and solar PPAs in select markets in the  
4   United States, correct?

5           A.    Yes.

6           Q.    And it identifies a 20-year PPA with a  
7   subsidiary of NRG Energy, Inc., to support the  
8   development of a wind farm of 100 megawatts, correct?

9           A.    Where is that in this?

10          Q.    I am sorry.  That would be on page -- on  
11   the second-to-last page, under "Executing Power  
12   Purchase Agreements for renewable energy."

13          A.    I see that.

14          Q.    And it also indicates that it intends to  
15   execute additional PPAs; is that correct?

16          A.    Yes.

17                MS. WILLIS:  Okay.  Now, your Honor, at  
18   this time, I would like to have marked as OCC Exhibit  
19   No. 22, a multipage document entitled "Corporate  
20   Social Responsibility, 2017 Report, Fifth Third  
21   Bancorp."

22                EXAMINER PARROT:  So marked.

23                (EXHIBIT MARKED FOR IDENTIFICATION.)

24                MS. PIRIK:  Your Honor, at this time, we  
25   are not objecting to the documents at this time, but

1 I guess my question is why was the first one not  
2 marked but these subsequent ones are being marked? I  
3 mean, you asked a question and you --

4 MS. WILLIS: Sure. I mean, it was my  
5 choice. I didn't choose to put that in as an  
6 exhibit.

7 MS. PIRIK: Okay. But you read parts of  
8 it into the record?

9 MS. WILLIS: Yes, I did ask questions on  
10 that, you are correct.

11 MR. NOURSE: Your Honor --

12 MS. PIRIK: So we would just ask -- go  
13 ahead.

14 MR. NOURSE: We've been looking for the  
15 Owens Corning, online, and I'm not sure we located  
16 it. You apparently don't have copies to share with  
17 the Company? Or do you? We didn't receive one.

18 MS. WILLIS: Yes, I do.

19 MS. PIRIK: We would just say, your  
20 Honor, if the witness is going to be crossed on a  
21 document and parts of the document are going to be  
22 read into the record, you know, it should be marked  
23 as an exhibit just like the subsequent ones have  
24 been.

25 MS. WILLIS: That is not my -- that is

1 not what I'm offering to do. The ones I have  
2 exhibits, I have marked as for exhibits. The ones I  
3 am not using as exhibits, I have not so marked. Your  
4 Honor, it is somewhat of a late objection. I think  
5 we've gone -- we are two down from that at this  
6 point.

7 MS. PIRIK: Well, it's not really late,  
8 your Honor. We were allowing her to ask these  
9 questions. We have no problem with the questions but  
10 we think the record is going to be unclear because  
11 she, in her questions, is specifically reading pieces  
12 of the document into the record. I think it would --  
13 part of our witness -- whatever our witness is  
14 referring to in BB-1 and those links is what's part  
15 of our testimony. She's bringing new exhibits,  
16 perhaps, into the record --

17 MS. WILLIS: These are not new exhibits,  
18 your Honor. These are from the links that were  
19 listed. I'm actually doing the parties a favor by  
20 going into the links because, otherwise, our record  
21 shows just links and there's nothing -- without  
22 getting onto a computer and looking, we don't know  
23 what those are. So I am actually trying to be  
24 helpful in bringing information to the Bench and to  
25 the Commission as to what these links show and what

1 the sustainability reports are.

2 EXAMINER PARROT: Then can you get a copy  
3 of the Owens Corning report for the Bench, please?

4 MS. WILLIS: Sure.

5 EXAMINER PARROT: Two preferably.

6 MS. MOONEY: Your Honor, a copy just for  
7 the Bench or?

8 MR. HEALEY: I'll hand them out.

9 EXAMINER PARROT: Ms. Pirik, I would just  
10 note, if you wish to have it marked on redirect,  
11 we'll proceed in that fashion, all right?

12 MS. PIRIK: Thank you, your Honor.

13 EXAMINER PARROT: Go ahead, Ms. Willis.

14 MS. WILLIS: I am sure there wasn't a  
15 question pending at this point.

16 Q. (By Ms. Willis) Mr. Burcat, have you had  
17 a chance to review the document that's been marked as  
18 OCC Exhibit 22?

19 A. Well, not in detail. It's very lengthy.  
20 I have -- again, I definitely was on their web page  
21 and they spoke about it again in a more generic way,  
22 I guess it was maybe a three- or four- or five-page  
23 document, but I think at least as far as energy is  
24 concerned, I'm familiar with what's located on page  
25 40.

1 Q. Okay.

2 A. And their statements on page 41.

3 Q. And are you also -- if we go to 39, page  
4 39, where they announce five bold sustainability  
5 goals, are you familiar with that?

6 A. Yeah. I mean, they are clearly talking  
7 about carbon reduction, and they had certain steps to  
8 get there, and certainly 100-percent renewable energy  
9 was one of their steps.

10 Q. And in fact, they have reached that  
11 100-percent renewable energy step, have they not,  
12 based upon this document?

13 A. I didn't look at it that carefully. The  
14 goal of that chart was to show the responsibilities,  
15 the responsibility goals of these companies, if they  
16 are reporting on those things and it was, you know,  
17 certainly a yes for this particular company.

18 Q. And if we look on page 39 at the blue  
19 chart, a very pretty blue chart, I would say, we can  
20 see "100-percent renewable energy contracts signed."  
21 Do you see that?

22 A. Yes. And I'm not sure that in and of  
23 itself -- I am not disagreeing that's great if they  
24 have gone to 100-percent renewable energy but I am  
25 not sure that necessarily means that that 100-percent

1 renewable energy applies across the board to all  
2 their companies. It could.

3 Q. Sure. And if we look on page 40, we see  
4 another statement about that 100 percent and it says  
5 "In 2017, Fifth Third signed a contract to achieve  
6 100 percent solar power. That's about 194,000  
7 megawatt hours of clean energy per year," correct?

8 A. Yes, but I would take you back to page  
9 30 -- again, I am not -- any company that's doing  
10 this is doing great things, but I am taking you back  
11 to page 38 where it says "Take accountability" and  
12 they are talking about achieving a 100-percent goal  
13 by 2022. So there is some discrepancy between  
14 different statements that they have in this document.

15 Q. Could it be that they -- even though that  
16 was their goal, they did achieve it earlier than  
17 possible?

18 A. I'm not reading in between --

19 Q. Okay. And if we go to page 38, doesn't  
20 it say, and I am looking at the quote from their  
21 Director, Environmental Sustainability, that "In June  
22 2017, Fifth Third committed to being an environmental  
23 sustainability leader by setting five bold goals,  
24 including achieving 100 percent renewable power by  
25 2022. Just six months later, we signed a long-term

1 power purchase agreement that will enable us to  
2 achieve our 100 percent goal four years ahead of  
3 schedule."

4 A. I think we are probably arguing over  
5 something that's not that critical but the -- I think  
6 with -- where you are not necessarily -- what I am  
7 reading out of it, let's put it that way, I don't  
8 know how you are reading it, how I am reading it is  
9 you can go out and sign a contract for 100 percent of  
10 your renewable energy goals, but you may not get  
11 there until 2022. So it's possible --

12 Q. Sure.

13 A. I don't know unless your next question --  
14 I don't know if the distinction is that critical.

15 Q. Now --

16 A. They have good goals and they are going  
17 to get there soon if they are not there already.

18 Q. Sure. And I think if we look -- we look  
19 further into that report, page 41, we find something  
20 else that's kind of nice. We look at 41 of the  
21 report, we can see that Fifth Third financed a  
22 significant renewable project, 92 megawatts of clean  
23 energy, for thousands of residents across Cumberland  
24 County, North Carolina, correct?

25 A. Correct.



1           Q.    Okay.  Now, in your duties as Executive  
2   Director, you are generally aware of solar projects  
3   and opportunities for renewables?

4           A.    I'm aware of projects that are out there.  
5   You know, it depends on the stage.  I'm not privy to  
6   individual companies' development schedules.  You  
7   know, some of their projects may be -- they may be  
8   far along but they are just in the process of  
9   developing territories and things like that for their  
10  projects.  So I'm aware of certain projects obviously  
11  because I'm in the field and I'm interested and it's  
12  helpful to know.

13          Q.    And are you aware -- are you familiar  
14  with Nationwide activities in investing in solar  
15  energy projects?

16          A.    I am to a degree because it's different  
17  in every state and that's why Ohio is dramatically  
18  different than North Carolina where this project was  
19  financed on page 41.  So, you know, everything is  
20  different.  Everything is based on what policies are  
21  out there and, you know, I also would say that I --  
22  it's great.  This is a financier of solar energy  
23  projects and I think that's what we need.

24                But without the right policies in Ohio,  
25  maybe you get the utility to do it, who is a great

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1     counterparty to such agreements, you're not going to  
2     either get the financing or you are not going to get  
3     financing that's much cheaper, ultimately, as a cost  
4     for ratepayers.

5             MS. WILLIS:   Can I have my question  
6     reread and the answer reread, please?

7             (Record read.)

8             MS. WILLIS:   Your Honor, I move to strike  
9     everything after the first sentence where he said  
10    yes.  He is -- I believe he said yes, he is aware.  I  
11    just asked him if he was aware of Nationwide, and I  
12    meant Nationwide the company, Nationwide the private  
13    company in Columbus, whether they are -- if he's  
14    aware of their investment in solar projects.

15            MS. PIRIK:   Your Honor, certainly if that  
16    was her intent, Mr. Burcat interpreted that in the  
17    way that we've been talking about the different  
18    states and the different types of companies and he  
19    represents a certain portion of states in the United  
20    States and he interpreted it as a nationwide state  
21    request.  She has the opportunity to clarify and  
22    actually ask him the question that she was proposing.

23            EXAMINER PARROT:  And the answer will  
24    stand.  If you want to narrow your question,  
25    Ms. Grady -- I'm sorry, Ms. Willis.  Keep doing that.

1 MS. WILLIS: Thank you, your Honor.

2 Q. (By Ms. Willis) Mr. Burcat, are you aware  
3 of Nationwide, the private company in Columbus,  
4 investing nearly \$100 million in solar projects?

5 A. I believe I saw that on their website.  
6 Again, I used this particular schedule to show that  
7 each of these companies -- with a couple of  
8 exceptions in there -- had sustainability goals and  
9 things like that, but I'm not -- off the top of my  
10 head, I'm not specifically aware of their project  
11 that you are talking about.

12 MS. WILLIS: May I approach, your Honor?

13 EXAMINER PARROT: Yes.

14 MS. WILLIS: I would like to mark this as  
15 OCC Exhibit No. 23.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. Take a moment, if you will, Mr. Burcat,  
18 to take a look at that.

19 EXAMINER PARROT: And let's go ahead and  
20 identify it for the record.

21 MS. WILLIS: I'm sorry, yes. This is a  
22 two-page document, I believe two-page document from  
23 Columbus Business First, with the heading  
24 "Nationwide, partner investing nearly \$100 million in  
25 solar projects."

1 EXAMINER PARROT: Thank you.

2 A. Are you waiting for me?

3 Q. I just want to give you a moment to look  
4 at that.

5 A. Yes.

6 Q. Are you familiar with the Washington,  
7 D.C. firm that is mentioned, Sol Systems?

8 A. I am. They are not one of my members but  
9 I am.

10 Q. Are you familiar with the joint venture  
11 called Helios Infrastructure Fund?

12 A. I am not.

13 Q. Going back, Mr. Burcat, to BB-1, you list  
14 Big Lots as one of the Fortune 500 companies that  
15 does sustainability reporting --

16 A. Correct.

17 Q. -- correct? And you indicate there, and  
18 it's a quote, "The Company will be adding to our  
19 website a Corporate Social Responsibility section in  
20 fiscal 2018." Can you tell me where that quote comes  
21 from, if you know?

22 A. Okay. Since I don't have that website up  
23 in front of me, I can't say exactly where I got that.  
24 They do talk about some of their corporate -- I  
25 forget how they termed it, but seemed to be some sort

1 of social corporate policies that they have, but to  
2 be honest with you, I do not know exactly where that  
3 particular quote came from.

4 Q. And do you know if they have, in fact,  
5 added to their website a Corporate Social  
6 Responsibility section?

7 A. I don't think they have.

8 Q. And do you know, offhand, if Big Lots has  
9 targets for emission reductions?

10 A. A lot of these companies are specifically  
11 talking about renewable energy, but they talk about  
12 targets for emission reductions. I can't say, off  
13 the top of my head, that that's one of the things  
14 that they are doing.

15 MS. WILLIS: Thank you, Mr. Burcat.

16 That's all the questions I have, your  
17 Honor.

18 EXAMINER PARROT: Let's go off the record  
19 for a minute.

20 (Discussion off the record.)

21 (Thereupon, at 1:07 p.m., a lunch recess  
22 was taken.)

23 - - -  
24  
25

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January 25, 2019.

- - -

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

Ms. Whitfield.

MS. WHITFIELD: Thank you, your Honor.

- - -

BRUCE BURCAT

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

CROSS-EXAMINATION

By Ms. Whitfield:

Q. Mr. Burcat, I just want to follow-up on a  
couple of questions earlier today about  
your attachment, BB-1 to your testimony. And just to  
clarify, you did not speak to anyone at Kroger, did  
you, regarding their sustainability plans?

A. I did not.

Q. And you are certainly not contending or  
intending to imply in any way in your testimony or  
with your attachment that Kroger's sustainability  
plan somehow makes Kroger supportive of AEP Ohio's  
Application in this case?

A. I did not. That was not the purpose.

1           Q.   And that would be -- that would be true  
2   for all the companies that you list on BB-1, correct?

3           A.   Correct.

4           Q.   And so, you are not intending that the  
5   Commission consider Attachment BB-1 to be an  
6   endorsement of these projects by any of those  
7   companies.

8           A.   No.

9           Q.   Now, I believe Ms. Willis had asked you  
10   some questions about other companies' sustainability  
11   plans.

12           MS. WHITFIELD:  And I've already -- your  
13   Honor, I marked just for expedition -- expeditious  
14   purposes, Exhibit 3, and put it on your -- yes, that  
15   would be Kroger Exhibit 3.

16           Q.   And it's right there, Mr. Burcat, on the  
17   side of your witness stand.  Should be right.  I  
18   didn't want to get it confused with your other.  
19   There it is.

20           A.   Oh, I see it.  I see the food.

21           MS. WHITFIELD:  So could I please have  
22   that marked as Exhibit 3, and for the record it is  
23   Kroger's 2018 Sustainability Report.

24           Q.   Do you recognize this, Mr. Burcat?

25           EXAMINER PARROT:  It's been marked.

1 MS. WHITFIELD: Thank you.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 A. Yeah. I think I definitely -- they  
4 talked about it on their web page. I think I was  
5 able to get to this on their web page and look for an  
6 article, information on it.

7 Q. Okay. So if I represented that by going  
8 to the link that you put on Attachment BB-1, I was  
9 able to pull this Sustainability Report, you don't  
10 have any reason to dispute that, right?

11 A. No.

12 Q. And if I could have you turn to page 97.

13 MR. NOURSE: Sorry, Ms. Whitfield. Did  
14 you say you handed out Exhibit 3?

15 MS. WHITFIELD: Well, I didn't have  
16 copies.

17 MR. NOURSE: I haven't received a copy.

18 MS. WHITFIELD: Here we go.

19 Q. So, again, for the record, Mr. Burcat,  
20 can you turn to page 97.

21 A. I'm there.

22 Q. And do you see where it says Kroger hosts  
23 -- under the wind component -- that they host the  
24 Frey Farm Wind Turbine Project at the Turkey Hill  
25 Dairy?



1           A.    I do see that.

2           Q.    And do you also see where -- you are  
3 aware that Turkey Hill is a company within the Kroger  
4 family?

5           A.    I wasn't aware of that, but I am very  
6 familiar with Turkey Hill, driving through  
7 Pennsylvania.

8           Q.    Okay. And that -- it says that Turkey  
9 Hill purchases all wind energy produced from those  
10 turbines? Do you see that?

11          A.    Yes.

12          Q.    You don't have any reason to dispute  
13 Kroger's efforts with respect to those wind turbines,  
14 do you?

15          A.    I do not.

16          Q.    And then under the solar, do you see  
17 where it talks about solar -- or several Kroger  
18 stores have installed rooftop solar systems?

19          A.    I see that.

20          Q.    And then I believe that they also have  
21 installed -- if you continue down that -- parking lot  
22 system covers, I guess carports, and they're  
23 PowerParasol systems, that are 840 kilowatts, over  
24 their parking lots out in primarily Arizona?

25          A.    I do see that.

1           Q.    And that's in support of their solar  
2 energy efforts?

3           A.    Sure.

4           Q.    And then they have also deployed, Kroger  
5 has also deployed two photovoltaic solar systems at  
6 our distribution centers. Do you see that?

7           A.    Yes.

8           Q.    And down, right before the section on the  
9 digestion, it says "In 2017, these wind and solar  
10 installations produced more than 14.5 million kWh of  
11 renewable power"?

12          A.    I do see that.

13          Q.    That was by Kroger.

14          A.    Yes, in 2017, I see that.

15          Q.    Did you see anywhere in this report, or  
16 in your review of Kroger's website, a statement  
17 saying they needed utility-owned or -operated  
18 renewable energy?

19          A.    No. Basically what you have seen is they  
20 have a commitment to reducing their global -- their  
21 global footprint and their commitment to renewable  
22 energy. But I did not see what -- I agree. I did  
23 not see the comment that you just mentioned.

24          Q.    Okay. And you would also agree that  
25 Kroger can fulfill that commitment through procuring

1 energy from CRES providers, correct?

2 A. It can fulfill energy through CRES  
3 providers, I guess it depends on the level of what  
4 Kroger's committing to and those types of things so,  
5 yeah, I mean, just as -- depending on how much it is  
6 that they are trying to procure, they can procure  
7 probably that level unless it's a much higher level.

8 Q. And they could also do that with on-site  
9 generation or on the competitive market?

10 A. I'm assuming when you say "the  
11 competitive market" that that's not much different  
12 than CRES providers. On-site would have to be  
13 working directly with developers to do it that way,  
14 yes.

15 Q. Are you aware that Kroger has entered  
16 into long-term contracts with CRES providers that  
17 allow Kroger to select green energy as they desire?

18 A. In Ohio?

19 Q. Yes.

20 A. I am not specifically aware of that, but  
21 I was aware that they are engaging in procuring  
22 renewable energy.

23 MS. WHITFIELD: That's all I have, your  
24 Honor. Thank you.

25 EXAMINER PARROT: Mr. Collier.

1 MR. COLLIER: Thank you, your Honor.

2 If I may approach, your Honor?

3 EXAMINER PARROT: You may.

4 MR. COLLIER: At this juncture, I would  
5 mark for purposes of identification as OCA Exhibit 4,  
6 information from the Ohio Power Siting Board  
7 regarding "Wind Case Status." And as OCA Exhibit 5,  
8 a similar document from the Ohio Power Siting Board,  
9 "Power Siting Solar Case Status."

10 EXAMINER PARROT: So marked.

11 (EXHIBITS MARKED FOR IDENTIFICATION.)

12 MS. BOJKO: I'm sorry. Which exhibit was  
13 this?

14 MR. COLLIER: 4 is wind and 5 is solar.  
15 Again, the wind status is 4 and solar is Exhibit 5.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Collier:

19 Q. Do you have now the Power Siting Board,  
20 Wind Case Status document, OCA Exhibit 4?

21 A. I do.

22 Q. All right. And have you seen a document  
23 like this or this document before?

24 A. Probably not something this recent. I've  
25 seen documents on the OPSB -- on their website that

1     were probably in a different state, they were a  
2     different time frame, so it didn't have all of this.

3             Q.     But you are generally familiar with the  
4     wind projects in Ohio, are you not?

5             A.     Not every single one but I -- I have a  
6     pretty good lay of the land on some of the issues and  
7     some of these projects.

8             Q.     And we are going to discuss this at a  
9     very high level.

10            A.     Okay.

11            Q.     You understand that there are -- as far  
12    as wind projects go, wind projects of a certain  
13    capacity have to gain Ohio Power Siting Board  
14    certification before they can proceed to  
15    construction?

16            A.     I agree.

17            Q.     All right. And there are projects that  
18    are in various stages of either pending or approval,  
19    approval under construction, or actually operational;  
20    is that correct?

21            A.     Yes.

22            Q.     As a general matter, you know, at a very  
23    high level, these wind developers, would they be  
24    considered merchant generators?

25            A.     Not really. Most -- pretty much any time

1 now, there are very few, maybe some of the older  
2 projects but there are very few current projects  
3 where wind developers are going in as merchant  
4 generators because the risk is so high because they  
5 can't get the financing necessarily for those types  
6 of projects. So I would categorize them as not  
7 merchant generation.

8 Q. Just for the sake of comparison, how do  
9 you define a merchant generator?

10 A. It's a generator who takes all the risk  
11 and says we are going to locate a project in X, and  
12 we think we can make money by doing so, and they  
13 generally have to have their own financing, whether  
14 it's internal numbers or they pay extraordinary high  
15 financing for their projects and -- and then they  
16 develop the projects.

17 It was a model probably about 20 years  
18 ago in the wind industry. And it's become -- I don't  
19 want to say dormant because there is exceptions out  
20 there in the right spots. I think some of the Texas  
21 projects may be because there is so much demand down  
22 there and the transmission availability, but I would  
23 say certainly not in PJM that you are going to see  
24 merchant projects. What you are going to see are  
25 projects that have purchase power agreements or these

1 REPAs in Ohio.

2 Q. That's what I was going to ask, if they  
3 don't follow the merchant generator model.

4 A. Yeah.

5 Q. They would sell their power through  
6 output contracts.

7 A. Yeah. And there's -- there's other  
8 types. I mean, you could have a developer develop a  
9 project and then essentially sell it to a third party  
10 or sell it to a utility if it's -- if it's something  
11 that could be done in that jurisdiction.

12 Q. So if they are not merchant generators,  
13 there are a variety of alternatives for the developer  
14 to sell its output.

15 A. Well, I would definitely clarify the word  
16 "opportunity." They are not going to sell their  
17 projects unless they have a purchase power agreement,  
18 unless -- and they are not going to sell to a utility  
19 unless it is permitted in that state and that's part  
20 of their business plan. They are not going to be  
21 able to sell without either having a third party and  
22 we have talked a lot about these companies that are  
23 out there who have interest in doing that and there  
24 have been great opportunities for some of our members  
25 and others in the development arena. But to be

1 honest with you, purchase power agreements or REPAs  
2 to get utility-scale wind which, again, is some of  
3 the cheapest wind out there.

4 Q. We don't need to go into that detail.  
5 Again, I am asking on a very high level. I asked you  
6 what the difference was between the PPA and merchant  
7 generator.

8 A. That is a detail as to a difference.

9 Q. Okay. Each of these developers, these  
10 generators will sell their power into PJM market; is  
11 that correct?

12 A. Well, it depends. I mean, they can  
13 sell -- they could sell, you know, through these  
14 bilateral contracts in a way that, you know, the  
15 third -- the counterparty wants them to sell, but  
16 yeah, a lot of what they do is they build the  
17 projects and they sell -- they come -- they get  
18 involved in these agreements where they can sell into  
19 the PJM market and that's certainly a quite-often way  
20 of doing it, but it's by agreement between the two  
21 counterparties.

22 Q. In any event, the power dispatched in the  
23 PJM market. Would the developer, the generator, be  
24 an exempt wholesale generator?

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



1           Q.   All right.  Briefly, the same types of  
2           questions on the solar case status.  Are you  
3           generally familiar with this type of display or ones  
4           like it as to location and presence of solar  
5           facilities in the State of Ohio?

6           A.   I don't know if I have seen this type of  
7           chart before.  You have to realize there's been very  
8           little utility-scale solar development in the state  
9           and --

10          Q.   I didn't ask you how much there was.  I  
11          asked you if you've seen something like this.

12          A.   Well, I think I'm clarifying.

13          Q.   I am asking about --

14               EXAMINER PARROT:  Let's let him answer,  
15          please.

16          A.   Yeah.  I've -- I haven't seen this, but  
17          like I said, it's primarily for the reason why that  
18          there really is very little utility-scale development  
19          of solar in Ohio.

20          Q.   These are projects of more than  
21          50 megawatts, correct?

22          A.   They are.  They are -- most of them are  
23          pending projects and --

24          Q.   With regard to the wind, those are also  
25          projects of more than 50 megawatts?

1           A.    I guess the simple answer to that  
2 question is yes, but there is a lot of other reasons  
3 why these aren't getting done.

4           Q.    I didn't ask that question. I just asked  
5 you where they are located and the fact that they  
6 exist.

7           A.    I don't think you asked me where they are  
8 located but that's interesting.

9           Q.    In any event, you understand that, like  
10 wind, there are solar projects that are in the  
11 process of either pending Ohio Power Siting Board  
12 approval or have actually been approved.

13          A.    There are and, interestingly enough, I  
14 don't see anything under construction there.

15               MS. BOJKO: Objection, mischaracterizes  
16 the document.

17          Q.    Now --

18               EXAMINER PARROT: Overruled.

19          Q.    -- starting with the wind projects,  
20 those projects would have various sources of  
21 financing, correct?

22          A.    They could. Are you talking about  
23 multiple projects having different types of sources  
24 or one project having various sources?

25          Q.    Either.

1           A.    Yes.

2           Q.    I want to establish these developers have  
3 various sources of financing.

4           A.    They do.

5           Q.    And they have various sources of equity  
6 participation as well, right?

7           A.    They could, depending on how --

8           Q.    All right.

9           A.    -- how strong the -- the books are of a  
10 particular company developer.

11          Q.    All right. And the same with solar, the  
12 solar developers would have various sources of  
13 financing for equity?

14          A.    Yes.

15          Q.    And over the long term, any developer,  
16 we'll start with wind, wind developer would expect to  
17 recover its capital costs, capitalized costs, as well  
18 as its fixed O&M; is that correct?

19          A.    Yes. And, of course, it's financing  
20 costs as well.

21          Q.    And its financing costs. And the capital  
22 costs would include, principally in the case of wind,  
23 the wind turbines?

24          A.    There's a lot more than wind turbines.

25          Q.    I said would include principally wind

1 turbines.

2 A. There is a lot more than wind turbines  
3 and that's not -- you know, there's other costs that  
4 are very high; transportation --

5 Q. At a very high level, that would include  
6 land lease costs --

7 MS. PIRIK: Your Honor, I would ask that  
8 the witness be allowed to answer the question in  
9 full.

10 MR. COLLIER: I am trying to speed this  
11 up, not slow it down.

12 MS. PIRIK: We do appreciate that, but I  
13 want to be sure Mr. Burcat gets his answers in.

14 EXAMINER PARROT: He should be able to  
15 finish before interrupting with another question.

16 Q. (By Mr. Collier) Okay. Starting with  
17 wind turbine, the principal -- a significant capital  
18 cost is the cost of the wind turbine.

19 A. It could be the highest-cost piece but  
20 there are so many other costs: Developing the roads  
21 to the sites, the transportation to get there, the  
22 concrete that's got to go into the ground, the steel  
23 encasings. There are more than the turbine. There  
24 is buildings that they develop. They have to connect  
25 to the transmission system. I am not going to say

1 the turbine is the principal cost.

2 Q. Okay. That's fine, but whatever capital  
3 costs they have and whatever capitalized costs they  
4 have, you would expect the developer would attempt to  
5 recover those costs over the long term.

6 A. Yes.

7 Q. And the developer would recover those  
8 costs through output sales to whatever buyer there  
9 might be out there.

10 A. Yes.

11 Q. All right. Now, in this case, page 8 of  
12 your testimony, you talk about two specific solar  
13 projects and we'll start with Willowbrook. You've  
14 indicated that the source of your information is the  
15 filing that was made before the Ohio Power Siting  
16 Board, correct?

17 A. Correct.

18 Q. And the same with the Highland project.

19 A. Yes.

20 Q. The source of your information was the  
21 filing before the Ohio Power Siting Board.

22 A. Yes.

23 Q. Isn't it a fact that the Willowbrook  
24 facility is a 2,200-acre site, if you know?

25 A. It may be in that document, but I don't

1 know that exactly offhand.

2 Q. Do you know where the -- how many solar  
3 panels the facility will deploy?

4 A. How many solar panels?

5 Q. Yes.

6 A. I couldn't tell you.

7 Q. Isn't it a fact that the applicant in the  
8 Willowbrook case has stated that the specific model  
9 of the solar panels has not been selected?

10 MS. PIRIK: Your Honor, I would object in  
11 that, you know, the witness does not have the  
12 application in front of him. There's no foundation  
13 that he's read this part of the application even if  
14 he did have it in front of him. You know, the  
15 application is a public document in the public  
16 record.

17 MR. NOURSE: And, your Honor, I would  
18 also add that we went to great lengths trying to  
19 achieve a stipulation to enter OCA Exhibit 1 which  
20 has already been admitted, I believe, and there is no  
21 reason to just read things into the record, Friday  
22 afternoon.

23 MR. COLLIER: I am simply asking, based  
24 on his review and his reliance on the document,  
25 whether he has personal knowledge of the question I

1 just asked him.

2 THE WITNESS: Well, I could --

3 EXAMINER PARROT: Hold on.

4 THE WITNESS: I could respond.

5 EXAMINER PARROT: Hold on. Go ahead and  
6 answer the question if you know.

7 A. My testimony actually says specifically  
8 Willowbrook Solar has communicated its intent to use  
9 Ohio-based First Solar modules for its facility.

10 Q. All right.

11 A. I think that was your question, right?

12 Q. No, it wasn't.

13 A. Oh, okay.

14 Q. My question was, in the application, has  
15 Willowbrook indicated the specific model of the solar  
16 panels has even been picked yet?

17 A. Oh, that I can't answer.

18 Q. All right. The source of your statement  
19 that Willowbrook has communicated an intent to use  
20 Ohio-based First Solar modules comes from where?

21 A. I could tell you that I am aware of this  
22 because I know the -- yeah, I know the -- that this  
23 is an Ohio-based company that it's going to provide  
24 this. It's First Solar and they are a member of my  
25 organization.

1           Q.    You have personal knowledge is what you  
2   are saying.

3           A.    Well, one of their employees has told me  
4   that's the plan.

5           Q.    One of First Solar?

6           A.    First Solar's employees.

7           Q.    That that was the intent, perhaps?

8           A.    Yes.

9           Q.    The actual fact is Willowbrook has not  
10   chosen a specific model of a solar panel.

11          A.    I can't answer that.

12          Q.    All right. Turning to -- and  
13   Willowbrook, you would agree, that Willowbrook will  
14   only employ 20 to 24 employees during the operation  
15   phase.

16          A.    That is true.

17          Q.    Turning to Highland or Hecate, isn't it a  
18   fact that Highland will deploy 1.1 million ground  
19   modules, the solar panels?

20          A.    Again, I don't know specifically the --

21          Q.    Isn't the --

22          A.    -- number of modules but it's definitely  
23   a large 300-megawatt project.

24          Q.    In the application, Highland has not  
25   committed to a specific source of those solar panels?



1           A.    That I do not know.

2           Q.    And in terms of operation, Highland will  
3 employ only five new direct employees.

4           A.    Can you repeat that question?

5           Q.    In the operation of the Highland project,  
6 Highland will employ only five new direct employees.

7                   MS. PIRIK:  Your Honor, I would object to  
8 the phrase of the question.  If he wants to point the  
9 witness to his testimony which he apparently is  
10 reading from, line 8, page 8, then the witness will  
11 be able to answer it, but I object to the phrase  
12 "only."

13          Q.    I'll strike "only."  You said it.  The  
14 Willowbrook or Highland --

15                   EXAMINER PARROT:  All right.

16          Q.    -- is expected to create five new  
17 operational-related jobs.

18                   EXAMINER PARROT:  Go ahead, Mr. Burcat.

19          A.    Direct operational jobs, that's what it  
20 says.

21          Q.    Okay.  Now, the contract -- the only  
22 commitment Highland would have is in the contract  
23 itself, that is the contract of AEP.

24          A.    It's extraordinarily complicated when you  
25 talk about these agreements.  There could be very --

1     there could be other agreements that -- I am not  
2     aware of, really, most of what's going on between AEP  
3     and these different companies, so I don't know if  
4     there are other understandings, agreements,  
5     Memorandum of Understanding, all those different  
6     legal issues that are out there, and I can't -- I  
7     can't answer that question for that.

8             Q.     All right. And isn't it a fact that  
9     Highland -- the definition of "acceptable solar  
10    manufacturer" in the Highland contract is a Canadian  
11    company or other?

12            MS. PIRIK: Your Honor, again, there's no  
13    document before the witness and I'm not sure what  
14    Mr. Collier is referring to specifically. If there's  
15    an exhibit on the record or something the witness --  
16    I mean, he -- Mr. Collier is basically testifying.

17            MR. COLLIER: Let me rephrase. Your  
18    Honor, let me rephrase it.

19             Q.     You haven't actually reviewed the REPA  
20    contract, proposed REPA contract between AEP Ohio and  
21    Highland?

22             A.     I have not.

23             Q.     Okay. And so, you wouldn't know whether  
24    there is a stipulation in the contract as to what  
25    acceptable solar manufacturer it would be or whether

1 it could be a Canadian company?

2 A. Yes. That one, in particular, I do not  
3 know.

4 MR. COLLIER: All right. No further  
5 questions.

6 EXAMINER PARROT: Mr. Whitt, you want to  
7 go --

8 MR. WHITT: I will move around.

9 EXAMINER PARROT: Okay.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Whitt:

13 Q. Good afternoon, sir.

14 A. Hello.

15 Q. I think I heard you refer to First Solar  
16 as an Ohio company. Did I hear that correctly?

17 A. Yeah. Let me clarify, that's a good  
18 question. I couldn't tell you what their state of  
19 incorporation is, but they have -- as far as I  
20 know -- the only solar manufacturing panel facility  
21 in the United States of any significant size and so  
22 that's where it is located, in Ohio, so -- and that's  
23 the case with them.

24 Q. Are you aware of First solar's  
25 manufacturing facilities in Malaysia and Vietnam as

1 well?

2 A. I am not aware of those.

3 Q. Okay. Apart from the First Solar  
4 manufacturing facility, there are no other Ohio  
5 members of the organization that you represent, are  
6 there, Ohio-based companies?

7 A. I have a lot of companies. I am trying  
8 to think if there is one. I don't want to miss one.  
9 I don't think so.

10 Q. Okay. And with respect to First Solar,  
11 you don't know where they are actually headquartered  
12 but you are just familiar with their manufacturing  
13 facility in Ohio, correct?

14 A. That's correct. I do -- do know that  
15 they do -- I think it's more than the manufacturing  
16 facility. I think they have offices there, but I  
17 couldn't tell you if it's their home office per se.

18 Q. They have offices around the world, in  
19 fact, don't they?

20 A. I would assume. They are a pretty big  
21 company.

22 Q. Okay. And on page 2, you talk about the  
23 role of your organization being to help state  
24 regulators develop supportive policies for renewable  
25 energy. I'm sort of paraphrasing the question and

1 answer from lines 7 through 17 on page 2. Do you see  
2 where I am?

3 A. Yes.

4 Q. Now, with respect to support of policies,  
5 would -- should a regulatory commission also ensure a  
6 fair and sensible net-metering policy to facilitate  
7 renewable development?

8 A. Well, if you use the word "fair and  
9 sensible," I would agree with that.

10 Q. And would the same be true for wind  
11 setback requirements, for example, and I see you  
12 chuckling as you are probably familiar with the --  
13 with the issues we've had in Ohio about that, but  
14 would you agree that wind setback policies can also  
15 either offer an incentive or deterrent to development  
16 of renewable energy?

17 A. I would -- I would agree for sure that  
18 that would -- I am not sure about incentive but  
19 certainly can be used as a disincentive.

20 Q. Would you agree as well, at least in  
21 deregulated states, that there needs to be rules and  
22 policies in effect to ensure fair competition between  
23 and among the incumbent utilities, they're  
24 affiliates, and CRES providers in the marketplace?

25 A. Well, I think there should definitely be

1 rules in place because -- and it's going back a  
2 hundred years, one of the most significant things  
3 about utilities since at least the distribution  
4 utility today is a monopoly. So you want to make  
5 sure if they are dealing with their affiliates, they  
6 are dealing with them at arm's length, so yeah.

7 Q. And it's the case, isn't it, in a  
8 deregulated state, when we are allowing other  
9 entrants into at least a portion of the energy  
10 market, that those entrants are -- should not be  
11 under any disadvantage relative to the incumbent  
12 utility or the incumbent's utility affiliates; it  
13 should be fair competition?

14 A. I will use the word "fair competition"  
15 so, yes.

16 Q. Okay. On page 3, you talk about the PPA  
17 Rider case, and I understand you've filed testimony  
18 in that case, correct?

19 A. I did.

20 Q. And that proceeding resulted in AEP Ohio  
21 committing to develop 900 megawatts of renewable  
22 generation, correct?

23 A. That's correct.

24 Q. And that was something that your  
25 organization supported, correct?

1           A.    Absolutely.

2           Q.    And you -- you didn't -- you are not  
3   aware of any resource planning projections that  
4   existed at the time suggesting there was a need for  
5   900 megawatts of renewables, did you?

6           A.    Yeah.  To be -- to be specific to your  
7   question, while there were other needs for that,  
8   there weren't any -- I am not aware of any resource  
9   planning projections that showed the need for that,  
10   yes.

11          Q.    Okay.  So your organization supported the  
12   development of up to 900 megawatts of renewables  
13   prior to the issuance of any resource planning  
14   projections in this case or elsewhere, correct?

15          A.    Well, we -- we actually -- and this all  
16   gets -- I don't want to be -- I don't think it's the  
17   purpose of my testimony to talk about specifically  
18   how -- how you determine the breadth of the word  
19   "need," but when we entered that case, we saw that  
20   there was a significant concern with the fact that  
21   the type of resources that the Company was using  
22   created -- especially with the way they were looking  
23   to do long-term commitments on those other resources,  
24   they created significant issues related to climate  
25   change and also -- not climate change but so much

1 carbon reduction and things like that and also, you  
2 know, to need to start planning for replacement of  
3 some of those other resources, so if you're not  
4 planning today for that; so, yes, maybe the Company  
5 didn't have a plan in there for additional renewable  
6 energy when they filed their case, we felt that it  
7 was our responsibility to come in and raise those  
8 issues and say here is some resources that you  
9 definitely should be considering for a host of  
10 reasons.

11 Q. Well, sure, because your members would  
12 gladly sell those resources to the utilities but your  
13 members don't do resource planning projections,  
14 correct?

15 A. No. But my members see a need when it's  
16 there and it's not strictly on, sure, they are  
17 business people and they are looking for that, but  
18 they don't jump into cases where there's no logical  
19 reason for them to be in the case. This case was  
20 very clear that we should enter the case. I think it  
21 was receptive by a number of parties in that case,  
22 including AEP. Ultimately, the Commission talked  
23 very positively about those issues and the importance  
24 of having renewable energy on the system for a number  
25 of reasons and part of it was the long-term rate



1 stability issue.

2 Q. Based on everything you just said, it  
3 sounds like your organization doesn't need to look at  
4 resource planning projections to make its own  
5 determination that there is a need and, in fact,  
6 that's what you did in the PPA Rider case, correct?

7 A. Well, in this case. I mean, you know,  
8 we're pretty -- go in pretty eyes wide open. We saw  
9 problems with this -- that filing and we saw  
10 opportunity with that filing as well because we  
11 didn't think that the resource allocation was right  
12 given at the time there was the Clean Power Plan, but  
13 we are going to still talk about, we still need to  
14 talk about what's happening over the next few years  
15 when there's going to be carbon reduction goals and  
16 things like that; so we wouldn't just jump in a case  
17 without thinking about those issues and without  
18 looking at what the Company has done.

19 We certainly have been in other states  
20 where we look at and said there is really no need for  
21 us to get involved in a particular case for those  
22 reasons. So that's -- that's the way we look at  
23 things. We're not -- we're not a big organization in  
24 the sense we're not heavily financed and things like  
25 that. What we try to do is come in and see an

1 opportunity and we're committed to doing renewable  
2 energy and we are all committed to carbon-reduction  
3 strategies, that's why we are all in this business.

4 Q. But my point is your organization's  
5 commitment to the development of 900 megawatts of  
6 renewable energy by AEP Ohio precedes their  
7 submission of the Integrated Resource Plan or LTFR  
8 filed in this case, correct?

9 MR. NOURSE: Your Honor, I object. I  
10 think this has already been covered. It's asked and  
11 answered.

12 EXAMINER PARROT: Overruled.

13 Go ahead, Mr. Burcat.

14 A. I would -- you know, I guess technically  
15 speaking, we preceded that filing, but we also saw  
16 what was in the filing related to the coal plants  
17 that were asking for long-term commitments and the  
18 danger in doing that, especially if you are not  
19 putting in zero-emitting resources like solar, wind,  
20 there's other ones out there, I am not going to get  
21 into all the details, but solar and wind, you know,  
22 you can do on a utility scale so you can make a  
23 pretty big difference by bringing those in.

24 So we're a realistic organization and we  
25 saw that as the right thing to do and we saw that as

1 something that needed to be addressed in that  
2 proceeding and it related to the way that the Company  
3 was looking at their resource allocation.

4 Q. Okay. If I wasn't clear, I'm -- I  
5 apologize, but I'm talking about in this case, Case  
6 No. 18-whatever it is-501, in the case that we are  
7 here about today, your organization's support for AEP  
8 Ohio's proposal predated the preparation and  
9 submission of the resource planning projections that  
10 are at issue in this case, correct?

11 A. I'm trying to think of the timing of it.  
12 I guess I would accept whatever you say subject to  
13 check.

14 Q. Okay. On pages 5 and 6 of your  
15 testimony, you talk about rate stability and how that  
16 should factor into the Commission's consideration of  
17 need. What I wanted to ask is if people believe that  
18 rates are too high, then stability is not necessarily  
19 a good thing, correct?

20 A. I guess I can say yes to that. I mean  
21 I'm not sure that's even relevant to this case.

22 Q. Okay. Well, competition has benefited  
23 consumers because fuel costs -- not because fuel  
24 costs have been stable but because fuel costs have  
25 been declining, correct?

1           A.    Not recently.

2           Q.    Well, let's turn to page 6 of your  
3 testimony. Page 6, line 8, "While wholesale and  
4 retail competition has resulted in significant  
5 benefits for ratepayers during this era of declining  
6 fuel costs, it has also resulted in an increased  
7 exposure to future natural gas cost escalation." So  
8 you would acknowledge, wouldn't you, that the decline  
9 in fuel prices has benefited consumers.

10          A.    I would say the decline has benefited  
11 consumers in the short run but if you look at the  
12 footnote on page -- Footnote No. 6, it talks about  
13 the EIA information, current EIA information that  
14 talks about natural gas rate -- well, in November,  
15 being at the highest levels in the -- in several  
16 years. And I would point out as well, I believe it  
17 was in 2016 and possibly in 2017, again during the  
18 winter, and I'm understanding at least in Ohio, and  
19 maybe where I am coming from, the polar vortex is  
20 raising its ugly head again.

21          Q.    I am not talking about the polar vortex  
22 or anything else other than the proposition of  
23 whether competition has benefited consumers because  
24 of declines in prices rather than stable prices. You  
25 would agree with that, wouldn't you?

1 A. I would not. In the short run, it could.

2 Q. It has, has it not?

3 A. In the short run as opposed to the long  
4 run.

5 Q. Okay.

6 A. They are two different things. They are  
7 both competition.

8 Q. Okay.

9 A. I think you are trying to box me in.

10 Q. No. I think --

11 A. It's not true.

12 Q. Is your --

13 EXAMINER PARROT: Let him finish. I said  
14 let him finish his response before you throw another  
15 question at him.

16 Q. Is your organization willing to make a  
17 guarantee to this Commission and Ohio ratepayers that  
18 if AEP develops these projects, it's going to save  
19 everybody money, and your organization is going to  
20 guarantee it with your checkbook? Are you going to  
21 do that?

22 A. Going past that bluster, I think that we  
23 certainly would not do that, but I am not saying  
24 that's -- you know, I would say if I were a betting  
25 person and I had to go to a casino to bet it, I would

1     bet it, but I am not going to tell that -- that's an  
2     absolute. I think that's a ridiculous statement.

3             Q.     And if you could bet it with other  
4     people's money, it would be a sure bet, wouldn't it?

5             MS. PIRIK:   Objection, your Honor.

6             MR. NOURSE:   Objection.

7             MS. LEPPLA:   Argumentative.

8             EXAMINER PARROT:   Sustained.

9             Q.     You acknowledge that CRES providers  
10     currently provide and offer in the marketplace,  
11     renewable energy products, correct?

12            A.     That's my understanding.

13            Q.     And I think you had mentioned the longest  
14     term you had seen was one for three years, correct?

15            A.     Correct.

16            Q.     Would you concede, perhaps, the reason  
17     you haven't seen contracts for a longer period of  
18     time is because there isn't a market for a long-term  
19     contract like that at the retail level?

20            A.     No. I think what the CRES providers do  
21     is they can't really possibly enter into long-term  
22     contracts the way this market -- believe me, this  
23     market -- it's not just a market that's a clean  
24     market. There are rules, there are regulations and  
25     things like that on how this market works. So

1 they're restricted in what they can go out and do as  
2 far as the types of products, and then it doesn't  
3 behoove them -- they don't -- they may not have the  
4 financing, it doesn't behoove them to go out and do a  
5 10-, 15-, 20-year contract in these cases in a lot of  
6 cases because their -- their particular customer  
7 could decide to come back to the Standard Service  
8 Offer.

9 Q. And would it be fair to assume that if a  
10 CRES provider were going to offer a 20-year retail  
11 product, given the level of risk that they would have  
12 to undertake, they would have to charge a much higher  
13 rate for that product? Would that seem reasonable?

14 A. Are you talking renewable energy or are  
15 you talking --

16 Q. Well, any energy contract.

17 A. Well, I would say yes, and that's why you  
18 need these other mechanisms to make sure that you can  
19 do a long-term contract because there is so many  
20 benefits to it.

21 Q. Or you could do contracts every three  
22 years would be another option, wouldn't it?

23 A. But you are not protecting consumers in  
24 the long run that way with some hedging value. The  
25 three years would be the worst possible time to enter

1 into that next three-year contract. We're not in  
2 that place right now.

3 Q. And the -- I think you had commented  
4 earlier, you had seen very little utility-scale solar  
5 in Ohio in recent years; is that a fair  
6 characterization?

7 A. No, I don't remember saying that. What I  
8 remember saying is I don't believe there's been --  
9 basically any -- any significant -- significant at  
10 all. Not in recent years, significant at all. And  
11 if you look at the power siting solar case status  
12 that was provided, this -- I forget whose document it  
13 was, Exhibit 5 for the party, I think you can see  
14 that's spelled out very strongly because none of  
15 these projects are in the ground at this point.

16 Q. And apart from the resource planning  
17 projections you may have seen in this case, you  
18 haven't seen any other resource planning projections  
19 from any Ohio utility suggesting the need for the  
20 construction of any renewable facilities, have you?

21 A. I think for the same reasons you've  
22 stated that it's been difficult even with AEP to have  
23 to go through this type of process. I think that's  
24 the reason why you are not seeing them.

25 Q. On page 7 of your testimony, you -- you



1 seem to acknowledge that independent power producers  
2 could argue that there is an anti-competitive effect  
3 or subsidy when a developer has a contract with the  
4 utility. That's sort of between lines 7 and 17 on  
5 page 7. Do you see that?

6 A. Yes, I am just rereading my sentence.

7 I think -- I will say this is -- if you  
8 read the full sentence, it talks about a contract  
9 that -- on different grounds than the way fossil fuel  
10 plants participate in the market. So this is not  
11 necessarily a difference between two different  
12 renewable energy entities having different products.  
13 This is talking about fossil fuel plants and I think  
14 it's very consistent with my position all along that  
15 there has to be another product, another way of doing  
16 these types of projects to get them done, and I'm not  
17 dismissing the competitive market. We've always  
18 argued in these cases, we want as vibrant a group of  
19 developers and other parties to participate in  
20 whatever RFP or auction process or whatever it is  
21 that the Commissions or regulatory authorities decide  
22 are the correct way to do this.

23 Q. Okay. And when a utility -- I'm sorry --  
24 when a developer has a PPA with a utility, you  
25 indicated that that makes it much easier for a

1 developer to secure financing, correct?

2 A. Absolutely.

3 Q. Because the utility's revenue stream is,  
4 while perhaps not guaranteed, there's a very high  
5 level of assurance that the utility is going to get  
6 the money, correct?

7 A. The utility is going to get the money to  
8 be able to pay for the cost to the developer, yes.

9 Q. Right. So, but that advantage does not  
10 exist for any developer that does not have a similar  
11 type of contract with the utility, correct?

12 A. Well, they can always enter into the RFP.

13 Q. Well, sure, but somebody -- there has to  
14 be winners and losers in the RFP.

15 A. Of course. That's the way it works. Not  
16 everybody who competes, wins.

17 Q. Right. And if an entity doesn't win the  
18 RFP, then they are subject to the market forces for  
19 the financing and so forth, correct?

20 A. Well, they go on to their next project.  
21 Believe me, these developers are developing projects,  
22 you know, in various places and they will move on to  
23 the next project but they probably will continue.  
24 There's already been legwork done on different  
25 projects, maybe these two projects, but there's been

1 legwork that's usually done. So these projects are  
2 still there, they're just waiting for the next  
3 opportunity to be able to compete.

4 Q. In fact, we've seen where in the  
5 competitive market we've looked at the maps and the  
6 charts where, notwithstanding the lack of PPAs with  
7 utilities, there is a market where projects have been  
8 completed and are under development and that are  
9 meeting the RPS needs of utilities and suppliers in  
10 the State of Ohio, correct?

11 A. Most of that is being met now with  
12 out-of-state renewable energy credits.

13 MR. WHITT: I have no further questions.

14 EXAMINER PARROT: Thank you, Mr. Whitt.

15 Mr. Darr?

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Darr:

19 Q. Mr. Burcat, you described a number of  
20 different ways that renewable resources are being  
21 financed currently earlier today. Are you familiar  
22 with a structure called a virtual power purchase  
23 agreement or VPPA?

24 A. I am. I'm aware of it. I have some  
25 understanding of it but there are, you know, people

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1 who specialize in those things and it's actually very  
2 complicated and, you know, it's mostly done at the  
3 developmental level, you know, where the folks that  
4 have to get these projects to a purchase power  
5 agreement, they are the ones with really all the  
6 intimate knowledge of how to do this. And they are  
7 off takers as well.

8 Q. And is it your understanding that this is  
9 a methodology by which groups of smaller customers  
10 can aggregate their load to participate in a -- in  
11 the financing of a project that would otherwise not  
12 be scalable?

13 A. I'm not aware of that.

14 Q. Okay. So you are unaware of the fact  
15 that a 100-megawatt facility, under a VPPA, has been  
16 entered into with 42-1/2 megawatts of that facility  
17 aggregated among five customers, Bloomberg, Cox, Gap,  
18 Salesforce, and Workday, correct?

19 A. I think I completely misunderstood your  
20 previous question on scale. So I could see that  
21 being the case in that situation you are talking  
22 about very -- I was really assuming it was -- you  
23 might have talked about a couple of school districts  
24 or something or even smaller. So when you are  
25 talking about companies that are -- have very strong

1 balance sheets and -- and it's a pretty significant  
2 project, I think that's a different situation, I  
3 could see that being done under that circumstance.

4 Q. Okay. So there is a mechanism for, for  
5 example, the loads of companies that couldn't afford  
6 a 100-megawatt facility to aggregate their loads,  
7 enter into a virtual power agreement, and the project  
8 goes forward on that basis.

9 A. Yeah, again, but -- you have to talk  
10 about scale here. We are -- you know, if we are  
11 talking about the advantage customer, you are talking  
12 about small businesses, you are talking about even  
13 mid-size businesses, they are not the same companies  
14 that you are talking about there. So, you know, this  
15 is -- yes, we are totally for, supportive, we think  
16 it's great, it's one of the ways we get projects done  
17 when companies like you just suggest get into  
18 agreements like that, we think that's an excellent  
19 way to get a project done.

20 But the mere fact is projects aren't  
21 really getting done like we are talking about here in  
22 Ohio and that's why we entered into the fray, a few  
23 years ago, and why we think it's really important  
24 that the Commission moves forward with these  
25 projects.

1           Q.    So the answer to my question was yes,  
2 correct?

3           A.    Can you repeat your question?

4           Q.    This was a mechanism by which smaller  
5 customers could aggregate their loads for the  
6 construction of a utility-scale facility, one, for  
7 example, of 100 megawatts?

8           A.    If you hadn't prefaced it with who those  
9 customers were but, yes, there is a way for customers  
10 to aggregate their load and do exactly what you said.

11          Q.    Throughout your testimony today, we  
12 discussed a number of companies that have entered  
13 into sustainability positions. As part of your  
14 preparation for this proceeding, did you do any  
15 polling to identify customers that were unable to  
16 secure renewable resources through either merchant  
17 contracts, virtual PPAs, REPAs, or through -- through  
18 contracts secured through utilities or their  
19 affiliates for renewable resources?

20          A.    I did not as it relates to the companies  
21 that are on Exhibit BB-1. But it's very clear, based  
22 on the Navigant study that the Company has offered,  
23 that there are many companies who cannot -- not  
24 companies, but residential customers and maybe small  
25 companies and maybe even other companies that want

1 these types of things but they can't get them.

2 Q. And you are basing that conclusion solely  
3 on the Navigant study; is that correct?

4 A. No. I am basing it also on my knowledge  
5 of participating in this field for many years and  
6 seeing what's happening across the country.

7 Q. So name for me one customer, retail  
8 customer in the state of Ohio that you've identified  
9 that has been unsuccessful in securing a contract if  
10 it -- if it sought renewable resources?

11 A. I guess I could walk down the street and  
12 probably get 9 out of 10 or --

13 Q. That's what I was --

14 A. -- 100 out of 101.

15 Q. Let's move on.

16 You indicated you defined "subsidy" as  
17 some sort of pricing mechanism in response to a  
18 question, correct? Do you recall that?

19 A. Yeah, I am not sure I used those exact  
20 words. What I would say is -- and, you know, there  
21 are all sorts of different things that maybe people  
22 define and it's -- to be honest with you, it's not  
23 something that's really defined. I mean people call  
24 things subsidies that aren't subsidies and vice  
25 versa.

1           I would say, to be honest with you, tax  
2 credits could be subsidies, for instance, could be  
3 considered subsidies because they are providing some  
4 financial help to get something done. In that sense  
5 there is money passing from -- basically from the  
6 Federal Government to these projects. To certain  
7 projects. So I would say that would be more of a  
8 subsidy. There have been many subsidies in coal and  
9 nuclear plants.

10           There's currently a huge subsidy in  
11 nuclear plants right now where basically you and I  
12 will pay for decommissioning of -- well, we've been  
13 paying for decommissioning of nuclear facilities and  
14 how to deal with their fuel spent -- their spent fuel  
15 that's on their locations and actually haven't had  
16 any benefit from that.

17           There's also subsidies related to that as  
18 far as God forbid there is any kind of accident, they  
19 do not go out and purchase the insurance, it's the  
20 Federal Government that's ensuring it. There is a  
21 lot of things that people can call subsidies. I  
22 would definitely say that the arrangement we have  
23 here is not a subsidy.

24           Q. I appreciate that you've defined it that  
25 way, but let's take your nuclear cleanup example.



1 That operates as an incentive to the utilities or  
2 operated as an incentive to the utilities to enter  
3 the -- enter into contracts to construct nuclear  
4 plants, correct?

5 A. Yes, that subsidy does do that, yes.

6 Q. Okay. So a subsidy is a payment or  
7 promise of payment that operates to encourage someone  
8 to do something, correct? In your -- is that an  
9 accurate definition of subsidy for you?

10 A. It could be a payment. I mean in the  
11 insurance case with the Federal Government,  
12 ultimately it could be a payment, but who in the heck  
13 is going to build a nuclear facility these days if  
14 they didn't -- if the exposure was so great it would  
15 put them out of business if something ever happened.  
16 So -- so that's -- you know, that's a subsidy in my  
17 mind but it's not necessarily upfront or a payment  
18 along the way for those particular units.

19 Q. Okay. So if I understand it correctly,  
20 the cost of insurance for these nuclear plants is  
21 extremely high. To encourage a builder to go forward  
22 with the project, there is a subsidy running from the  
23 Federal Government to the insured to cover the cost  
24 of that insurance, correct, the beneficiary of the  
25 insurance.

1           A.    Well, I am not sure they are covering the  
2   cost of the insurance.  What they're saying is we are  
3   not imposing an insurance cost on the nuclear  
4   facility because they couldn't possibly pay for it  
5   and get the project done.

6           Q.    Economically it relieves the insured  
7   of -- of the cost of the additional cost of that  
8   insurance, correct?

9           A.    Yeah, if there were even any insurance  
10  available to them, yes.

11           MR. DARR:  Okay.  I think that's all I  
12  wanted.  Thank you very much.

13           EXAMINER PARROT:  Mr. McNamee.

14           MR. McNAMEE:  No questions, thank you.

15           EXAMINER PARROT:  Mr. Nourse?

16           MR. NOURSE:  Thank you, your Honor.

17                   - - -

18                   CROSS-EXAMINATION

19  By Mr. Nourse:

20           Q.    Good afternoon, Mr. Burcat.

21           A.    Good afternoon.

22           Q.    I just want to ask you a couple of  
23  follow-up questions on OCA Exhibit 4 and 5.  
24  Mr. Collier had asked you about Power Siting Board  
25  charts.

1 A. Yes.

2 Q. So you had not -- if I recall correctly,  
3 you had not reviewed this previously. Is that  
4 correct?

5 A. Correct.

6 Q. And you don't know if it's accurate or  
7 contains errors, do you?

8 A. I do not.

9 Q. For example, let's look at Exhibit 4, the  
10 wind chart.

11 A. Yes.

12 Q. And near bottom of the page, there's a  
13 project called Buckeye II. Do you see that one?

14 A. I do.

15 Q. And that's color-coded as being approved,  
16 right?

17 A. Correct.

18 Q. If you flip to the second page of that  
19 exhibit, excuse, me and look at Buckeye II,  
20 three-quarters of the way down the page, do you see  
21 the listing of Case 17-2517.

22 A. Yes.

23 Q. And then across to the right it says  
24 pending?

25 A. Correct.

1           Q.    So that -- in that example it would  
2 appear there was a certificate but then, currently,  
3 the current status is that it's been -- there is an  
4 amendment and it's still pending?

5           A.    Yes.  That's the way it reads.

6           Q.    Okay.  All right.  So based on the  
7 color-coding, would you consider that an error?

8           A.    Yes.

9           Q.    And then if you look at there is a  
10 project, sort of in the middle of the page called  
11 Black Fork, do you see that?

12          A.    Which side?

13          Q.    I'm sorry.  Back on the map.

14          A.    Okay.

15          Q.    Back on the map.

16          A.    I see it on the right side, yes.

17          Q.    And if that case was taken to the Ohio  
18 Supreme Court and that court had reversed the  
19 approval, last year, then that would also be an  
20 inaccurate coding, right?

21          A.    Yes, they would no longer be approved.

22          Q.    Okay.  Then just to follow that one  
23 through on the backside, the second page, do you see  
24 Black Fork listed two-thirds down the page?

25          A.    I do.  I do.

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1           Q.   And then do you see, on the right of the  
2 name, where there's a pending matter for that as  
3 well?

4           A.   Yes.

5           Q.   2018 case number. Okay. Thank you.

6                   Then can you look at Exhibit 5. This is  
7 a solar map. And you had indicated earlier that  
8 there is nothing on this map that indicates projects  
9 under construction or in operation, correct?

10          A.   That's correct.

11          Q.   And if you look at the -- let's go to the  
12 second page of the table. There's a project near the  
13 middle called Hillcrest? Do you see that one?  
14 Hillcrest?

15          A.   This is on the back? Oh, I see it, yes,  
16 on the top part, yeah, the orange part.

17          Q.   Okay. And does that indicate it's  
18 pending?

19          A.   It's pending.

20          Q.   Can you find Hillcrest on the map and how  
21 that's color-coded?

22          A.   Yeah. It says approved.

23          Q.   So you would guess that's an error based  
24 on that information?

25          A.   Correct.

1 MR. NOURSE: Thank you. That's all I  
2 had, your Honor.

3 EXAMINER PARROT: Any redirect?

4 MS. PIRIK: Just a couple items, your  
5 Honor. Thank you.

6 - - -

7 REDIRECT EXAMINATION

8 By Ms. Pirik:

9 Q. Mr. Burcat, you'll remember you had been  
10 asked some questions about the members of MAREC  
11 throughout your cross-examination?

12 A. I have.

13 Q. And I don't want to divulge any  
14 confidential information you may know personally but  
15 is it possible that some of your members actually  
16 filed a response to the RFP that was proposed by AEP?

17 A. I was aware -- is it possible? Yes. I  
18 was aware that a number of my members were very  
19 interested in that and were likely to file responses  
20 to the RFP but I couldn't tell you for sure --

21 Q. No, no. We don't want to go there.

22 A. Okay.

23 Q. And is it possible that some of those  
24 members did not win the bid for the RFP?

25 A. It's possible, yeah.

1 Q. And --

2 A. Likely, I would say, because there were  
3 definitely a number of interested parties.

4 Q. Okay. And yet, MAREC supports the  
5 application in this case?

6 A. Absolutely. We think this is -- this is  
7 not -- this is -- we just think this is the right way  
8 to go and so we absolutely support this.

9 Q. On another topic, you've been asked quite  
10 a bit about utility-scale solar and your opinions  
11 with regard to the benefits of utility-scale solar.  
12 In your opinion are there financial benefits that  
13 come as a result of the application in this case?

14 A. Sure. You know, we're talking -- yeah, a  
15 number. We're talking about, first of all, there is  
16 economies of scale. You know, we've seen around the  
17 country that utility-scale solar or utility-scale  
18 wind are some of the most-competitive resources that  
19 are out there.

20 You know, we are definitely -- if you  
21 look at a lot of the, like, Lazard, and other types  
22 of agencies that analyze these types of energy  
23 resources, both wind and solar have dropped  
24 dramatically in the past few years, so the costs of  
25 wind and solar are, in some places, even cheaper than

1 natural gas.

2 I mean, some parts of the midwest, down  
3 in Texas, we know that wind energy is very  
4 inexpensive because of the high capacity values that  
5 they receive down there. The resources out in  
6 western Ohio and other places in this region are very  
7 good.

8 But probably the main benefit that  
9 we're -- we see here in this particular RFP and the  
10 way the Company did it is the fact that these are  
11 long-term 20-year products that were not available,  
12 not even close, there weren't 5-year products, there  
13 weren't 10-year products. These are products that  
14 will have the same price on day one as on the last  
15 day of the -- non-escalating, on the last day of the  
16 contract period, 20 years down the road. And I think  
17 it would be wrong to think that -- it would be wrong  
18 to think that the price of natural gas or other  
19 resources are going to be anywhere close to where  
20 solar and wind are at that time.

21 And as we said, it's a hedge to volatile  
22 prices because it's a -- volatile pricing because the  
23 price of wind and solar aren't going to change  
24 because they have no fuel.

25 Q. Thank you.



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1           You were also asked quite a few questions  
2 about different companies, Nationwide, JPMorgan,  
3 Fifth Third and their renewable developments. Are  
4 there costs associated or different costs associated  
5 with those types of arrangements? Well, let me put  
6 this a different way. Versus a situation such as the  
7 application before us that has AEP as a counterparty.

8           A. I mean, we're talking about a  
9 300-megawatt project here. There aren't that much  
10 large companies that could do necessarily a 300, you  
11 know, on their own, do a 300-megawatt project,  
12 finance it, and do all of that. I mean, there  
13 clearly are, we've heard of Microsoft and Amazon and  
14 some of the really large companies for their data  
15 centers, looking at very big purchases.

16           But this is similar to the deal that  
17 they're getting and these companies like these deals.  
18 They like them because they have the sustainability  
19 goals. Those are extremely important to them but  
20 they like them for the other two reasons: Rate  
21 stability and lower pricing. And so this is very  
22 similar to that. And all of AEP's ratepayers are  
23 going to benefit from this.

24           And the other advantage of it is it's --  
25 there is an advantage of being able to deal with

1 federal regulations or other regulations that are  
2 certainly going to come out in the next number of  
3 years for carbon reduction, you know, Ohio will be --  
4 if they are doing enough of these, be where other  
5 states are and the impact won't be too bad at that  
6 time and so they are doing it for a number of reasons  
7 and that's a benefit to ratepayers here, and I think  
8 that's -- that's a big aspect of this.

9 Q. With AEP as a counterparty, does that  
10 result in lower-cost financing versus, you know, a  
11 situation where it's a Nationwide or JPMorgan or  
12 Fifth Third?

13 A. I would say so because, you know, here  
14 you have a company they may have a very tremendous  
15 balance sheet but there's no absolute assurance that  
16 a company if it runs into that type of financial  
17 situation, a bad financial situation, surely there  
18 are some right now, I will just point out Tesla for  
19 instance, I don't know what they are doing on the  
20 renewable energy front but their stock keeps going  
21 down. There's issues there. They may not have the  
22 best balance sheet to do these types of things.

23 Whereas, a utility like AEP, not only is  
24 going to have a very good balance sheet but they have  
25 basically an insurance that their ratepayers are

1 going to be paying for this, just like they've paid  
2 for other energy resources.

3 MS. BOJKO: Objection, your Honor.  
4 Sorry. I thought you were finished.

5 THE WITNESS: That's all right.  
6 "Resources" was my last word.

7 MS. BOJKO: Objection, your Honor, I move  
8 to strike the answer to his question. He is  
9 speculating. He has already admitted, today, he  
10 hasn't talked to these companies, and now he is  
11 talking about whether they have or haven't entered  
12 into financing agreements or whether their costs are  
13 lower or higher than AEP. He hasn't talked to the  
14 companies, he hasn't done that analysis, and now he  
15 is speculating to it and it's hearsay. It's  
16 inadmissible hearsay but mostly because he's  
17 speculating to all of these statements and the Tesla  
18 comment was completely inappropriate. There is no  
19 grounds. There is no evidence for any of the things  
20 that he's talking about.

21 EXAMINER PARROT: Your motion to strike  
22 is denied. You will be permitted to question him on  
23 his testimony, Ms. Bojko.

24 MS. PIRIK: Thank you, your Honor.

25 Q. (By Mr. Pirik) Were you done with your

1 answer?

2 A. Yes, I was.

3 Q. I wanted to make sure.

4 So would you say that having AEP as a  
5 counterparty, from a developer's perspective, results  
6 in lower costs?

7 A. Absolutely.

8 MS. BOJKO: Objection, your Honor. She  
9 is leading the witness and telling him the answer.

10 MS. WILLIS: Your Honor, lower cost for  
11 who? Certainly not for ratepayers.

12 MS. PIRIK: I asked him specifically with  
13 regard to developers.

14 MR. NOURSE: Your Honors, I mean, he  
15 talked about financing costs earlier. And obviously  
16 this is redirect, so any leading is not really  
17 objectionable.

18 MR. DARR: Yes, it is.

19 EXAMINER PARROT: The objection is  
20 overruled.

21 Go ahead, Mr. Burcat.

22 A. Can you repeat the question?

23 Q. I am asking --

24 A. I think I answered.

25 Q. -- from a developer's perspective -- you

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1 were asked a lot of questions when it came to all  
2 different types of scenarios with different types of  
3 companies and the differences in, you know, what  
4 their resources were. I am asking you with regard to  
5 the application that we are actually here to discuss,  
6 for comparison purposes with all the companies that  
7 you were crossed on, whether or not the application  
8 before us, from a developers's perspective, results  
9 in any types of cost savings?

10 A. I work with -- with many renewable energy  
11 developers, all at the utility-scale level. And  
12 while they do and they really do think those  
13 contracts with like a Kroger or whoever are great  
14 contracts because they've got great balance sheets  
15 and those types of things. What they see as the, you  
16 know, the best as far as getting absolutely the best  
17 financing is when they deal with the utilities  
18 directly on these contracts.

19 MS. PIRIK: Thank you, Mr. Burcat.

20 Your Honor, the only other thing that we  
21 have is that with regard to the Owens Corning  
22 exhibit, if OCC is not going to mark it, in order to  
23 make the record clear, MAREC would be willing to mark  
24 it as Exhibit 2.

25 EXAMINER PARROT: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MS. PIRIK: Thank you.

3 EXAMINER PARROT: Mr. Dove, any  
4 questions?

5 MR. DOVE: No, your Honor.

6 EXAMINER PARROT: Ms. Leppla.

7 MS. LEPPLA: No questions, your Honor.

8 EXAMINER PARROT: Ms. Cohn.

9 MS. COHN: No questions, your Honor.

10 EXAMINER PARROT: Ms. Bojko?

11 MS. BOJKO: Yes, your Honor.

12 - - -

13 RECROSS-EXAMINATION

14 By Ms. Bojko:

15 Q. Mr. Burcat, did you meet with Tesla and  
16 talk about Tesla's balance sheet and whether or not  
17 they could enter into REPAs? Prior to drafting your  
18 testimony or testifying here today?

19 A. No. I have just -- I was throwing that  
20 out as an example because I just read their stock  
21 price dropped precipitously based on their ability to  
22 meet projections.

23 Q. Thank you. Inability to meet projections  
24 of sales --

25 A. Projections for their cars.

1 Q. Sales.

2 A. Sales --

3 Q. Not any -- not any other kind of  
4 renewable sustainability goals --

5 EXAMINER PARROT: Ms. Bojko --

6 Q. Sales, correct?

7 A. No, it was more than that, and also the  
8 loss of at least 7 percent of their workforce and the  
9 fact that Mr. -- I am trying to think of his name,  
10 the Tesla head, the fact that he -- he has sent out a  
11 thing saying they are going to have to go out there  
12 and work a lot harder to keep up.

13 MS. BOJKO: Your Honor, I move to strike  
14 his response. It's irrelevant, whether he wants to  
15 talk about Tesla's sales or their balance sheet is  
16 irrelevant. I asked about sustainability goals and  
17 he answered the question no. It was more. And then  
18 everything after that was about Tesla's workforce,  
19 Tesla's problems, nothing to do with the application  
20 here today.

21 MS. PIRIK: Your Honor, he was trying to  
22 clarify what he meant in his previous testimony.

23 EXAMINER PARROT: His answer will stand.

24 Q. (By Ms. Bojko) Mr. Burcat, have you gone  
25 and spoken to the companies and asked specifically

1 the Fortune 500 companies or any other commercial  
2 customer and asked specifically if they could not  
3 enter into a contract to receive renewable energy?

4 MS. PIRIK: Your Honor, this is beyond  
5 the scope of redirect. We did not go into what  
6 questions were asked at these different companies.

7 MS. BOJKO: Actually it is a foundational  
8 question to my next question. These are very  
9 relevant. Counsel asked about lower costs, and you  
10 are making assumptions in the record that these  
11 companies cannot procure these type of contracts, so  
12 I have a right to ask him if he asked the companies  
13 that he is claiming cannot enter into these contracts  
14 and get a lower cost.

15 MS. PIRIK: I would also like to point  
16 out that, previously, Counsel asked the witness  
17 whether he had talked with these companies. He's  
18 already answered this question.

19 MS. BOJKO: Your Honor, it's in response  
20 to her lower cost --

21 EXAMINER PARROT: Let's rephrase.

22 Q. (By Ms. Bojko) In response to your  
23 counsel's question, you stated that these  
24 companies -- companies could not enter into REPAs or  
25 renewable energy contracts at the same cost as AEP.



1 Have you talked to those companies that you are  
2 referencing in your response and asked them  
3 specifically if they could or could not enter into  
4 contracts at the exact price that AEP is projecting  
5 in this case?

6 A. I don't know what the exact price is --  
7 are in those particular contracts. I know what they  
8 are looking for possibly in their rider but there is  
9 a difference between those prices. But what I would  
10 say is that I would not have talked to them  
11 specifically about this. I just know it from  
12 industry knowledge and talking to my members.

13 Q. Thank you.

14 And I would just add -- or ask you, you  
15 have not read AEP's application and Torpey's  
16 projection of the costs that this would incur and  
17 that ratepayers would be responsible for?

18 A. You asked me for price.

19 Q. And in that analysis, Mr. Torpey's  
20 analysis that comes up with net benefits, isn't it  
21 true there is an assumption of a REPA cost?

22 A. That's not what you asked me. You asked  
23 me what the price was for -- between the -- you were  
24 asking for the price.

25 Q. No. I asked you if you know what the

1 Torpey --

2 A. That's confidential and I have no idea.

3 Q. It's not confidential. It's in  
4 Mr. Torpey's testimony. He assumed a \$45 REPA price;  
5 isn't that true?

6 A. That I don't know.

7 MS. BOJKO: Thank you. No further  
8 questions, your Honor.

9 EXAMINER PARROT: Ms. Willis?

10 MS. WILLIS: No questions, your Honor.

11 EXAMINER PARROT: Ms. Whitfield.

12 MS. WHITFIELD: No questions, your Honor.

13 EXAMINER PARROT: Mr. Collier.

14 MR. COLLIER: No questions, your Honor.

15 EXAMINER PARROT: Mr. McNamee, let's get  
16 you out of the way.

17 MR. McNAMEE: No questions. Thank you.

18 EXAMINER PARROT: Ms. Glover.

19 MS. GLOVER: No questions, your Honor.

20 EXAMINER PARROT: Mr. Darr?

21 MR. DARR: No questions, your Honor.

22 EXAMINER PARROT: Mr. Nourse.

23 MR. NOURSE: No questions, thank you.

24 EXAMINER PARROT: All right. Ms. Pirik,  
25 you have already moved, I believe, the admission of

1 MAREC Exhibit 1. Let's start with that one. Any  
2 objections?

3 MS. BOJKO: Just subject to our prior  
4 motions, your Honor.

5 EXAMINER PARROT: Okay. Noted for the  
6 record. And that exhibit will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER PARROT: Ms. Pirik, your other  
9 exhibit.

10 MS. PIRIK: Yes. We'd like to -- MAREC  
11 would like to move for admission of MAREC Exhibit 2.

12 EXAMINER PARROT: Are there any  
13 objections?

14 MS. BOJKO: Yes, your Honor. I object  
15 because Ms. Pirik did not use this exhibit on  
16 cross-examination and so she did not -- or redirect,  
17 I mean, so she does not have any foundation for  
18 moving this exhibit into the record.

19 MS. PIRIK: Your Honor, the document was  
20 referenced and our witness -- in a question to our  
21 witness. I think it clarifies the record. I really  
22 don't know what else to say about that. I just think  
23 it should be an exhibit in the record and I think the  
24 record needs to be clear.

25 EXAMINER PARROT: And there were

1 questions on it. MAREC Exhibit 2 is also admitted  
2 into the record.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PARROT: Ms. Bojko, your  
5 exhibits.

6 MS. BOJKO: Thank you, your Honor. OMAEG  
7 moves the admission of Exhibits 13, 14, and 15.

8 EXAMINER PARROT: Are there any  
9 objections?

10 MR. NOURSE: Your Honor --

11 EXAMINER PARROT: Mr. Nourse.

12 MR. NOURSE: Your Honor, I do not object  
13 to 13 and 15, but Exhibit 14, the Company objects to.  
14 The witness has not seen it. He could not answer any  
15 questions about it. It relates to Phase II issues.  
16 It should not be admitted.

17 MS. BOJKO: Your Honor, if I may respond,  
18 I think that Mr. Nourse's mischaracterizing the  
19 testimony. Mr. Burcat actually said he was familiar  
20 with the RFPs and he had reviewed the RFPs in this  
21 case. It does not respond to Phase II. So he did  
22 answer my questions on it. He said he was not  
23 familiar with the one provision, and so when he was  
24 not familiar with that one provision, I moved on.

25 MR. NOURSE: I disagree, your Honor.

1 He -- he was aware of the RFPs but he is not aware of  
2 this document, hadn't seen it, and couldn't answer  
3 questions about it. And the RFP is a Phase II issue.  
4 We have got a separate witness on that and it relates  
5 to the REPAs and definitely is a Phase II issue.

6 MS. PIRIK: Your Honor, we would join in  
7 the motion in opposition.

8 MS. BOJKO: Your Honor, I would just note  
9 for the record that his testimony specifically  
10 references the REPAs. So we keep trying to make a  
11 distinction here about REPA being in the second phase  
12 of the hearing. His testimony on page -- what did I  
13 do with his testimony -- his testimony on pages --  
14 page 6 through page 7, says solar renewable energy  
15 purchase agreements, solar REPAs, and it defines the  
16 team of a solar REPA, it talks about the fixed price  
17 of the solar REPA, all of that was contained in  
18 Mr. Torpey's testimony and underlying analysis that  
19 Mr. Torpey conducted.

20 And it seems to me, to note on the  
21 record, that the Company and supporting companies are  
22 allowed to put in testimony and information regarding  
23 the REPAs that benefits them, but any time we try to  
24 ask questions or provide documents that contradict  
25 Torpey's underlying analysis regarding the REPAs and

1 everything that it relates to, the Company objects  
2 and that information is being kept out of the record.  
3 If we could put it in the record for the supporting  
4 testimony and AEP's testimony, then we should be able  
5 to put our questions and the counterarguments to  
6 question what they've actually put in their  
7 testimony, in our cross-examination and through our  
8 witnesses.

9 MS. WHITFIELD: Your Honor, can I just  
10 add something quickly with respect to that? I  
11 disagree with Mr. Nourse's characterization that the  
12 RFPs are clearly a Phase II issue. If you recall,  
13 Mr. Torpey testified about the RFP process, about his  
14 reliance upon looking at the bid responses for his  
15 fixed price that he put into his charts to calculate  
16 the benefits and, in fact, on -- in his testimony, in  
17 his direct testimony on page 8, lines 12 and 13, he  
18 says "Data provided by responsive bidders to the  
19 Company's RFPs were the basis for expected hourly  
20 energy output values."

21 So to say that the RFPs and the responses  
22 to those RFPs are not in this Phase I is disingenuous  
23 since Mr. Torpey has testified extensively about that  
24 and they laid the foundation for his analysis. Thank  
25 you.

1 MR. NOURSE: Okay. Your Honor --

2 MS. PIRIK: Your Honor, before Mr. Nourse  
3 has the last word, I would just like to point out  
4 this witness is not Mr. Torpey. This is Mr. Burcat.  
5 And to try to get information under our witness who  
6 generically talked about the REPAs, we discussed this  
7 earlier when the motion to strike was denied, I just  
8 think that I have to object to that. The  
9 information -- you can't just put information in  
10 under a witness because you couldn't get it in under  
11 another one.

12 MS. BOJKO: No, your Honor. I have to  
13 respond to that. He does not talk about generic  
14 solar REPAs. He says the solar REPAs established a  
15 set price for the entire life of the contract. REPAs  
16 typically include a 20-plus-year term which is what  
17 the REPA and the RFPs responded to and what Mr.  
18 Torpey included in his testimony. He is directly  
19 talking about the REPAs for Highland and Willowbrook.  
20 We could do a search and find, and find how many  
21 times in this testimony he refers to Highland and  
22 Willowbrook. He even puts the application for the  
23 Ohio Power Siting Board for Willowbrook and Highland  
24 in his testimony. He is talking about the specific  
25 solar projects, so it's very disingenuous to say he

1 is not.

2 EXAMINER PARROT: Mr. Nourse.

3 MR. NOURSE: Your Honor, I think you've  
4 already ruled on this in your January 14 Entry.  
5 Obviously the economic development impacts of these  
6 projects is a distinction that all the parties  
7 understand, all the parties have been working  
8 throughout this hearing. Mr. Burcat's testimony  
9 about REPAs, clearly, is generic. What Ms. Bojko  
10 referenced on pages 6 and 7, it's very obvious. I  
11 think all the questions and his answers were about  
12 REPAs generally and how they support projects  
13 generally. And it's consistent with the generic  
14 economic evaluation in Mr. Torpey's testimony.

15 But, again, I agree with Ms. Pirik, this  
16 exhibit, he had no knowledge of, hadn't seen, wasn't  
17 involved with and, you know, there was no --  
18 absolutely no foundation for it. But it does deal  
19 with the details of the REPA that are part of Phase  
20 II, and not the economic development impacts or  
21 generic assumptions that Mr. Torpey dealt with at  
22 all.

23 EXAMINER PARROT: And I agree that the  
24 witness clearly stated that he had not seen this  
25 document before. So, with that, OMAEG Exhibits 13



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1 and 15 are admitted, but the request to admit Exhibit  
2 14 is denied.

3 (EXHIBITS ADMITTED INTO EVIDENCE.)

4 EXAMINER PARROT: Ms. Willis.

5 MS. WILLIS: Thank you, your Honor. OCC  
6 moves for the admission of 19, 20, 21, and 22.

7 EXAMINER PARROT: Just to be clear, you  
8 are not moving 23?

9 MS. WILLIS: That is correct, your Honor.  
10 I would like to, but I am going to resist.

11 EXAMINER PARROT: Okay. Are there any  
12 objections to the admission of OCC Exhibits 19  
13 through 22?

14 MR. NOURSE: No, your Honor.

15 EXAMINER PARROT: Hearing none, they are  
16 admitted.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 MS. WILLIS: Thank you.

19 EXAMINER PARROT: Ms. Whitfield.

20 MS. WHITFIELD: Your Honor, at this time,  
21 I would move for admission of Kroger Exhibit 3.

22 EXAMINER PARROT: Any objections?

23 Kroger Exhibit 3 is also admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER PARROT: Mr. Collier.

2222

1 MR. COLLIER: Thank you, your Honor. At  
2 this time, I move OCA Exhibits 4 and 5. The  
3 relevance is established and responsive to the  
4 witness's comprehensive testimony concerning whether  
5 or not there is significant utility-scale renewables  
6 in Ohio. And it also goes to the map that he had  
7 attached to his testimony. I don't know what exhibit  
8 that was that shows the location of renewable energy  
9 projects in Ohio. This map -- these maps are  
10 specific to utility-scale renewables. That's the  
11 relevance.

12 The authenticity is this is a document  
13 from the Ohio Power Siting Board. Documents  
14 typically admitted. Mr. Nourse has pointed out a  
15 couple of updates, which I don't have a problem with,  
16 in terms of the status of Black Fork, in particular,  
17 having been reversed recently by the Ohio Supreme  
18 Court, and Hillcrest merely a -- an identification  
19 differential because Hillcrest was indicated to be  
20 pending on the reverse side of the document and that  
21 was a minor error. So --

22 EXAMINER PARROT: We are good.

23 Are there any objections?

24 MR. NOURSE: Your Honor, I will just  
25 note, I am not going to object, but I will ask the

2223

1 Commission to take the weight of the document based  
2 on some errors and the fact this witness had not seen  
3 it before he took the stand. Thank you.

4 EXAMINER PARROT: I believe the witness  
5 did state that he had seen similar, perhaps previous  
6 versions of these exhibits, so, with that, OCA  
7 Exhibits 4 and 5 are admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER PARROT: Thank you very much,  
10 Mr. Burcat.

11 THE WITNESS: Oh, thank you.

12 EXAMINER SEE: Ms. Whitfield.

13 MS. WHITFIELD: Thank you, your Honor.  
14 The Kroger Company calls Justin Bieber.

15 (Witness sworn.)

16 EXAMINER SEE: Please cut your mic on.  
17 Ms. Whitfield.

18 MS. WHITFIELD: Thank you, your Honor.

19 - - -

20 JUSTIN BIEBER

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

23 DIRECT EXAMINATION

24 By Ms. Whitfield:

25 Q. Good afternoon, Mr. Bieber. Can you

1 please state your name and business address for the  
2 record.

3 A. Yes. My name is Justin Bieber. My  
4 business address is 215 South State Street, Salt Lake  
5 City, Utah.

6 Q. On whose behalf are you testifying here  
7 today?

8 A. On behalf of The Kroger Company.

9 Q. And did you file or cause to be filed  
10 direct testimony in this case?

11 A. Yes.

12 MS. WHITFIELD: Your Honors, at this  
13 time, I would like to mark as Kroger Exhibit No. 4,  
14 the public version of the direct testimony of Justin  
15 Bieber, filed on behalf of The Kroger Company on  
16 January 2, 2019; and as Kroger Exhibit No. 4A, the  
17 confidential version of Mr. Bieber's direct testimony  
18 filed on January 2, 2019. And just for the record, I  
19 have already given copies of that testimony to the  
20 court reporter.

21 EXAMINER SEE: Okay.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 Q. Mr. Bieber, do you have in front of you  
24 what has been marked as Kroger Exhibit 4?

25 A. Yes.

1           Q.    Do you recognize this document as your  
2 direct testimony?

3           A.    Yes, I do.

4           Q.    And was this direct testimony prepared by  
5 you or under your direction?

6           A.    Yes.

7           Q.    And since the filing of this, your direct  
8 testimony, do you have any changes to it?

9           A.    No.

10          Q.    And if I were to ask you the same  
11 questions today as they appear in your direct  
12 testimony, would your answers be the same?

13          A.    Yes, they would.

14                MS. WHITFIELD: Your Honors, at this  
15 time, I would like to move Kroger Exhibit Nos. 4 and  
16 4A, subject to cross-examination.

17                Before I tender Mr. Bieber for  
18 cross-examination, I do have some motions for  
19 reconsideration that I would like to make with  
20 respect to specific sections of his testimony that  
21 were previously stricken with your January 14  
22 entry -- I am sorry -- deferred with respect to your  
23 January 14 Entry, given some consistency issues that  
24 have come up through the -- through the hearing thus  
25 far.

1 EXAMINER SEE: Let's hear it.

2 MS. WHITFIELD: Okay. First, with  
3 respect to page 6, line 17, starting with the word  
4 "Further" through page 7, line 2. We would ask your  
5 Honors to reconsider the deferral of this testimony  
6 as it directly responds and relates to Mr. Torpey's  
7 analysis that he testified for over the course of  
8 about a day that it was based on a fixed-price REPA.  
9 And Mr. -- and what Mr. Bieber testifies to is  
10 potential negative impacts of the fixed price on the  
11 economic benefits that Mr. Torpey is alleging.

12 And as Mr. Burcat just testified about  
13 the benefits of various fixed prices, Mr. Bieber  
14 should be entitled to respond to show some -- some  
15 negatives or potential negatives for a fixed-price  
16 generic REPA. And how their analysis is flawed in  
17 that regard.

18 Do you want me to do them all or do you  
19 want to take them one by one?

20 EXAMINER SEE: Let's do all of the ones  
21 that you are requesting reconsideration for.

22 MS. WHITFIELD: Okay.

23 EXAMINER SEE: Okay?

24 MS. WHITFIELD: If you turn to page 14  
25 and this is on line 7, part of the question but it

2227

1 would just be the word "consistent" to be the end of  
2 that question. The "consistent with Revised Code  
3 4928.143(B) (2) (c)" also applies to the 900 megawatts  
4 need determination.

5 MS. BLEND: And just for clarification,  
6 it was my understanding that that language has not  
7 been deferred.

8 MS. WHITFIELD: Oh, I'm sorry, it was  
9 marked in mine that it was, so that one is not  
10 deferred? Okay.

11 EXAMINER SEE: The way the question reads  
12 now goes "generation consistent with Revised Code  
13 4928.143(B) (2) (c) ."

14 MS. WHITFIELD: Okay. Thank you.

15 Then if you turn to page 18, line 1  
16 through 15, and then page 19, line 1, through page  
17 20, line 2.

18 EXAMINER SEE: I am sorry. Repeat the  
19 second half of that.

20 MS. WHITFIELD: So it's all of page 18,  
21 all of page 19, and over to page 20 through line 2.  
22 And the reasoning for this is, as you can see from  
23 Mr. Bieber's testimony, he is responding to the  
24 fundamental forecast that AEP, Mr. Bletzacker did,  
25 showing some flaws that was in that forecast, as well

1 as then that formed the basis for Mr. Torpey's  
2 analysis.

3 And then if you continue on to page 19,  
4 he is specifically showing some flaws in Mr. Torpey's  
5 analysis that he was -- that he was allowed to speak  
6 to. And about the projected life cycle savings. If  
7 you recall, he's got -- Mr. Torpey has, in his  
8 testimony, a chart of the projected benefits on page  
9 6. What Mr. Bieber is doing here is responding to  
10 those projected benefits and indicating what are  
11 flaws in Mr. Torpey's analysis and what would  
12 actually be costs to that analysis. And if you look,  
13 he cites to Mr. Torpey's testimony in this case, 35  
14 and 36, and Mr. Allen's.

15 I am not -- as you can see, I am not  
16 moving for reconsideration at this time as to his  
17 specific questions on the debt equivalency cost given  
18 your Honors' prior rulings.

19 Are you ready for me to go on? Okay.

20 EXAMINER SEE: Go ahead, Ms. Whitfield.

21 MS. WHITFIELD: Okay. And then if you  
22 look at page 21, starting on line 7, and that would  
23 continue on to page 24, line 2. Again, Mr. Torpey,  
24 in his testimony, in his analysis, specifically in  
25 Exhibit JFT-1, pages 21 and 22, his analysis and



1 calculation of the benefits for the generic project  
2 relied upon a fixed price, that he relied upon the  
3 bid -- bid responses, the RFP bid responses to  
4 develop that fixed price.

5 Mr. Burcat just again testified about the  
6 benefits of that fixed price and Mr. Bieber -- and  
7 also if you recall, Mr. Torpey talked extensively  
8 about his calculation of -- and his formula for the  
9 net cost of energy, and Mr. Bieber is responding to  
10 and addressing the flaws in that calculation and  
11 limitations of that calculation, as well as  
12 responding to concerns or risks that relate to the  
13 way AEP handled the RFP and the bid process.

14 You'll note that the answers in these,  
15 it -- the answer specifically did not address  
16 Highland and Willowbrook any more than what you would  
17 say Mr. Torpey's addressed Highland and Willowbrook.

18 And I have one final one when you are  
19 ready.

20 EXAMINER SEE: Go ahead.

21 MS. WHITFIELD: Okay. And then finally,  
22 Mr. Bieber's testimony on page 25, starting at line  
23 11, through page 26, line 11, and, again, this  
24 relates to the Company's alleged need of the  
25 900 megawatts and the risks to customers under that

1 and if there has been any type of proposal by the  
2 Company to mitigate or share those risks.

3 And Mr. Burcat, as you know, just  
4 testified extensively today about the various  
5 benefits to customers, in addition to Mr. Torpey and,  
6 of course, Dr. Buser and Dr. LaFayette. Those are my  
7 specific motions for reconsideration.

8 MS. BLEND: Your Honor, I am happy to  
9 respond if it would be helpful or you deem it  
10 necessary.

11 EXAMINER SEE: Okay. Just hold on just a  
12 minute, Ms. Blend.

13 Ms. Blend, you wanted to respond?

14 MS. BLEND: Your Honor, the Company  
15 respectfully requests the motion for reconsideration  
16 be denied, consistent with the January 14 Entry and  
17 the Attorney Examiners' rulings from the Bench for  
18 the last week and a half in this proceeding.

19 Specifically, with respect to the  
20 testimony on page 6, beginning at line 17, and  
21 continuing to page 7, line 2, this testimony  
22 addresses the specific structure of the REPAs that  
23 are proposed in Phase II and that are the subject of  
24 Company witness Torpey's testimony in Phase II.

25 In Phase I, although it's true Company

1 witness Torpey modeled -- did his modeling on a  
2 levelized basis, he testified on cross-examination  
3 that the net present value of the benefits that he  
4 calculated would be the same regardless of whether  
5 the REPA was modeled for purposes of the generic  
6 analysis on a levelized basis or on an escalated  
7 basis.

8               So I think what this really comes down to  
9 is more of an issue of the specific contract  
10 structure which would be appropriate for Phase II and  
11 was correctly deferred for Phase II and should  
12 continued to be deferred to Phase II.

13               With respect to the testimony beginning  
14 on page 18, at line 1, and continuing on to page 20  
15 at line 2, while it may be true Mr. Bieber is  
16 responding to Mr. Torpey's testimony in these  
17 sections, it is clear, both from the content of the  
18 testimony and from the citations to the Torpey  
19 testimony to which he is responding is the Phase II  
20 project-specific Torpey testimony and not the generic  
21 Torpey testimony.

22               Mr. Torpey was very clear, both in his  
23 written testimony and during cross-examination in  
24 this phase of the proceeding, for example, that he  
25 did not utilize four scenarios from the AEP

1 Fundamentals Analysis Department's 2018 Fundamentals  
2 Forecast. And the testimony on page 18 specifically  
3 responds to those scenarios which are part of  
4 Mr. Torpey's Phase II testimony.

5 With respect to the testimony on page 19,  
6 it's somewhat -- it's not 100-percent accurate to  
7 characterize these -- the statements in this answer  
8 as relating to Mr. Torpey's testimony from Phase I  
9 because if you look at the actual testimony on lines  
10 13 and 14, before Footnote 35, and on line 17 and 18  
11 with respect to Footnote 36, both of which reference  
12 the 18-501 testimony, both of those statements are  
13 discussing the proposed debt equivalency costs which  
14 are a proposal in Phase II of this proceeding in  
15 which your Honors have properly deferred for Phase  
16 II.

17 Likewise, the question and answer on  
18 page -- I'm sorry, that -- that only went to page 20,  
19 line 2, so I'll stop there.

20 With respect to the testimony beginning  
21 on page 21, line 7, and continuing on through page  
22 24, line 2, again, this -- these questions and  
23 answers relate specifically to the RFP and the bid  
24 prices for the RFP which have been specifically  
25 deferred to Phase II, and the structure of the REPAs

1 that have been executed and that are the subject of  
2 approval in Phase II, the specific terms of those  
3 REPAs, and Mr. Bieber's opinion regarding how the  
4 terms of those REPAs should change in order to, in  
5 his view, correct various issues with the REPAs. And  
6 so, again, those are topics that are more appropriate  
7 for Phase II that your Honors have appropriately  
8 deferred and should continue to be deferred.

9 With respect to Mr. Bieber's testimony on  
10 page 25, beginning on line 11, and continuing on to  
11 page 26, line 11, Mr. Bieber here is really making a  
12 rate-design argument or a -- an allocation-of-cost  
13 argument that goes to the recovery of specific costs  
14 associated with specific projects that the Commission  
15 may approve and, again, that is a Phase II issue.

16 So, for all of those reasons, we would  
17 respectfully request that your Honor deny the motion  
18 for reconsideration. Thank you.

19 MR. WHITFIELD: Your Honor, I would like  
20 to respond when you're ready.

21 EXAMINER SEE: Go ahead, Ms. Whitfield.

22 MS. WHITFIELD: First of all, Ms. Blend  
23 just made my point for me. She said Mr. Torpey  
24 testified that he -- he modeled his proposed  
25 structure based on fixed but he testified -- fixed

1 prices, but his -- she said he testified that it  
2 wouldn't make a difference if he used escalating  
3 prices.

4 MS. BLEND: For purposes of the -- I  
5 didn't mean to interrupt. I'm sorry.

6 MS. WHITFIELD: That's all right. But  
7 Mr. Bieber is entitled to test that and challenge  
8 that and that's exactly what his testimony does. He  
9 says that fixed prices are not -- do not generate the  
10 most benefit to the customers. In fact, escalating  
11 prices would -- would do a better result for the  
12 customers and he -- he explained that in his direct  
13 testimony.

14 So to allow Mr. Torpey to say his results  
15 would be the same, but then not allow Mr. Bieber to  
16 challenge that and to show that, in fact, it would  
17 not, is prejudicial and unfair to the intervenors  
18 opposing this application on the generic basis.

19 MS. BLEND: And, your Honor, Mr. Torpey's  
20 testimony, as I just said, while his generic project  
21 analysis assumed levelized costs for fixed-price  
22 REPAs, his conclusion was a conclusion over the term  
23 of the REPAs. Mr. Bieber's escalating-price argument  
24 relates to his opinion that you could better align  
25 costs and benefits to customers for specific REPAs if

1 you were to use an escalating-price structure. The  
2 specific price in any given year of the REPAs, the  
3 specific REPAs is a Phase II issue. And the issue  
4 with respect to the overall cost or benefit of the  
5 REPAs addressed in this phase is a -- again, a  
6 generic overall-total-term-of-the-REPA benefit.

7 MS. WHITFIELD: Your Honor -- I'm sorry.

8 EXAMINER SEE: Go ahead. Ms. Whitfield.

9 MS. WHITFIELD: I was just going to make  
10 the point that, first of all, if you recall, Mr.  
11 Torpey, while his -- he talks about it in the  
12 generic, he relied upon -- for his modeling, he  
13 relied upon Mr. Ali's calculations in which he used  
14 the specific REPAs, the Highland and the Willowbrook.  
15 So he modeled it. The term of it is the same. The  
16 price, that's where he came up with the price. So to  
17 say that while he is talking about it in a generic  
18 sense, which Mr. Bieber is as well, then he's  
19 entitled to respond to Mr. Torpey's testimony and his  
20 analysis on pages 21 and 22 of his exhibit that the  
21 benefits are not as he says that they are. Thank  
22 you.

23 MS. BLEND: If I could just briefly  
24 respond very quickly, your Honor.

25 EXAMINER SEE: Quickly.

1 MS. BLEND: Mr. Torpey's testimony about  
2 representative projects that he used for his analysis  
3 does not bear any relation to the specific testimony  
4 of Mr. Bieber that Ms. Whitfield is seeking to --  
5 seeking reconsideration on here. Ms. Whitfield is --  
6 Ms. Whitfield's request to reconsider a ruling on the  
7 price structure over the term of the REPAs, that  
8 testimony has no bearing on the inputs to  
9 Mr. Torpey's generic analysis.

10 EXAMINER SEE: And Kroger's request for  
11 reconsideration of the outlined sections of  
12 Mr. Bieber's testimony is denied.

13 MS. WHITFIELD: Thank you, your Honor.

14 EXAMINER SEE: Has the witness been  
15 informed of what sections of his testimony have been  
16 deferred to the second phase of this hearing?

17 MS. WHITFIELD: Yes, he should have a  
18 copy up there with him that has the parts stricken,  
19 consistent with your January 14 -- January 14 entry.

20 EXAMINER SEE: Thank you.

21 MS. WHITFIELD: I would tender Mr. Bieber  
22 for cross-examination at this time.

23 MS. BLEND: Before we get to cross, I do  
24 have two additional short motions to defer.

25 EXAMINER SEE: Go ahead.



1 MS. BLEND: Thank you.

2 The motions to defer, the first is on  
3 page 7, beginning on line 5, through page 8,  
4 beginning on line 2. This testimony relates to the  
5 establishment of the Renewable Generation Rider and  
6 the design of that rider. Again, the specific --  
7 there is no specific proposal or request for approval  
8 of costs for inclusion in any rider in this case.  
9 This is a generic -- this is a forecast proceeding,  
10 and so testimony regarding the cost recovery,  
11 consistent with other deferral of specific testimony  
12 later, Mr. Bieber's testimony should be deferred.

13 And when you are ready, your Honor, I can  
14 continue.

15 EXAMINER SEE: Go ahead.

16 MS. BLEND: The second is page 9, lines 8  
17 through 20. This is, again, a summary of the  
18 Company's specific proposals in the phase -- in the  
19 portion of the proceeding that has been designated  
20 for Phase II and deferred for Phase II, specifically  
21 the Company's cost-recovery proposals in the 18-1392  
22 and 1393 cases, the Company's Green Tariff proposal  
23 and the Company's debt equivalency cost proposal, as  
24 is evident by the citation in that paragraph in  
25 Footnote 8. So, for that reason, we would request

1 that page 9, lines 8 through 20, and Footnote 8,  
2 likewise be deferred, consistent with your prior  
3 rulings.

4 MS. WHITFIELD: Your Honor --

5 MS. BLEND: I have one more. I said two  
6 but I actually have three.

7 It's a continuation of the second one.  
8 Page 10, lines 1 and 2. The fact "The Company has  
9 entered into 20-year REPAs to facilitate the  
10 development of these new projects." Again, the  
11 citation is to -- those 20-year REPAs are the subject  
12 of the 18-1392 and 1393, second phase proceeding, and  
13 the citation on Footnote 9 is to that proceeding, so  
14 we would request that those two lines on that  
15 footnote also be deferred.

16 MS. WHITFIELD: If I can respond?

17 Okay. With respect to the first -- well,  
18 both of them actually. This has to do with the  
19 history of the case that your Honors have  
20 consolidated. If you recall, there has been  
21 substantial testimony pretty much from every witness  
22 about the PPA case settlement that led to the  
23 establishment of the RGR and how we come to be in  
24 this case and that is just what Mr. Bieber's history  
25 section is discussing on pages 7 and onto 8.

1           Onto 9. If you look directly above the  
2 paragraph they want to strike, he is just following  
3 up on what Mr. Allen specifically testified to. "The  
4 Company will be filing an application in the near  
5 future to advance specific renewable projects and  
6 seeking cost recovery under the RGR. If the  
7 Commission consolidates that filing with this need  
8 case, the Commission may choose to consider the need  
9 question in conjunction with specific renewable  
10 projects." So he is saying, as promised, they did  
11 file those and this is what they filed.

12           And if you recall -- if we are going to  
13 say that just because things are quoted from the  
14 18-1392 proceeding, if you recall Dr. Buser and  
15 Dr. LaFayette, the sole purpose of their testimony  
16 was to support the economic benefits, economic  
17 impacts in the 1392 case, that's where their  
18 testimony is filed, on the two specific projects.

19           So just for consistency with your Honors'  
20 orders over the course of the last two weeks, we  
21 would request that this -- these motions to strike be  
22 denied.

23           MS. BLEND: I won't take any more time to  
24 respond further, other than to just note that we  
25 disagree with the characterization of Drs. Buser and

1 LaFayette, the purpose of their testimony, as  
2 represented by Ms. Whitfield.

3 EXAMINER SEE: The motions to strike or  
4 defer additional -- to defer additional portions of  
5 Mr. Bieber's testimony, starting on page 7 and  
6 continuing -- page 7, line 5, and continuing through  
7 page 8, line 2, and starting on page 9, line 8, and  
8 continuing through to page 10, line 2, are denied.

9 MS. BLEND: Thank you, your Honor.

10 EXAMINER SEE: Any others?

11 Okay. Any cross-examination of this  
12 witness, Mr. Whitt?

13 MR. WHITT: No, your Honor.

14 EXAMINER SEE: Mr. Darr.

15 MR. DARR: No, thank you.

16 EXAMINER SEE: Mr. Collier.

17 MR. COLLIER: No, your Honor.

18 EXAMINER SEE: Ms. Bojko.

19 MS. BOJKO: No, thank you, your Honor.

20 EXAMINER SEE: Mr. Healey.

21 MR. HEALEY: No, your Honor. Thank you.

22 EXAMINER SEE: Ms. Pirik.

23 MS. PIRIK: No, your Honor.

24 EXAMINER SEE: Mr. Dove.

25 MR. DOVE: No, your Honor.

1 EXAMINER SEE: Ms. Leppla.

2 MS. LEPPLA: No, your Honor. Thank you.

3 EXAMINER SEE: Ms. Cohn.

4 MS. COHN: No, your Honor.

5 EXAMINER SEE: Mr. McNamee.

6 MR. MCNAMEE: We're on a roll. No, thank  
7 you, your Honor.

8 EXAMINER SEE: And Ms. Blend.

9 MS. BLEND: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Blend:

13 Q. Good afternoon, Mr. Bieber.

14 A. Good afternoon.

15 Q. Mr. Bieber, you are not an attorney,  
16 correct?

17 A. Correct.

18 Q. And your academic background is in  
19 business and engineering, correct?

20 A. Yes, that's correct.

21 Q. And the opinions that you present in your  
22 testimony in this case are not legal opinions,  
23 correct?

24 A. Yes.

25 Q. You indicate on page 4 of your testimony

1 that you have previously filed testimony with the  
2 Indiana Utility Regulatory Commission, the Public  
3 Service Commission of Kentucky, the Michigan Public  
4 Service Commission, the North Carolina Utilities  
5 Commission, and the Public Utilities Commission of  
6 Oregon, correct?

7 A. Yes, that's correct.

8 Q. You filed testimony in those proceedings  
9 in a total of seven cases; is that right?

10 A. I would have to check. I think it's  
11 about seven.

12 Q. Okay.

13 MS. BOJKO: Your Honor, can you ask the  
14 witness to move the mic closer. Thank you.

15 Q. All of that testimony in -- before those  
16 commissions has been filed in the last two years,  
17 correct?

18 A. Yes. That's correct.

19 Q. And all of that testimony has been filed  
20 on behalf of Kroger, correct?

21 A. Yes. That's correct.

22 Q. And none of your prior testimony in any  
23 of the cases that you've filed testimony in, in other  
24 jurisdictions, has addressed utility applications in  
25 forecast proceedings, correct?

1           A.    What do you mean by "utility  
2 applications"?

3           Q.    Applications by electric utilities in  
4 forecast proceedings like the one we are in now.

5           A.    Forecast proceedings specifically, no.

6           Q.    None of your prior testimony has  
7 addressed cases where a utility is seeking a finding  
8 of need for generation resources, correct?

9           A.    Well, in some of the cases they've been  
10 general rate cases and there are generation-related  
11 issues in the case.

12          Q.    But the issues in the cases have not been  
13 about forecasts for new generation or integrated  
14 resource planning, correct? You have not testified  
15 on those issues.

16          A.    Correct, I have not testified on those  
17 issues.

18               EXAMINER SEE: Mr. Bieber, I am going to  
19 need you to move the mic so that it's closer to your  
20 mouth or speak into it a little louder.

21               THE WITNESS: Move it over here. That  
22 better? Sorry about that.

23          Q.    Mr. Bieber, you have no specific  
24 expertise, training, or experience with utility --  
25 utility forecasting, correct?

1           A.    No.  I wouldn't say that's correct.  I  
2   used to work for a utility and I worked in  
3   transmission project development and as well as some  
4   other roles where that was an element of the job.

5           Q.    Have you prepared an integrated resource  
6   plan before?

7           A.    No, I have not.

8           Q.    Have you forecasted a utility's need for  
9   new generation before?

10          A.    No, I have not.

11          Q.    I think we may have just covered this,  
12   but if I am asking a question a second time, please  
13   forgive me.  You have -- you do not have any specific  
14   expertise, training, or experience with regulated  
15   utility resource planning.

16                MS. WHITFIELD:  Objection, asked and  
17   answered.

18                EXAMINER SEE:  Because there was some  
19   difficulty hearing earlier, I am going to ask the  
20   witness to answer that question, so.

21          A.    I do have experience with integrated  
22   resource planning not directly but indirectly through  
23   my role in transmission project development as well  
24   as generator interconnection and some of the policy  
25   work that I did.



1 Q. You have no prior expertise, training, or  
2 experience with long-term forecast reports in Ohio,  
3 correct?

4 A. Yes, that's correct.

5 Q. Or with the application of Revised Code  
6 4935.04?

7 A. That's correct, no prior experience with  
8 that.

9 Q. Or with the application of Ohio  
10 Administrative Code Chapter 4901:5?

11 A. Yes, that's correct.

12 Q. And you have no prior expertise,  
13 training, or experience with electric security plans  
14 in Ohio, correct?

15 A. No, that's not correct. I've provided  
16 support on cases to others within my firm.

17 Q. And which cases were those?

18 A. You know, I don't have the list in front  
19 of me, the numbers, the case numbers.

20 Q. Okay. Did any of the support that you  
21 provided in those cases relate to the application of  
22 Revised Code 4928.143(B)(2)(b) or (c)?

23 A. Can you repeat the code number?

24 Q. Sure. 4928.143(B)(2)(b) or (c)?

25 A. No. The work that I did previously was

1 not specific to that.

2 Q. Okay. And do you consider yourself an  
3 expert on PJM wholesale markets?

4 A. I have some experience.

5 Q. But -- okay. And I can appreciate that.  
6 Do you consider yourself an expert?

7 A. I wouldn't claim to be an expert in all  
8 aspects of it, no.

9 Q. Mr. Bieber, it is your position that  
10 there is no need for 900 megawatts of renewable  
11 generation proposed in this proceeding because demand  
12 for electricity in Ohio is already being adequately  
13 met with existing resources, correct?

14 A. That's correct, and I base that on the  
15 Company's Amended LTFR in this case, based on  
16 statement by the Company.

17 Q. And you state without a demonstration  
18 that renewable projects are necessary to meet demand,  
19 peak load, or reserves, the requisite need showing  
20 cannot be satisfied. That's on page 12 of your  
21 testimony, line 17 through 18, correct?

22 MS. WHITFIELD: Objection. Can I have  
23 that reread, that question reread? What page were  
24 you looking at, Christen?

25 MS. BLEND: Page 12, line 17 through 18,

1 beginning with the word "Yet."

2 A. I am sorry. Can you repeat the question,  
3 please?

4 Q. Sure.

5 Mr. Bieber, it's your opinion that  
6 without a determination that the renewable projects  
7 that are the subject of this proceeding are necessary  
8 to meet demand, peak load, or reserves, the requisite  
9 need showing cannot be satisfied? Correct?

10 A. That's what I said.

11 Q. On what do you base this opinion?

12 A. I based it on my understanding of the  
13 code, 4928.143. And specifically I think you've  
14 quoted the language in my testimony here, but it  
15 talks about -- give me one second -- no surcharge  
16 shall be authorized unless the Commission first  
17 determines in the proceeding that there is need for  
18 the facility based on resource planning projections  
19 submitted by the electric distribution utility.

20 I also reviewed previous Orders by the  
21 Commission in case -- Case No. 11-346-EL-SSO.

22 Q. And that's -- go ahead, sorry.

23 A. I am sorry. This is on --

24 MS. WHITFIELD: Go ahead and finish.

25 A. This is on page 13 of my testimony -- or

1 in my testimony as well, on page 13, starting on line  
2 18. I can read the relevant section.

3 Q. That's not necessary. Thank you.

4 A. Okay.

5 MS. WHITFIELD: Actually, I would like  
6 him to read that relevant section. Go ahead and read  
7 it.

8 EXAMINER SEE: Ms. Whitfield, when you  
9 get around to redirect and you want to direct the  
10 witness to do so, you can.

11 For now, go ahead with your cross,  
12 Ms. Blend.

13 MS. BLEND: Thank you, your Honor.

14 Q. (By Ms. Blend) Mr. Bieber, it's your  
15 testimony then that there could never be a resource  
16 planning need for additional generation resources  
17 such as those that are at issue in this case so long  
18 as there is sufficient capacity that's being offered  
19 in the PJM base residual auction to satisfy minimum  
20 reserve requirements, right?

21 A. No. I wouldn't say that specifically.

22 Q. Okay. Then can you clarify for me where  
23 I have gone too far with that question?

24 A. So I think that there's a number of ways  
25 that need could be established. I haven't come up

1 with a list of all the hypotheticals, but based on  
2 the Company's statements in this case and my  
3 understanding of the statute, but specifically that  
4 the Company acknowledges that the PJM wholesale  
5 markets are adequately supplying capacity and energy  
6 to the AEP Ohio load zone and that the Company is not  
7 proposing that it has a traditional integrated  
8 resource planning need for generation. That's what  
9 I've based my interpretation on.

10 Q. Okay. You just said you think there is a  
11 number of ways that a need could be established.  
12 What are those ways?

13 A. Like I said, I don't have a hypo -- a  
14 hypothetical list, but integrated resource planning  
15 is obviously a complex process and there are, you  
16 know, any number of factors that could create a need,  
17 I have not seen put forward in this case.

18 Q. Okay. If renewable generation resources  
19 provide savings and rate stability for customers,  
20 would you believe that that should -- could support a  
21 need?

22 A. I don't believe that supports a resource  
23 planning need in this case.

24 Q. Is it your position that resource  
25 planning need cannot encompass the economic impacts

1 of adding additional generation?

2 A. I think there are some circumstances  
3 where that may be the case, maybe in other areas,  
4 maybe here, so I wouldn't make a definitive statement  
5 about economics never playing a part.

6 Q. So if there were going to be beneficial  
7 economic impacts associated with a renewable project,  
8 you would agree that that would be an appropriate  
9 consideration that could be taken into account in  
10 looking at whether there is a resource need?

11 MS. WHITFIELD: Objection, your Honor.  
12 Mischaracterizes his testimony. He never said  
13 "beneficial" in his answer.

14 MS. BLEND: I was asking my next  
15 question, your Honor. I wasn't trying to restate his  
16 answer.

17 EXAMINER SEE: Okay.

18 A. So this is a hypothetical planning  
19 scenario? Can you repeat it, please?

20 Q. Yes.

21 Assume, hypothetically, there will be  
22 beneficial economic impacts associated with a  
23 renewable project. Do you agree that that would be  
24 an appropriate consideration that the Commission  
25 could take into account in looking to whether there

1 is a resource need for that project?

2 MR. HEALEY: Objection, your Honor.

3 Vague as to "beneficial economic impacts."

4 MS. BLEND: Your Honor, I don't think my  
5 question was vague. And I think the witness should  
6 be allowed to answer it.

7 EXAMINER SEE: And the objection is  
8 overruled. If the witness needs any clarification,  
9 he can certainly ask for it.

10 A. So I think that's something that could be  
11 considered. I wouldn't say it's something that, in  
12 and of itself, would make for a determination of  
13 need.

14 Q. Do you believe that the Commission should  
15 consider customer preferences in connection with  
16 resource planning?

17 A. You know, I think that depends on the  
18 scenario. I think in the case we're talking about  
19 here, where the need is being established for  
20 renewable resources that would be -- where the cost  
21 recovery would be accomplished through a  
22 nonbypassable rider, I think that you need to take  
23 into consideration customers' preferences in all  
24 respects, so that also includes shopping customers,  
25 to procure their generation from other sources.

1           Q.    Okay.  Two follow-up questions on that.  
2   Are you aware of any -- are you aware of any  
3   jurisdiction in which a utility that was filing a  
4   resource plan would not receive cost recovery for the  
5   resources approved in that plan?

6           MS. WHITFIELD:  Objection, your Honor.  
7   That's irrelevant to what other jurisdictions are  
8   doing.  We are here in Ohio.

9           MS. BLEND:  Well, your Honor, if I can  
10   respond.  The witness just said -- Mr. Bieber just  
11   said that -- he qualified his answer by saying where  
12   the need is being established for a renewable  
13   resource where the cost would be recovered through a  
14   nonbypassable rider.  So I'm simply asking whether he  
15   is aware of jurisdictions where facilities that a  
16   Commission deems to be necessary from an integrated  
17   resource planning perspective, the cost of those  
18   facilities are not recovered from customers.

19           MS. WHITFIELD:  And again --

20           EXAMINER SEE:  The witness can answer the  
21   question.

22           A.    Specifically I don't think that cost  
23   recovery is always guaranteed in various  
24   jurisdictions but I think, as a general rule,  
25   resources that are approved, not through just an



1 integrated resource planning process but also through  
2 various other proceedings and processes, those are  
3 required for cost recovery, but I am not aware of any  
4 jurisdiction where cost recovery would be disallowed.

5 Q. You also said, a couple of moments ago,  
6 that customer preference -- that you need to take  
7 into consideration customer preferences in all  
8 respects, so that also includes shopping customers,  
9 when you were talking about customer -- whether the  
10 Commission should consider customer preference in  
11 connection with resource planning. Do you recall  
12 that answer?

13 A. Yes. Yes, I do.

14 Q. Is it your understanding that shopping  
15 customers' input was not received in connection with  
16 the Navigant survey that the Company had conducted in  
17 this case?

18 A. You know, I'm not aware specifically  
19 which -- which customers provided which feedback.

20 Q. You have no basis to believe that  
21 customers, who are shopping for their generation  
22 service, were not invited to or participate in --  
23 invited to participate or actually did not  
24 participate in the survey though, correct?

25 A. No. I have no reason to believe that

1 shopping customers did not participate.

2 Q. Mr. Bieber, do you think that fuel  
3 diversity is a valid factor that the Commission can  
4 consider in connection with resource planning,  
5 whether there is a resource planning need?

6 A. Yes. I think that's a valid  
7 consideration.

8 Q. On pages 13 and 14 of your testimony,  
9 beginning on line 17 on page 13, and continuing to  
10 page 2 -- I'm sorry, to line 2 on page 14, you  
11 discuss a portion of the Commission's December 14,  
12 2011, Opinion and Order in Case 11-346-EL-SSO, et al.  
13 as you indicated previously, correct?

14 A. Correct.

15 Q. Mr. Bieber, you do not know how the Ohio  
16 market for renewable generation has changed since  
17 December 2011, correct?

18 A. When you say I don't know how it's  
19 changed, I'm aware of trends that have occurred in  
20 the renewable energy industry.

21 Q. In Ohio?

22 A. Not specific to Ohio as opposed to  
23 generally what's happened across the country.

24 Q. And you don't know whether -- would it be  
25 accurate that you do not know whether the Ohio market

1 for renewable generation has changed since December  
2 2011?

3 MS. WHITFIELD: Objection.  
4 Mischaracterizes his testimony. He indicated he was  
5 aware of trends that could affect Ohio.

6 MS. BLEND: I was asking a new question,  
7 and he specifically said that he was not aware  
8 that -- his knowledge was not specific to Ohio.

9 MS. WHITFIELD: But it's also not  
10 exclusive of Ohio.

11 EXAMINER SEE: The objection is  
12 overruled. The witness can answer the question.

13 A. So can you repeat that question, please?

14 Q. Sure. Is it accurate to say that you do  
15 not know whether the Ohio market for renewable  
16 generation has changed since December 2011?

17 A. My understanding is that the renewable  
18 energy market has changed nationwide since 2011. So  
19 if there is something specific about Ohio that you  
20 are asking about, can you clarify?

21 Q. I am asking you whether you know whether  
22 the Ohio, specifically Ohio market, has changed since  
23 December 2011.

24 MS. WHITFIELD: Objection, asked and  
25 answered. He just -- he just answered that question.

1 MS. BLEND: I don't think he did, your  
2 Honor.

3 A. Yes, the Ohio renewable energy market has  
4 changed.

5 Q. In what respects has it changed?

6 A. Well, it's changed in a number of  
7 respects. Specifically, across the country, prices  
8 have come down for renewable generation.

9 Q. On page 16 of your testimony, if you  
10 could turn there. Lines 5 through 8 on page 16, you  
11 discuss your opinion that customers are able to  
12 procure the renewable resources they desire to  
13 satisfy their energy needs through a CRES provider.  
14 Do you see that?

15 A. Yes, I do.

16 Q. Do you know what renewable products CRES  
17 providers are offering in Ohio?

18 A. I'm generally aware of some of the  
19 projects. I mean, I'm sorry, I am generally aware of  
20 some of the offerings.

21 Q. Do you know the term and length of months  
22 or years for specific renewable products that CRES  
23 providers are providing in Ohio?

24 A. I mean, I've referred to the Apples to  
25 Apples comparison of various offerings, yes.

1 Q. Okay.

2 A. I don't have them all memorized.

3 Q. That's understandable. There are several  
4 of them. You are not contending that customers --  
5 you're not contending, though, customers can obtain a  
6 20-year fixed rate for a renewable product from a  
7 CRES provider, correct?

8 A. Are you asking if that's one of the  
9 current offerings? Are you suggesting that's one of  
10 the current offerings?

11 MS. WHITFIELD: Objection. I think the  
12 question is vague. I am not sure if she's asking  
13 about the Apples to Apples, if she could clarify.

14 EXAMINER SEE: And I think the witness  
15 was requesting some clarification of the question.

16 Q. Sure. We can start with current  
17 offerings. Is it -- you would agree there is not a  
18 current CRES offering for a 20-year fixed rate for a  
19 renewable product in Ohio, correct?

20 MS. BOJKO: Objection. Your Honor, I  
21 don't understand her question. Is she asking about  
22 the Apples to Apples or general CRES offerings  
23 because they are two separate issues.

24 MS. BLEND: And, your Honor, he can -- I  
25 think my question is pretty clear, whether there is a

1 CRES offering, whether he knows of one from the  
2 Apples to Apples or otherwise.

3 A. I am not aware of a 20-year CRES  
4 offering.

5 EXAMINER SEE: And, Mr. Bieber, there was  
6 an objection outstanding.

7 THE WITNESS: Sorry. I didn't follow  
8 that.

9 MS. BOJKO: Your Honor, I think Ms. Blend  
10 clarified her question enough that I'll withdraw my  
11 objection.

12 EXAMINER SEE: Thank you.

13 MS. BLEND: For purposes of clarity of  
14 the record which is now very messy, I am going to  
15 just ask a couple of follow-up questions.

16 MS. WHITFIELD: Well, I would just -- I  
17 think he was in the middle of starting to answer your  
18 question, one, and then he had to stop because of the  
19 pending objection which has now been withdrawn.

20 MS. BLEND: And I will just start over  
21 with my question and I will make things cleaner.

22 MS. WHITFIELD: Thank you.

23 Q. (By Ms. Blend) Mr. Bieber, in your view  
24 of the Apples to Apples website, did you see a  
25 20-year fixed -- any 20-year fixed-rate CRES offers

1 for renewable products?

2 A. No, I am not aware of a 20-year offer for  
3 one of the current CRES projects -- or CRES  
4 offerings. I'm sorry.

5 Q. And outside of Apples -- the Apples to  
6 Apples website, are you -- let me say this  
7 differently.

8 Other than looking at the Apples to  
9 Apples website, are you aware of what products CRES  
10 providers are offering to customers in Ohio?

11 A. My familiarity is generally along the  
12 lines of what's on the Apples to Apples comparisons.

13 Q. Okay. So you are not aware of any other  
14 20-year fixed-price renewable products that are being  
15 offered.

16 A. I am not currently aware of one, but I'm  
17 not aware of any reasons why there couldn't be one or  
18 why that certain customers couldn't enter into  
19 various bilateral agreements with renewable  
20 developers.

21 Q. Would you expect that a residential  
22 customer would be able to enter into a 20-year  
23 bilateral agreement with a CRES provider for a  
24 renewable product?

25 MR. HEALEY: Objection. That calls for

1 speculation as to whether any of the million  
2 customers of -- customers of AEP Ohio could or could  
3 not enter into a contract.

4 MS. BLEND: Your Honor, Mr. Bieber just  
5 responded, in response to my last question, he is not  
6 aware of any reasons why certain customers couldn't  
7 enter into bilateral agreements. I am simply trying  
8 to make sure that the record is clear and that I  
9 understand which customers he is talking about in  
10 that answer.

11 THE WITNESS: To clarify what I said --

12 MS. WHITFIELD: Wait.

13 THE WITNESS: Sorry.

14 EXAMINER SEE: You can answer the  
15 question. Go ahead. Objection overruled.

16 A. To clarify what I said, I didn't see a  
17 reason why a CRES provider couldn't offer a  
18 longer-term offering and also said that some  
19 customers could enter into bilateral agreements. I  
20 don't think that it's an option that's for every  
21 customer.

22 Q. Which customers would you expect not to  
23 have that option?

24 A. Customers with less financial resources.

25 Q. Lower-income customers, for example?



1           A.     Specifically for a bilateral contract  
2 with a renewable developer, yes.

3           Q.     Residential customers, for example?

4           A.     I wouldn't expect a residential customer,  
5 most residential customers to enter into a bilateral  
6 contract. We're talking about a, you know, large  
7 20-year contract for a very large renewable resource.

8           Q.     Would you expect that most residential  
9 customers could enter into a bilateral contract for  
10 any size renewable resource with a 20-year term?

11          A.     I mean, I guess it's possible.

12          Q.     Okay. Mr. Bieber, you don't know whether  
13 all customers in Ohio are able to procure renewable  
14 energy resources from a CRES provider, correct?

15          A.     My understanding is that low-income  
16 customers are not able to -- to procure from a CRES  
17 provider.

18          Q.     Would you agree that not all customers  
19 may want to shop in order to obtain renewable  
20 resources?

21                 MS. WHITFIELD: Objection. That calls  
22 for speculation as to customers' wants.

23                 MR. HEALEY: I join that objection as  
24 well, your Honor. This witness can't possibly  
25 credibly testify on what most customers want.

1 MS. BLEND: I didn't ask about most  
2 customers. I asked not all customers. And I asked  
3 about some customers. And, your Honor, Mr. Bieber is  
4 providing testimony regarding customers' options;  
5 what customers can and cannot procure in terms of  
6 renewable resources. He also elsewhere testifies  
7 regarding the Navigant customer preference surveys.  
8 So I think it's a fair question. And I can rephrase  
9 it to take out the double negative if that --

10 EXAMINER SEE: Rephrase then, Ms. Blend.

11 Q. (By Ms. Blend) Mr. Bieber, would you  
12 agree that some customers may not want to shop in  
13 order to obtain renewable resources?

14 A. Yeah. I would agree it's possible.

15 Q. And, Mr. Bieber, on page 15 of your  
16 testimony, you offer your assessment of the Navigant  
17 survey conducted for AEP Ohio, correct?

18 A. Yes, that's correct.

19 Q. You do not have any specialized training  
20 or expertise with respect to customer surveys, do  
21 you?

22 A. I'm familiar with customer surveys but I  
23 wouldn't claim to be an expert.

24 Q. And you are not presenting any competing  
25 survey of customer preferences as part of your

1 testimony, correct?

2 A. That's correct.

3 Q. And on page 17 of your testimony, you  
4 criticize the economic benefits of the Company's  
5 proposals in this case as supported by the Company  
6 Witnesses Allen, Torpey, and Bletzacker, correct?

7 MS. BOJKO: I'm sorry. Which page are  
8 you on?

9 MS. BLEND: 17.

10 A. So when you say "criticize," I think  
11 that, you know, I point out what I believe to be some  
12 shortcomings in their analysis.

13 Q. Fair enough.

14 You have not presented any competing  
15 economic analysis regarding the Company's proposal,  
16 correct?

17 A. So I guess I'm not quite sure how to  
18 answer that because part of my testimony was  
19 stricken. But I did provide some analysis where I  
20 leveraged the analysis that was done by the Company  
21 and pointed out that the debt equivalency costs that  
22 have been proposed in Phase II were not included  
23 which would obviously have a big impact on the  
24 economics. I also talked about some  
25 intergenerational equity -- inequities that would be

1 experienced by customers. And I also talked about  
2 the uncertainty in the forecasts and that if you look  
3 at the various forecasts provided by the Company,  
4 that not all of them result in net economic benefits  
5 to customers.

6 MS. WHITFIELD: Your Honor, just for  
7 clarification, I think Mr. Bieber referred to his  
8 testimony as stricken, but for purposes of the record  
9 it's deferred.

10 THE WITNESS: I'm sorry.

11 EXAMINER SEE: Thank you for that  
12 clarification. Thank you, Ms. Whitfield.

13 Q. (By Ms. Blend) So recognizing you may  
14 have testimony that may be part of a future hearing  
15 regarding the Company's specific project proposals,  
16 I'm tabling that for now and just talking about the  
17 Company's generic integrated resource plan analysis;  
18 are you with me?

19 A. I'm with you so far.

20 Q. Okay. You're not presenting a competing  
21 generic economic analysis that responds to Company  
22 Witness Torpey's IRP, correct?

23 MS. WHITFIELD: I am actually going to  
24 object to that. His Exhibits 2 -- 1 and 2  
25 specifically respond to Mr. Torpey's IRP economic

1 analysis and showed the flaws in that. So she's  
2 opening the door to this testimony that I moved to  
3 reconsider. So if we are going to go down this path,  
4 he needs to be able to answer these questions.

5 MS. BLEND: Your Honor, Exhibits JDB-1  
6 and -2, as you've previously found twice now, and as  
7 his testimony acknowledges, responded to Company  
8 witness Torpey's project-specific analysis which is  
9 not the subject of this phase of the hearing.

10 MS. WHITFIELD: But it is, in fact --  
11 it's his analysis.

12 EXAMINER SEE: Just a minute.

13 MS. BLEND: I will just point out --

14 EXAMINER SEE: Just a minute. Just a  
15 minute.

16 Go ahead with your response, Ms. Blend.

17 MS. WHITFIELD: Could we have that  
18 question read back?

19 EXAMINER SEE: Sure.

20 (Record read.)

21 THE WITNESS: So the --

22 EXAMINER SEE: Just a minute.

23 THE WITNESS: Oh, sorry.

24 EXAMINER SEE: Ms. Blend, you were going  
25 to respond?

1 MS. BLEND: Yes, your Honor. I was going  
2 to point out that I used the words -- specifically  
3 used the words "generic" and "IRP" in my question.  
4 And I'll also point out that Exhibits JDB-1 and -2  
5 are designated confidential because they contain  
6 information specific to the projects that are the  
7 subject of Phase II. And they do not respond to the  
8 generic analysis -- generic nonconfidential analysis  
9 that Mr. Torpey has provided.

10 MS. WHITFIELD: I disagree with that,  
11 your Honor. They respond to Mr. Torpey's IRP  
12 analysis. They are marked confidential because of  
13 some discovery responses and data that the Company  
14 deemed confidential. But for her to imply that he  
15 has not done his own analysis is incorrect as to  
16 Mr. Torpey because he took Mr. Torpey's analysis and  
17 showed the flaws and the things that were not  
18 included. So if you did a complete -- economic  
19 analysis, Mr. Torpey's results are flawed and  
20 incorrect.

21 I would just indicate that if she is  
22 going to pursue this line of questioning, I would  
23 renew my motion for reconsideration that he be  
24 allowed to testify and his testimony be put in and  
25 his exhibits be put in.

1 MS. BLEND: I will withdraw the question  
2 and move on, your Honor.

3 EXAMINER SEE: Sure.

4 Q. (By Ms. Blend) Mr. Bieber, you are not  
5 presenting a forecast of future market prices,  
6 correct?

7 A. That's correct.

8 Q. Mr. Bieber, Kroger is your client in this  
9 proceeding, correct?

10 A. Yes, it is.

11 Q. In connection with your work in this  
12 proceeding, you have worked with Kroger's energy  
13 group, correct?

14 A. Yes, that's correct.

15 Q. And Denis George is the leader of the  
16 Kroger energy group?

17 A. That's my understanding, yes.

18 Q. Has Mr. George been involved with -- in  
19 the development of Kroger's position in these  
20 proceedings?

21 A. No, he has not.

22 Q. Has Kroger's energy group been involved  
23 in the development of Kroger's positions in these  
24 proceedings?

25 A. Maybe let me ask a clarifying question.

1 When you say "involved," what do you mean? He -- we  
2 have a long-standing -- my firm has a long-standing  
3 relationship with Kroger and also with my -- with  
4 Angie here and so we were asked if we could engage in  
5 this, and I performed an independent analysis which  
6 is what I've presented in my testimony based on my  
7 expert opinions.

8 Q. Thank you for that. Are you aware that  
9 Mr. George is among the applicants for Commissioner  
10 to the PUCO -- of the PUCO --

11 MS. WHITFIELD: Objection.

12 MR. HEALEY: Objection.

13 MS. BLEND: May I finish my question?

14 EXAMINER SEE: Yes. Finish your  
15 question.

16 Q. Mr. Bieber, are you aware Mr. George is  
17 among the applicants for Commissioner of the PUCO  
18 that the PUCO Nominating Council has selected to  
19 interview for that position on January 31, 2019?

20 MS. WHITFIELD: Now objection.

21 MS. BOJKO: Objection.

22 MR. HEALEY: Objection.

23 MS. WHITFIELD: I'll raise my objection.  
24 It's irrelevant. He has already just testified  
25 Mr. George had no involvement in his independent



1 analysis. He did not frame his testimony or the  
2 position being taken here by Mr. Bieber on behalf of  
3 Kroger, and we would move that this line of  
4 questioning is irrelevant and potentially  
5 prejudicial. Thank you.

6 EXAMINER SEE: Ms. Bojko.

7 MS. BOJKO: I would concur, and also I  
8 believe Mr. Bieber said that Mr. George did not take  
9 part in drafting the testimony or reviewing the  
10 testimony, so I think that it's irrelevant and  
11 inappropriate and prejudicial.

12 EXAMINER SEE: Mr. Healey.

13 MR. HEALEY: I join in the same  
14 objections, your Honor. There is absolutely no  
15 relevance here.

16 MS. BLEND: If I could respond briefly,  
17 your Honor? Mr. Bieber just testified that his firm  
18 works with Mr. George and is regularly engaged by  
19 Kroger and has been engaged by Kroger in this  
20 proceeding. I simply asked whether he was aware  
21 Mr. George is on the short list of PUCO Commissioner  
22 applicants being interviewed next week.

23 MR. WHITT: Your Honor, if I may --

24 MS. BLEND: On the list of applicants  
25 being interviewed this week.

1 MR. WHITT: Do we need to then bring  
2 Mr. Conway in on cross, who is a sitting member of  
3 the Commission with a long relationship with AEP?

4 EXAMINER SEE: Thank you, Mr. Whitt.  
5 That's enough.

6 MS. WHITFIELD: Can I respond to that  
7 quickly just because --

8 EXAMINER SEE: Respond to what?  
9 Mr. Whitt or --

10 MS. WHITFIELD: No, to what Ms. Blend  
11 said, that she mischaracterized what he said.

12 EXAMINER SEE: Okay. Thank you,  
13 Ms. Whitfield.

14 MS. WHITFIELD: Okay.

15 MS. BLEND: I'll withdraw the question,  
16 your Honor.

17 EXAMINER SEE: Thank you.

18 MS. BLEND: And I have no further  
19 questions. Thank you, Mr. Bieber.

20 EXAMINER SEE: Thank you.

21 Redirect for this witness?

22 MS. WHITFIELD: Yes. Could you just give  
23 us a couple minutes?

24 EXAMINER SEE: Certainly.

25 MS. BOJKO: Your Honor, may we take a

1 5-minute restroom break?

2 MS. WHITFIELD: We'll confer at the same  
3 time.

4 EXAMINER SEE: We are off the record.  
5 (Recess taken.)

6 EXAMINER SEE: Let's go back on the  
7 record.

8 Ms. Whitfield.

9 MS. WHITFIELD: Thank you, your Honor.

10 - - -

11 REDIRECT EXAMINATION

12 By Ms. Whitfield:

13 Q. Mr. Bieber, just to clarify the record,  
14 did you do your own analysis responding to  
15 Mr. Torpey's economic analysis?

16 A. Yes, I did. And I think a lot of the  
17 issues in that analysis are applicable both to the  
18 specific analysis that he did as well as the generic  
19 analysis of renewable resources.

20 Q. And then you were asked various questions  
21 about residential customers and whether or not they  
22 could obtain renewable generation and different  
23 questions like that. Are you aware that residential  
24 customers can enter into bilateral contracts to  
25 install rooftop solar?

1 A. Yes, I'm aware that's an option.

2 Q. Okay. And then are you also aware that  
3 commercial customers can enter into 20-year REPAs for  
4 renewable on-site generation?

5 A. Yes.

6 Q. And, again, you were asked a lot of  
7 questions about residential customers. Who are you  
8 here again testifying on behalf of?

9 A. The Kroger Company.

10 Q. Now, you said you did your own analysis.  
11 What was the conclusion of your analysis?

12 A. The conclusion of my analysis was that  
13 the economic benefits and costs were uncertain and  
14 that also certain elements, in particular debt  
15 equivalency costs, were not included.

16 MS. WHITFIELD: Thank you. That's all I  
17 have, your Honor.

18 EXAMINER SEE: Mr. Whitt, any questions?

19 MR. WHITT: No questions.

20 EXAMINER SEE: Mr. Darr?

21 MR. DARR: No questions.

22 EXAMINER SEE: Mr. Collier?

23 MR. COLLIER: No questions.

24 EXAMINER SEE: Ms. Bojko?

25 MS. BOJKO: No questions, your Honor.

1 EXAMINER SEE: Mr. Healey?

2 MR. HEALEY: No questions. Thank you.

3 EXAMINER SEE: Mr. Allwein? I'm sorry,  
4 yes. Okay.

5 MR. ALLWEIN: No. You are correct.

6 EXAMINER SEE: Mr. Dove?

7 MR. DOVE: No questions, your Honor.

8 EXAMINER SEE: Ms. Leppla?

9 MS. LEPPLA: No questions.

10 EXAMINER SEE: Ms. Cohn?

11 MS. COHN: No questions, your Honor.

12 EXAMINER SEE: Mr. McNamee?

13 MR. McNAMEE: No questions, your Honor.

14 EXAMINER SEE: Ms. Blend?

15 MS. BLEND: No questions, your Honor.

16 Thank you.

17 EXAMINER SEE: Kroger has already moved  
18 for the admission of Kroger Exhibit 4 and Kroger  
19 Exhibit 4A. Are there any objections to the  
20 admission of those exhibits?

21 MS. BLEND: No objection, your Honor,  
22 with the understanding that admission of both  
23 exhibits is subject to your January 14, 2019, Entry,  
24 and your rulings today.

25 EXAMINER SEE: And that is the case.

1 With that --

2 MS. WHITFIELD: I would like to make a  
3 proffer, if I could, your Honor.

4 EXAMINER SEE: Okay.

5 MS. WHITFIELD: I would like to proffer  
6 the complete testimony of Mr. Bieber as it was filed  
7 on January 2, 2019, both the public and the  
8 confidential versions, marked as Exhibits 4 and 4A.  
9 Kroger seeks to preserve its right under Ohio Rules  
10 of Evidence 103 and Rule 4901-1-15(F) of the Ohio  
11 Administrative Code to raise the propriety of your  
12 Honors' January 14 ruling as well as today's rulings  
13 deferring portions of Mr. Bieber's testimony to the  
14 Phase II proceeding of this consolidated action.

15 EXAMINER SEE: So noted, Ms. Whitfield,  
16 and Kroger Exhibit 4 and 4A are admitted into the  
17 record.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MS. WHITFIELD: Thank you, your Honor.

20 EXAMINER SEE: Thank you, Mr. Bieber.

21 THE WITNESS: Thanks.

22 EXAMINER PARROT: Mr. Healey.

23 MR. HEALEY: Thank you, your Honor. The  
24 Ohio Consumers' Counsel calls Dr. Noah Dormady. And  
25 may I approach, your Honor, with the next OCC exhibit

1 as well?

2 EXAMINER PARROT: You may. Let's give  
3 him a minute to get settled first. Go ahead,  
4 Dr. Dormady.

5 (Witness sworn.)

6 EXAMINER PARROT: Please have a seat.

7 MR. HEALEY: Your Honor, I have marked as  
8 OCC Exhibit 24, the direct testimony of Noah Dormady  
9 on behalf of the Ohio Consumers' Counsel, filed  
10 January 2, 2019.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 - - -

13 NOAH DORMADY, PH.D.

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

16 DIRECT EXAMINATION

17 By Mr. Healey:

18 Q. Dr. Dormady, do you have in front of you  
19 now what has been marked OCC Exhibit 24?

20 A. Yes, I do.

21 Q. And what is OCC Exhibit 24?

22 A. That's my written direct testimony.

23 Q. And did you cause this written direct  
24 testimony to be filed in this case on January 2?

25 A. That's correct.

1           Q.    Do you have any edits or changes to this  
2 testimony?

3           A.    I do not.

4           Q.    And if I were to ask you the questions  
5 found in this testimony today, would all of your  
6 answers be the same?

7           A.    They would.

8           MR. HEALEY:  Thank you, your Honor.  With  
9 that, OCC moves for the admission of OCC Exhibit 24,  
10 subject to cross-examination.  Thank you.

11          EXAMINER PARROT:  Mr. Whitt?

12          MR. DOVE:  Your Honor, would now be a  
13 good time to entertain motions to strike or exclude?

14          EXAMINER PARROT:  Go ahead, Mr. Dove.

15          MR. DOVE:  I would like to make a motion  
16 to exclude Exhibit OCC Exhibit 24, Dr. Dormady's  
17 direct testimony.  He is testifying in a capacity as  
18 an employee of Consumers' Counsel which -- while  
19 seeking a position as a Commissioner at the PUCO.  He  
20 has been granted an interview and, under the Ohio  
21 Ethics Commission, this is a conflict of interest.

22                 Outside of the conflict, it is also  
23 prejudicial, if he were to be appointed as a  
24 Commissioner, to all the other parties because we  
25 would have a Commissioner with direct testimony on



1 the record in an active case which would amount to an  
2 advisory opinion.

3 So pursuant to the rules under the Ohio  
4 Ethics Commission, I would move that his testimony be  
5 excluded for reasons of prejudice and conflict of  
6 interest.

7 MR. HEALEY: Your Honor, may I respond  
8 please? First, I would like to clarify. Mr. Dove  
9 identified Dr. Dormady as an employee of the Ohio  
10 Consumers' Counsel which he is not. He is an  
11 employee of the Ohio State University and is  
12 representing the Ohio Consumers' Counsel in this  
13 case. He is an independent contractor and not a  
14 employee.

15 Second, if I may, Mr. Dove referenced the  
16 Ohio Ethics Commission. Could he clarify what  
17 specific rule or Ethics Commission provision he is  
18 referring to?

19 MR. DOVE: Yes. I apologize. I wasn't  
20 intending to make this motion since he hadn't been  
21 announced as an interviewee, so I didn't print them  
22 off. I am happy to send you e-mails with my  
23 citations.

24 The specific statute that's violated here  
25 would be Revised Code 102.03(D) and (E). And as far

1 as the characterization of his employment, the Ohio  
2 Ethics Commission has held that the contractual  
3 nature of the employment does not govern whether or  
4 not he is an employee for purposes of this statute.  
5 It's whether or not he executes the sovereignty of  
6 the state. That is determined by looking at what the  
7 agency he is testifying on behalf is appointed to do  
8 and, in this case, it is represent residential  
9 utility customers at the Public Utilities Commission.  
10 He is doing that in his capacity as an expert witness  
11 and, therefore, is an employee. The contractual  
12 nature of his engagement with OCC is irrelevant.

13 MS. BOJKO: Your Honor, may I have that  
14 statutory reference listed again?

15 MR. DOVE: Sure. Ohio Revised Code  
16 102.03(D) and (E) and I have several ethics' opinions  
17 that I'm happy to e-mail out if you would like.

18 MR. HEALEY: May I respond in substance  
19 now, your Honor?

20 EXAMINER PARROT: Yes.

21 MR. HEALEY: Thank you. Mr. Dove has  
22 identified no known objection that would preclude  
23 Dr. Dormady from testifying in this case. Contrary  
24 to his claims, there is no statute, rule of evidence,  
25 law, or other PUCO or court precedent for his motion.

1 As everyone in this room knows, our colleagues  
2 routinely proceed through their careers and represent  
3 different interests. This includes past and present  
4 Commissioners, some of whom have previously been  
5 advocates in this forum. The PUCO should be careful  
6 not to set a precedent, suggesting anyone who  
7 advocates on behalf of a party in a PUCO proceeding  
8 is then considered incapable of acting fairly and  
9 objectively should that person later work for the  
10 Commission Staff or be appointed to the Commission.

11 Based on OCC's thorough search of case  
12 law, the only situation in which a court has found an  
13 expert witness disqualified for conflict of interest  
14 is if the expert previously had privileged  
15 communications with the opposing party with respect  
16 to that very case. That is not the case here.

17 Further, in an abundance of caution, OCC,  
18 in fact, contacted the Ohio Ethics Commission along  
19 with Dr. Dormady. They provided information and  
20 guidance to OCC and Dr. Dormady, and based on this  
21 information and guidance, there is no basis to  
22 conclude that Dr. Dormady has any conflict of  
23 interest here.

24 Obviously, if he is ultimately appointed  
25 to the Commission, we would expect that he would

1     recuse himself from deciding this case, but to  
2     suggest that the other four Commissioners would then  
3     be incapable of providing a fair and balanced  
4     decision in this case simply because Dr. Dormady has  
5     subsequently been appointed to the Commission goes  
6     too far.

7             I personally believe that all the  
8     Commissioners could in that situation and would, in  
9     fact, decide this case on the merits and without  
10    bias.

11            In conclusion, Dr. Dormady's pending  
12    application to be a Commissioner does not impact the  
13    weight of his expert judgment and there is no basis  
14    to conclude that his testimony in any way is impacted  
15    by his pending application, nor is there any basis to  
16    conclude that other Commissioners would be biased in  
17    their evaluation of the evidence.

18            MR. DOVE:   If I may respond.

19            MR. HEALEY:   I apologize.   If I may go  
20    one step further, the reference to RC 102.03(D) and  
21    (E) referred to public officials and employees and  
22    there is a specific exception for teachers and  
23    professors who are not considered public officials or  
24    employees unless they have administrative duties at  
25    the university beyond their normal teaching and

1 research duties which Mr. Dormady does not and,  
2 therefore, those statutes do not apply to him.

3 MS. BOJKO: Your Honor, before Mr. Dove  
4 responds, I think you might want me to respond. I  
5 support OCC's comments and add that I concur that I  
6 believe Mr. Dove has misinterpreted, misrepresented  
7 Revised Code 102.03(D) and (E) and who that applies  
8 to and in what cases and what representative capacity  
9 applies.

10 MR. DOVE: Your Honor, I appreciate that,  
11 as a public employee -- or as a professor, he is  
12 exempt from the statute. I am not claiming that he  
13 is an employee by virtue of his employment at OSU.  
14 As I indicated, I am claiming he is an employee by  
15 virtue of his testimony today as a -- an expert  
16 witness before OCC.

17 Like I said, I can provide these sheets.  
18 This is straight out of the Ohio Ethics Commission.  
19 I am quoting what they are -- what public employees  
20 are allowed to do when it comes to seeking  
21 employment.

22 This would be considered an improper  
23 source because he is testifying actively in a  
24 proceeding before the Commission while soliciting  
25 employment from the Commission. That is a conflict.

1           The fact that our colleagues have gone on  
2 to the Commission after they're done is irrelevant.  
3 There are statutory provisions that require certain  
4 waiting periods. It's not about what you've done  
5 before. It's what you are actively doing. The  
6 conflict under the ethics rules starts the moment you  
7 solicit employment. So he is actively participating  
8 in a case while he is soliciting employment and, in  
9 fact, up for an interview next week.

10           MR. ALLWEIN: Your Honors, if I may, good  
11 afternoon. I support Robert's motion here.

12 Professor Dormady used his testimony in this case as  
13 a bullet point as to why he should get the job as a  
14 Commissioner and that -- I think that demonstrates  
15 what Robert is saying about, you know, he is active  
16 in this case while he is actively seeking employment.

17           And I would also like to say that OCC may  
18 have called the Ohio Ethics Commission, but I would  
19 certainly like to see an express opinion from them  
20 regarding what was said to them, how it was  
21 presented, and, you know, what the response was.  
22 Trust but verify.

23           EXAMINER PARROT: All right. With this,  
24 we are going to take a recess.

25           Off the record.

1 (Recess taken.)

2 EXAMINER PARROT: Let's go back on the  
3 record.

4 Thank you, everyone, for your patience.  
5 At this time we are going to ask any of the  
6 interested parties, any party in this room that is  
7 interested on this -- in this question, we are going  
8 to ask that memoranda be filed no later than this  
9 Monday on this issue.

10 And with that, Dr. Dormady, we are going  
11 to ask that you stand down for now and, following  
12 review of the memoranda, we will decide how to  
13 proceed from that point.

14 MR. HEALEY: Just to be clear --

15 EXAMINER SEE: Close of business.

16 EXAMINER PARROT: Close of business  
17 Monday.

18 MR. HEALEY: Just to be clear, it will be  
19 only one round of memoranda for everyone and then a  
20 decision will be made?

21 EXAMINER PARROT: That's correct.

22 MR. HEALEY: Thank you, your Honor.

23 EXAMINER SEE: Mr. McNamee.

24 MR. McNAMEE: Yes, your Honor. Well, let  
25 me see if he's here.

1 EXAMINER SEE: He's right here.

2 MR. McNAMEE: Here he is. Yes, your  
3 Honor, at this time, the Staff would call Timothy  
4 Benedict.

5 (Witness sworn.)

6 EXAMINER SEE: Thank you. Have a seat  
7 and cut on your microphone.

8 - - -

9 TIMOTHY W. BENEDICT  
10 being first duly sworn, as prescribed by law, was  
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Mr. McNamee:

14 Q. Mr. Benedict, could you state and spell  
15 your full name for the record, please.

16 A. Timothy Benedict, last name spelled  
17 B-e-n-e-d-i-c-t.

18 Q. By whom are you employed and in what  
19 capacity?

20 A. I'm a Utility Specialist 3 with the Ohio  
21 Public Utilities Commission.

22 Q. What is your business address?

23 A. 180 East Broad Street, Columbus, Ohio  
24 43215.

25 Q. Thank you.



1 MR. McNAMEE: Your Honor, I would ask to  
2 have marked at this time, Staff Exhibit 2, a  
3 multipage document filed in this case on January 8,  
4 2018, denominated prefiled testimony Timothy W.  
5 Benedict, Office of the Federal Energy Advocate.

6 EXAMINER SEE: Mr. McNamee, sorry to  
7 interrupt you. When was the testimony filed again,  
8 please?

9 MR. McNAMEE: Oh, whoops. It has the  
10 wrong year on it, doesn't it? January 8, 2019.  
11 Sorry about that. I had not noticed that.

12 EXAMINER SEE: Okay.

13 MR. McNAMEE: Is it so marked, your  
14 Honor?

15 EXAMINER SEE: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. McNAMEE: Thank you.

18 Q. (By Mr. McNamee) Mr. Benedict, do you  
19 have before you what's been marked for identification  
20 as Staff Exhibit 2?

21 A. I do.

22 Q. What is that?

23 A. That's my prefiled testimony in this  
24 proceeding.

25 Q. Was it prepared by you or under your

1 direction?

2 A. Yes, it was.

3 Q. Do you have any corrections to make to  
4 that document?

5 A. Just the one that's already been  
6 identified on the cover page.

7 Q. All right. Are the contents of that  
8 document true to the best of your knowledge and  
9 belief?

10 A. Yes.

11 Q. Okay. If I were to ask you the questions  
12 that are contained in what's been marked for  
13 identification as Staff Exhibit 2, again here this  
14 evening, would your answers be the same as they  
15 appear therein?

16 A. They would.

17 MR. McNAMEE: Good. With that, your  
18 Honor, the witness is available for cross.

19 EXAMINER SEE: Okay. Mr. Whitt?

20 MR. WHITT: No questions.

21 EXAMINER SEE: Mr. Darr?

22 MR. DARR: No questions.

23 EXAMINER SEE: Mr. Collier?

24 MR. COLLIER: No questions, your Honor.

25 EXAMINER SEE: Ms. Whitfield?

1 MS. WHITFIELD: No questions, your Honor.

2 EXAMINER SEE: Ms. Bojko?

3 MS. BOJKO: I do, your Honor. Thank you.  
4 Briefly.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Bojko:

8 Q. Clarification question, Mr. -- good  
9 evening, Mr. Benedict.

10 A. Good evening, Ms. Bojko.

11 Q. Could you please turn to page 5 of your  
12 testimony.

13 A. I'm there.

14 Q. Sir, on lines 4 and 5, you stated that  
15 "We have found that Ohio Power's forecast  
16 trajectories are reasonable and their methodologies  
17 to be adequate." Do you see that?

18 A. I do.

19 Q. In this statement you are referring to  
20 the load forecasts of Ohio Power; is that correct?

21 A. Yes, for the purposes of analyzing the  
22 forecast trajectories, we are looking at forms FE-D1  
23 and FE-D3 from AEP's Long-Term Forecast Report filed  
24 on April 16, 2018.

25 Q. And just to be clear, in your testimony

1 you are not opining on the reasonableness of  
2 Mr. Bletzacker's fundamental pricing forecasts?

3 A. That's correct.

4 MS. BOJKO: Thank you. That's all I  
5 have, your Honor.

6 EXAMINER SEE: Mr. Healey?

7 MR. HEALEY: Nothing, your Honor. Thank  
8 you.

9 EXAMINER SEE: Mr. Dove?

10 MR. DOVE: No questions, your Honor.  
11 Thank you.

12 EXAMINER SEE: Mr. Allwein?

13 MR. ALLWEIN: No questions, your Honor.  
14 Thank you.

15 EXAMINER SEE: Ms. Leppla?

16 MS. LEPPLA: Yes, your Honor, I have some  
17 questions.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Leppla:

21 Q. Good evening, Mr. Benedict. My name is  
22 Miranda Leppla, and I am with the Ohio Environmental  
23 Counsel. I just have some questions for you. Do you  
24 have a copy of your testimony filed in this matter?

25 A. I do.

1 Q. Okay. If you can turn to page 2, line  
2 18.

3 A. Yes, I'm there.

4 Q. And in this -- at this part of your  
5 testimony you cite to Ohio Revised Code  
6 4928.143(B)(2)(c), and you have read that part of the  
7 statute, I take it?

8 A. Yes, I have.

9 Q. And the term "need" is not defined in the  
10 statute, correct?

11 A. The only clarification provided in that  
12 specific statute is need based on resource planning  
13 projections provided by the utility.

14 Q. Okay. And the term "resource planning  
15 projections" is not defined in that statute either,  
16 correct?

17 A. I think there is further clarity provided  
18 in Ohio Revised Code Chapter 4935 which is the  
19 forecasting statute.

20 Q. Okay. 4928 does contain explicit  
21 definitions for a lot of other terms, is that  
22 accurate, if you've read it?

23 A. I don't know that to be true.

24 Q. Okay. And if the General Assembly had  
25 wanted to define "need" in a specific way, it could

1 have done so in that statute, correct?

2 MR. DARR: Objection.

3 MR. McNAMEE: Objection.

4 MR. DARR: As far as speculation on the  
5 part of the witness.

6 MS. LEPPLA: Your Honor --

7 MR. McNAMEE: Ditto.

8 MS. LEPPLA: Your Honor, if I may, he  
9 testifies what need means on the basis of Staff's  
10 position, so I am just trying to investigate that a  
11 bit.

12 MR. DARR: In response to that, your  
13 Honor, she is asking about what Staff's opinion is.  
14 She is asking what the legislature has deemed to be  
15 the appropriate definition and that's a far cry from  
16 her explanation of her question.

17 MS. LEPPLA: That's not actually what I  
18 asked, your Honor. I asked if they wanted to define  
19 it in a specific way, they could have.

20 MR. WHITT: And did.

21 MS. LEPPLA: I would just move to strike  
22 Mr. Darr's last comment, your Honor.

23 MR. DARR: I didn't --

24 EXAMINER SEE: Okay.

25 MS. LEPPLA: I'm sorry, Frank.

1 EXAMINER SEE: Rephrase your question,  
2 Ms. Leppla.

3 MS. LEPPLA: Sure, your Honor.

4 Q. (By Ms. Leppla) You just testified in  
5 response to my question that the term "need" is not  
6 specifically defined in this statute, and I am asking  
7 the question as if the General Assembly, who creates  
8 our statutes, had wanted to define "need"  
9 specifically in this statute, they could have done  
10 so, correct?

11 MR. DARR: Same objection, your Honor.

12 MR. HEALEY: I would object also.

13 MR. McNAMEE: I object.

14 MR. HEALEY: Sorry. She is asking for a  
15 question of statutory interpretation which is  
16 necessarily a legal issue. That's what lawyers do.

17 MS. LEPPLA: Again, your Honor, I am not  
18 asking for a definition. I am asking him if the  
19 General Assembly is able to define a term that they  
20 have not defined, that he just testified about.

21 MR. HEALEY: That's the definition of  
22 statutory construction, your Honor.

23 EXAMINER SEE: Mr. McNamee.

24 MR. McNAMEE: I'm afraid Mr. Healey keeps  
25 taking words out of my mouth. He is much quicker

1     than I.

2                   MS. WILLIS: Younger.

3                   MR. McNAMEE: Most people are.

4                   EXAMINER SEE: Okay. The objection is  
5     sustained.

6                   Next question, Ms. Leppla.

7                   MS. LEPPLA: Yes, your Honor.

8                 Q.     (By Ms. Leppla) If you can turn to page  
9     3, line 6.

10                A.     I'm there.

11                Q.     And you reference the first step on that  
12     line in this process that Staff took. An idea of  
13     these steps as a process is not part of the language  
14     of the statute, correct?

15                A.     That's my understanding, yes.

16                Q.     And the process you discuss in this  
17     paragraph on page 3 could be a reasonable  
18     interpretation of the statute, correct?

19                A.     It's what we believe to be the proper  
20     interpretation of the statute.

21                Q.     And there could be other reasonable  
22     interpretations as well, would you agree?

23                A.     This statute could be interpreted in  
24     various ways, yes.

25                Q.     And I just want to talk a little bit with



1 you about public interest. The Commission is able to  
2 consider the public interest in the cases it decides,  
3 correct?

4 MR. McNAMEE: Objection.

5 EXAMINER SEE: Basis?

6 MR. McNAMEE: I believe it's again asking  
7 for a legal opinion from this witness. You know,  
8 what is the Commission allowed to consider. Well,  
9 allowed under statute, that's a legal opinion, I  
10 believe.

11 MS. LEPPLA: And, your Honor, Staff is  
12 interpreting that as part of this witness's  
13 testimony, so I am just trying to understand the  
14 basis for their interpretation here. And their  
15 decision-making. I am not asking him for a legal  
16 interpretation, to be clear.

17 EXAMINER SEE: With that understanding,  
18 Ms. Benedict -- Mr. Benedict, so sorry, you can  
19 answer the question.

20 A. I'm sorry, could you repeat?

21 Q. Sure, sure. My question was, is the  
22 Commission able to consider the public interest in  
23 deciding cases?

24 A. I believe the Commission would consider  
25 the public interest in any case it decided.

1           Q.    And one aspect of public interest that  
2   the Commission could choose to consider would be  
3   economic development?

4           A.    They could, although I would note that  
5   Ohio has an independent agency that considers  
6   economic development on its own.

7           Q.    Okay.  And actually, the Commission has  
8   used economic development as a factor in its  
9   decision-making in cases past, correct?  If you know.

10          A.    Not in any cases I'm aware of.

11          Q.    Okay.  And it would be reasonable for the  
12   Commission to be more concerned about the economy of  
13   Ohio than other states, correct?

14               MR. DARR:  Your Honor, objection.  The  
15   question is so broadly worded, it's -- it's nearly  
16   impossible to answer in a coherent manner that would  
17   be meaningful to the record in this case.

18               MS. LEPPLA:  I would disagree, your  
19   Honor.  All of the words have meaning.  I am asking  
20   if it's more reasonable for the Commission to be  
21   concerned about -- the Public Utilities Commission of  
22   Ohio to be more concerned about Ohio's economy than  
23   the economy of other states.

24               MR. DARR:  In what context?

25               MR. HEALEY:  I would object as well, your

1 Honor.

2 MS. BOJKO: I'm sorry. Can I have that  
3 question read, your Honor?

4 EXAMINER SEE: Sure.

5 (Record read.)

6 MR. HEALEY: I object to that question,  
7 your Honor.

8 MR. McNAMEE: I object as well.

9 MS. BOJKO: I object too, your Honor. I  
10 think that it goes beyond the scope or statutory job  
11 description of the PUCO.

12 MR. KURTZ: I cannot imagine a more clear  
13 question. That seems --

14 MS. BOJKO: Clear?

15 MR. KURTZ: -- pretty obvious and clear.

16 MR. HEALEY: Your Honor, my objection is  
17 it calls for speculation in that this witness  
18 testifies on behalf of the PUCO Staff, not on behalf  
19 of the PUCO. If the attorneys want to ask him what  
20 the Staff's opinion is, that would be within the  
21 context of his testimony as opposed to asking him  
22 what the Commission should or should not do or would  
23 or would not think.

24 EXAMINER SEE: And I agree wholeheartedly  
25 with Mr. Healey. The objection is sustained.

1 MS. LEPPLA: As to asking about the  
2 Commission's perspective, your Honor, or? I'm a  
3 little unclear.

4 EXAMINER SEE: Yes.

5 MS. LEPPLA: Okay.

6 Q. (By Ms. Leppla) Mr. Benedict, another  
7 aspect of the public interest that Staff could  
8 consider would be generation resource diversity,  
9 correct?

10 MR. DARR: Objection. Again, the context  
11 is important, your Honor, and if she is going to ask  
12 questions that are without context at this particular  
13 proceeding, we're going to be here a really long time  
14 because it's not relevant.

15 MS. LEPPLA: Your Honor, this is directly  
16 with respect to AEP's attempt to prove need and just  
17 because, again, like we've had -- we've had this  
18 objection repeatedly throughout this case where  
19 because opposing intervenors don't like the  
20 interpretation presented by AEP and supported by  
21 other parties in this matter, they are not willing to  
22 entertain questions like this, and I believe this is  
23 a wholly appropriate question and line of questioning  
24 for a Staff witness who is, you know, opining on  
25 whether or not this project should move forward and

1 opining on AEP's case of need.

2 MR. NOURSE: Your Honor, I agree with  
3 Ms. Leppla. She did ask the Staff's view and, you  
4 know, this witness's testimony, at least in part, has  
5 a -- sets out a narrow view that would not include  
6 such factors, so I think it's an appropriate  
7 question. I had similar questions.

8 MR. McNAMEE: Your Honors, I believe this  
9 is already addressed in the witness's testimony.

10 MS. LEPPLA: And that is exactly what I  
11 am attempting to ask about. I'm sorry, Tom.

12 MR. McNAMEE: Perhaps if the question  
13 were directed to his testimony, the witness would be  
14 able to respond in a more-focused fashion.

15 EXAMINER SEE: Try that, Ms. Leppla.

16 Q. (By Ms. Leppla) Mr. Benedict, in your  
17 testimony, you discuss the process by which Staff  
18 came to its conclusions. My questions are related to  
19 how you came to those conclusions. And you've  
20 already testified previously in response to a  
21 question that the public interest is one of the  
22 potential factors Staff could consider, and so my  
23 question is whether Staff could consider, as part of  
24 your analysis, generation resource diversity?

25 A. So as you are probably aware, Ohio is

1 part of a regional transmission organization, PJM.  
2 PJM's comprised of 14 different jurisdictions, and  
3 resource diversity is probably best addressed from a  
4 regional level.

5 Q. Okay. And another aspect of the public  
6 interest that Staff could choose to consider is the  
7 environmental impact of its analysis, correct?

8 MR. DARR: Objection again, your Honor.

9 MR. McNAMEE: Objection.

10 MR. DARR: Same problem. Let me make my  
11 objection, please. Again, in the interest of  
12 protecting the record here, these questions are not  
13 relevant to the determination of need.

14 MS. LEPPLA: Your Honor, respectfully  
15 that is in Mr. Darr's and his client's opinion. AEP  
16 has presented its case for need. These are cases --  
17 questions that go directly to the heart of the case  
18 they've presented, and I am inquiring as to Staff's  
19 position and whether or not they could address these  
20 types of public interest questions in their analysis.  
21 And Mr. Benedict did mention, in response or say in  
22 response to my question earlier, the public interest  
23 was one of the things they could consider.

24 MR. McNAMEE: Your Honor, it would appear  
25 to me these matters are addressed in the witness's

1 testimony on page 4 and there is really no purpose to  
2 these questions. They've already been answered by  
3 the witness in his testimony.

4 MR. NOURSE: Well, I would weigh in, too,  
5 your Honor, that yeah, that's exactly right, and  
6 that's why Mr. Darr and others are wrong when they  
7 say they are irrelevant. He's mentioned these same  
8 factors in his testimony. He is putting them in Step  
9 II instead of Step I, and so it's entirely wrong to  
10 say it's beyond the scope of his testimony.

11 MS. LEPPLA: Yes.

12 EXAMINER SEE: Okay.

13 MS. LEPPLA: That same piece, your Honor,  
14 it's page 4, lines 7 through 10, he actually uses the  
15 words "environmental attributes, dispatchability,  
16 portfolio fuel diversity, siting considerations, and  
17 economic impact analyses."

18 MR. DARR: To complete the thought, your  
19 Honor, the point of all this is there's a segregation  
20 in the Code and in the Orders governing this  
21 particular proceeding as to what constitutes the  
22 topics in this proceeding. If we start wandering  
23 into this again, we've again ignored both the  
24 statutory construction and, unfortunately, this  
25 problem has been created by AEP's attempt to, we

1 believe, redefine what constitutes need. That's a  
2 statutory question. That's a question that defines  
3 relevancy.

4 EXAMINER SEE: But at this phase -- are  
5 you finished, Mr. Darr?

6 MR. DARR: Yes, ma'am.

7 EXAMINER SEE: Thank you.

8 MR. NOURSE: Is that a motion to strike  
9 page 4 of Mr. Benedict's testimony, your Honor?

10 MR. DARR: No, because he --

11 EXAMINER SEE: Just a minute. We are not  
12 at that point. Ms. Leppla is cross-examining this  
13 witness.

14 MS. LEPPLA: Thank you, your Honor.

15 EXAMINER SEE: The objection is  
16 overruled.

17 Q. (By Ms. Leppla) Mr. Benedict, as you  
18 state --

19 MS. LEPPLA: So, I'm sorry. I don't  
20 remember if my last question was answered. I  
21 apologize.

22 EXAMINER SEE: Nor do I. So restate it  
23 and let's keep it moving.

24 MS. LEPPLA: Sure.

25 Q. (By Ms. Leppla) Mr. Benedict, referencing



1 page 4 of your testimony, another aspect of the  
2 public interest that the Staff could consider is  
3 generation resource diversity, correct?

4 MR. DARR: Objection, same grounds.

5 EXAMINER SEE: Noted.

6 You can answer the question,  
7 Mr. Benedict.

8 MS. LEPPLA: Actually, your Honor, I  
9 believe he did answer that question. Am I mistaken?  
10 He can answer it again. That's fine.

11 EXAMINER SEE: Go ahead and answer the  
12 question.

13 THE WITNESS: Thank you.

14 A. So had Staff found that there was a need,  
15 these various purported benefits would be considered  
16 in determining what resource was best suited to meet  
17 that need. And I would also point you to page 11 of  
18 my testimony, actually the very last answer, "the  
19 purported benefits associated with the...projects do  
20 not relate to need as Staff defines the term."

21 Q. Okay. And, Mr. Benedict, another aspect  
22 of the public interest that Staff could have  
23 considered would be the environmental impact as you  
24 just stated, correct?

25 MR. DARR: Objection, same grounds.

1 EXAMINER SEE: Noted. Overruled.

2 Answer the question, Mr. Benedict.

3 A. Again, had Staff found a need and was  
4 evaluating resources that were best suited to meet  
5 that need, certainly the environmental attributes of  
6 those resources would be considered.

7 Q. Mr. Benedict, you'd just agree with me in  
8 general, people want clean air and clean water,  
9 correct?

10 MR. MCNAMEE: Objection. Wild  
11 speculation. People want all sorts of things.  
12 There's 6 billion people, I think, on earth.

13 MS. LEPPLA: I am asking Mr. Benedict's  
14 opinion, your Honor.

15 MR. HEALEY: Your Honor, Mr. Benedict is  
16 not an expert on people's knowledge and opinions  
17 about clean air. If it's an opinion she is seeking,  
18 it has to be within the scope of his expert  
19 testimony.

20 MS. LEPPLA: He has acknowledged  
21 environmental impacts, your Honor, and I am asking  
22 about those.

23 EXAMINER SEE: Sustained.

24 Q. (By Ms. Leppla) Mr. Benedict, another  
25 aspect of the public interest that the Staff could

1 have considered would be the impact on climate of the  
2 types of generation, correct?

3 MR. DARR: Objection, same grounds.

4 MS. LEPPLA: Do you want a standing  
5 objection, Mr. Darr?

6 MR. DARR: No, ma'am, because a standing  
7 objection won't be recognized by the court, so,  
8 unfortunately, we have to go through this process.

9 EXAMINER SEE: So noted.

10 MR. DARR: Thank you, your Honor.

11 EXAMINER SEE: Answer the question,  
12 Mr. Benedict.

13 A. So had Staff found there was a need and  
14 the Commission had agreed, various intervening  
15 parties could make recommendations as to what  
16 resources are best suited to meet that need and why.  
17 I can't say for sure that Staff would consider  
18 climate specifically as one of those considerations.

19 Q. Okay. Mr. Benedict, if you could turn to  
20 page 7 of your testimony and look at line 3. And on  
21 line 3, your testimony says "PJM is responsible for  
22 ensuring resource adequacy across its footprint,..."  
23 Do you see that line?

24 A. Yes, I'm there.

25 Q. Okay. So PJM has the primary

1 responsibility for resource adequacy in their  
2 footprint, correct?

3 A. Yes.

4 Q. Okay. And would you agree with me that  
5 the Ohio Commission has a role also to play in  
6 resource adequacy as well?

7 A. As it relates to the distribution  
8 utilities that are directly regulated by this  
9 Commission, yes.

10 Q. And you would agree with me the  
11 Commission also has a role to play in influencing the  
12 type of resources that serve Ohio customers?

13 A. I believe the types of resources that  
14 serve customers in Ohio is determined in a  
15 competitive marketplace.

16 Q. And the Commission oversees that  
17 competitive marketplace here in Ohio, correct?

18 A. The Commission implements the statute,  
19 yes.

20 Q. And today, in Ohio, there is either no or  
21 very little utility-scale solar depending on how we  
22 define the term, correct?

23 A. I haven't evaluated that.

24 Q. Okay. Would adding utility-scale solar  
25 increase the diversity of generation resources here

1 in Ohio? Do you know?

2 MR. DARR: Objection, your Honor, same  
3 ground.

4 EXAMINER SEE: Noted.

5 You can answer the question,  
6 Mr. Benedict.

7 A. Again, resource diversity is best  
8 evaluated at the regional level given that Ohio is in  
9 a regional transmission organization.

10 Q. And, Mr. Benedict, if you know, is it  
11 fair to say PJM energy prices tend to be highest on  
12 summer afternoons?

13 MR. DARR: Objection. I am not even sure  
14 how that relates to the testimony provided;  
15 relevance.

16 MS. LEPPLA: Your Honor, we are talking  
17 about PJM and we're talking about resource diversity  
18 and how they run the market. I am just asking  
19 Mr. Benedict's opinion as a Staff witness on this  
20 matter.

21 EXAMINER SEE: And the witness can answer  
22 to the extent that he knows.

23 A. The question was PJM's prices are highest  
24 in summer afternoons; is that correct? I'm sorry.

25 Q. Yes, that's correct.

1           A.    So PJM generally peaks, meaning it has  
2   its highest loads that it experiences during the year  
3   during hot summer afternoons. High prices can be a  
4   phenomenon that occurs at any time during PJM. I  
5   would point you to the polar vortex of a number years  
6   back. High prices can also be a function of  
7   congestion within PJM's system, so I wouldn't  
8   necessarily agree with that characterization.

9           Q.    But you did say demand peaks on the  
10  hottest sunny afternoons, correct?

11          A.    That's correct. PJM generally peaks on a  
12  weekday, in the summer, between 1400 and 1700.

13          Q.    If you will flip to page 8 of your  
14  testimony, the chart regarding capacity prices. And  
15  auction results.

16          A.    Yes, I'm there.

17          Q.    Okay. And you would agree that capacity  
18  prices in PJM have been volatile since the inception  
19  of the capacity market.

20          A.    I think that's fair.

21          Q.    And PJM's capacity market is currently in  
22  a state of uncertainty about what rules are going to  
23  apply moving forward, correct?

24          A.    There are capacity market reforms that  
25  are currently pending before the FERC.

1           Q.    So generation developers may have  
2   difficulty relying on capacity revenues to finance  
3   generation projects, right?

4           MR. DARR:  Objection.

5           MR. McNAMEE:  Objection.

6           EXAMINER SEE:  Mr. McNamee, did you --

7           MR. McNAMEE:  Your Honor, she is asking  
8   the witness to speculate about what developers may  
9   think or do, and he's not in a position to do that,  
10   not being a developer.

11          MS. LEPPLA:  Your Honor, he is being  
12   provided as the Utility Specialist for Staff.  I am  
13   just inquiring about his knowledge of PJM capacity  
14   markets, and I think it's a fair question, and if he  
15   can't answer it, then he can tell us that.

16          EXAMINER SEE:  The objection is  
17   sustained.

18          Q.    (By Ms. Leppla) Mr. Benedict, if you  
19   could turn to page 9 of your testimony.

20          A.    I'm there.

21          Q.    If you can take a look at page 14 -- I'm  
22   sorry, line 14, sorry, where it states that "Staff  
23   recognizes that customers increasingly have  
24   preferences about the resources from which their  
25   electricity is sourced,..."  Do you see that line?

1           A.    Yes, I do.

2           Q.    To be specific, AEP's -- AEP Ohio's  
3 customers generally favor renewable energy over other  
4 resources, correct?

5           A.    Customers have various preferences.  I  
6 wouldn't agree with that characterization.

7           Q.    Okay.  What specifically are you  
8 referring to when you talk about preferences?  That  
9 you are aware of.

10          A.    Right.  So customer preferences could  
11 take on any, you know, any form.  I would think the  
12 vast majority of customers within PJ -- or, excuse  
13 me, within AEP Ohio's service territory would have  
14 the preference that their price be as low as  
15 possible.  There would also be customers who would  
16 have other preferences that are not necessarily  
17 compatible with that preference such as renewable,  
18 locally-sourced, what have you, and Staff supports  
19 the right of customers to seek products that meet  
20 their legitimately-held preferences.

21          Q.    If you can flip to page 10 of your  
22 testimony, line 6.

23          A.    I'm there.

24          Q.    And you note here that there are about  
25 1,500 customers on net metering tariffs in Ohio Power



1 territory, right?

2 A. Yes; according to data that I pulled from  
3 the U.S. EIA.

4 Q. So not all of AEP's customers can afford  
5 to install solar on their homes, correct?

6 A. That's correct. And I think that there's  
7 a lot of resources that wouldn't necessarily be an  
8 appropriate solution for everybody.

9 Q. And I would ask, the majority of  
10 customers can't afford their own installation at  
11 today's prices; is that the impediment, to your  
12 knowledge?

13 MR. McNAMEE: Objection. I don't know  
14 how this witness -- witness could possibly know what  
15 the majority of people could afford or not afford.

16 MS. LEPPLA: And, your Honor, he just  
17 answered my prior question that that was accurate  
18 that not all of them can do it. I am asking for his  
19 opinion.

20 EXAMINER SEE: And the witness can answer  
21 the question.

22 THE WITNESS: I'm sorry. I forgot the  
23 pending question.

24 MS. LEPPLA: Can you reread my question?  
25 I apologize.

1 (Record read.)

2 A. I don't know.

3 Q. And for renters installing solar panels  
4 on their apartments, it is generally not permitted in  
5 Ohio?

6 MR. McNAMEE: Objection. I don't know  
7 that this witness is being offered as an expert in  
8 building codes.

9 MS. LEPPLA: Your Honor, he testified  
10 about net metering tariffs. I am asking specifically  
11 about whether AEP Ohio customers are able to take  
12 advantage of those metering tariffs. If he doesn't  
13 know the answer, he can tell me that.

14 MR. McNAMEE: She asked if they were  
15 permitted to do this and that would be, I assume, a  
16 legal requirement, a building code matter, or zoning  
17 code matter perhaps.

18 MS. LEPPLA: It is part of the net  
19 metering rules which is why I am asking about it.

20 EXAMINER SEE: Try it again, Ms. Leppla.

21 MS. LEPPLA: Sure, your Honor.

22 Q. (By Ms. Leppla) For renters in Ohio,  
23 Mr. Benedict, installing solar panels on their  
24 apartments is generally not permitted, correct?

25 A. I generally think it wouldn't be a good

1 idea to install a solar installation on a premises  
2 you don't own.

3 Q. Fair enough. And to your knowledge,  
4 Mr. Benedict, is community solar legal in Ohio?

5 MR. McNAMEE: Could I have the question  
6 reread, please?

7 MS. LEPPLA: I can repeat.

8 Q. (By Ms. Leppla) To your knowledge, is  
9 community solar legal in Ohio?

10 MS. BOJKO: Objection.

11 MR. McNAMEE: Objection.

12 MR. HEALEY: Objection.

13 MR. McNAMEE: Clearly asking for a legal  
14 opinion, what's legally permitted.

15 MS. LEPPLA: I can ask it a different  
16 way, your Honor.

17 EXAMINER SEE: Okay.

18 Q. (By Ms. Leppla) In your understanding, as  
19 a specialist who opined in your testimony about net  
20 metering, do you know if it's permitted to do  
21 community solar in Ohio?

22 A. I don't know of any specific reason why  
23 it wouldn't be allowed.

24 Q. Okay. If you can look at line 11 on page  
25 10. Yeah. I'm sorry. As of November -- the

1 sentence that starts "As of November 8, 2018."

2 A. I'm there.

3 Q. And you refer to the ability of  
4 residential customers to procure their energy  
5 products that have renewable attributes through the  
6 Apples to Apples, Public Utilities Commission  
7 website, correct?

8 A. That's correct.

9 Q. And as you note in your testimony, some  
10 CRES offerings advertise themselves as 100-percent  
11 renewables?

12 A. That's right.

13 MS. LEPPLA: Your Honor, may I approach?

14 EXAMINER SEE: Yes.

15 Q. And, Mr. Benedict, I've handed you a  
16 packet of six documents. And just before we refer to  
17 the documents, most, if not all, of the CRES  
18 offerings rely on RECs to support their renewable  
19 attributes claim, correct?

20 A. Yes, that's my understanding.

21 EXAMINER SEE: Were you intending to mark  
22 this, Ms. Leppla?

23 MS. LEPPLA: I will. I'm sorry. I just  
24 want to get it handed out and then I'll mark it.

25 Q. And the RECs relied on by CRES providers

1 are often national RECs; is that correct?

2 A. I don't know.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. So referring to the packet of documents I  
5 handed to you, the first document in that packet we  
6 can mark as OEC Exhibit 1. And you are familiar with  
7 the PUCO's Apples to Apples site that allows  
8 consumers to compare prices as we discussed, correct?

9 A. Yes, I am.

10 Q. And if you can take a look at that OEC  
11 Exhibit 1, and take a look at that document. Do you  
12 recognize this document? Or have you seen this  
13 document?

14 A. Just to be clear, document 1 is the  
15 FirstEnergy Solutions?

16 Q. Yes, I am sorry. Yeah, the document is  
17 FirstEnergy Solutions, residential terms and  
18 conditions, at the top of the page.

19 A. And the pending question is do I  
20 recognize this document?

21 Q. Let me rephrase.

22 Does this appear to be a residential  
23 terms and conditions printout from an Apples to  
24 Apples site for FirstEnergy Solutions' CRES offering?

25 A. Yes, this appears to be the terms and

1 conditions page of a CRES provider offering.

2 Q. Okay. And the products they are offering  
3 on this document is the "Fixed Price - AllGreen,"  
4 correct?

5 MR. HEALEY: Objection. The fact that  
6 he's identified this as being a document from Apples  
7 to Apples does not mean there is any foundation. He  
8 has not testified he has specifically seen this  
9 document or knows anything about it.

10 MS. LEPLA: Your Honor -- sorry, Chris.  
11 Your Honor, he's testified about Apples to Apples in  
12 his testimony. He has talked about CRES provider  
13 offerings, and I am trying to understand and identify  
14 whether there are CRES provider offerings that  
15 actually allow Ohio consumers to get 100-percent  
16 renewable energy in the State of Ohio.

17 MR. NOURSE: I agree, your Honor. In  
18 this witness's testimony, he makes claims that --  
19 what the Apples to Apples website consistently  
20 demonstrates and specifically with regard to  
21 renewable energy offerings of CRES providers.

22 MR. HEALEY: May I respond, your Honor?

23 EXAMINER SEE: Go ahead, Mr. Healey.

24 MR. HEALEY: Thank you, your Honor.

25 Again, nothing that they said in response has

1 anything to do with foundation. If they want to try  
2 to rebut his positions through documents, they can do  
3 that through their own witnesses. They do not get to  
4 do it by putting documents in front of a witness who  
5 has never seen them and then ask him questions about  
6 them. That's the whole point of the foundation  
7 requirement for evidence.

8 MS. LEPPLA: Your Honor, if I may respond  
9 to that briefly. Again, this is the Staff witness  
10 that's been put on here that has said he is familiar  
11 with Apples to Apples. And these are the terms and  
12 conditions that goes along with those Apples to  
13 Apples comparisons about 100-percent renewable energy  
14 offerings for individuals in the State of Ohio.

15 MR. McNAMEE: Your Honor, what we haven't  
16 established with this is that this witness knows that  
17 that is, in fact, what this document is.

18 MS. LEPPLA: Your Honor, I did --

19 MR. McNAMEE: Perhaps he does. I don't  
20 know.

21 MS. LEPPLA: Your Honor --

22 EXAMINER SEE: Start with some  
23 foundational questions, Ms. Leppla.

24 MS. LEPPLA: Yes, your Honor. If I may  
25 just -- I thought I did establish he understood what

1 this document was when I asked if it was the  
2 FirstEnergy Solution residential terms and  
3 conditions, and he said it did appear to be something  
4 that was off of the Apples to Apples site related to  
5 a CRES offering. But I thought I did, so I apologize  
6 if I did not.

7 MR. McNAMEE: Yeah, I guess the problem  
8 is this isn't what he referred to.

9 MR. NOURSE: You're right. Your Honor,  
10 this is called impeachment, and he is making claims  
11 about what the Apples to Apples website is  
12 demonstrating. So information on the same website,  
13 to undermine what he is saying, is perfectly  
14 appropriate for cross-examination.

15 MS. LEPPLA: And I agree with Mr. Nourse.

16 MR. NOURSE: I would just add --

17 EXAMINER SEE: Hold on. No.

18 Okay. Go ahead. The objection is  
19 overruled. Go ahead and ask the question.

20 MR. NOURSE: Oh, I'm sorry. I was just  
21 going to add that these -- a link to these are  
22 required to be on the Apples to Apples website under  
23 the Commission's rules. So if you are looking at  
24 that, then this is part of that, and that's required  
25 under Commission rules.



1                   EXAMINER SEE: As I just said, the  
2                   objection is overruled. Ask -- was there a question  
3                   pending?

4                   MS. LEPPLA: I believe the last question  
5                   I had ask whether -- just if the witness could  
6                   confirm for me that the product being offered,  
7                   according to this document, is a "Fixed Price -  
8                   AllGreen product."

9                   EXAMINER SEE: You can answer that  
10                  question, Mr. Benedict.

11                 A. That is the product description on the  
12                 first line, yes.

13                 Q. And if you can turn to page 3 of that  
14                 document, Mr. Benedict. If you go to that first  
15                 paragraph below the chart, line 3 says "Your REC  
16                 purchase supports renewable electricity production in  
17                 the region of generation." Do you see that?

18                 A. I do.

19                 Q. Okay. And that's -- that does not  
20                 specifically say it supports renewable generation in  
21                 Ohio, correct? It just says in the region?

22                 A. That's correct.

23                 Q. Okay. If you could turn to the second  
24                 document in that packet which I'll ask to be marked  
25                 Exhibit 2, OEC Exhibit 2.

1 EXAMINER SEE: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 A. And just to be clear, I am looking at the  
4 document with the black box in the upper left?

5 Q. Correct.

6 A. Okay.

7 Q. It says "Residential Terms & Conditions  
8 ('Agreement')." Mr. Benedict, does this appear to be  
9 the residential terms and conditions for an AEP  
10 Energy CRES provider option? And I point you to the  
11 box that says "contract renewal."

12 A. Yes, it does.

13 Q. Okay. And the terms for this offering  
14 are 12 months for 100-percent wind-generated  
15 renewable energy certificates and generation service  
16 which you -- under the "Generation Service Charges"  
17 box?

18 A. That's right.

19 Q. And if you would flip to page 5 of this  
20 document. And on that second paragraph -- second  
21 column, I'm sorry, that starts with 17, is it correct  
22 that the ECO-Advantage product being offered here is  
23 a 100-percent nationally wind-generated REC product?

24 A. That's what it states.

25 Q. And if you can flip two more pages,

1 you'll see a gray box on this page. It's entitled  
2 "Green-e Energy Certified New Renewables in  
3 ECO-Advantage." And the generation location  
4 indicates that this is RECs sourced from Texas, Iowa,  
5 Illinois, and Pennsylvania, correct?

6 A. Including but not limited to, yes.

7 Q. Okay. If you'll turn to the third  
8 document in your packet.

9 MS. BOJKO: I'm sorry. Are you marking  
10 each of these documents separately?

11 MS. LEPPLA: Yes. It is OEC Exhibit 3.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Benedict, does this appear to be a  
14 Life Energy, residential and small commercial, Ohio  
15 contract for generation?

16 A. It appears to be.

17 Q. If you'll turn to page 4 on this -- in  
18 this -- on OEC Exhibit 3 and look down to the page --  
19 or the paragraph that starts with "Renewable Power."  
20 And that indicates that this plan purchases and  
21 retires renewable energy certificates to offset  
22 100 percent of your energy usage -- electricity  
23 usage, correct?

24 A. I'm sorry. I am not sure exactly where  
25 you are at.

1           Q.    I'm sorry.  It's the last page of OEC  
2 Exhibit 3.

3           A.    Oh, the last page.

4           Q.    Yeah, I'm sorry, and there's a paragraph  
5 that starts with "Renewable Power."

6           A.    Okay.  I see.

7           Q.    And this just indicates that they will  
8 purchase and retire RECs to offset 100 percent of  
9 your electricity usage if you chose this option from  
10 Apples to Apples, correct?

11          A.    That's correct.

12          Q.    And it doesn't indicate where those are  
13 coming from, correct?  Those RECs.

14          A.    Not in this specific section.  I haven't  
15 reviewed the entire contract though.

16          Q.    Okay.  And those RECs could be coming  
17 from anywhere, nationally or regionally, correct?

18               MR. DARR:  Objection.

19               MR. HEALEY:  Objection.  Now we are  
20 asking the witness to speculate as to a contract he  
21 has never seen before today; so, therefore, it calls  
22 for speculation, also irrelevant, but.

23               MS. LEPPLA:  Your Honor, he did testify,  
24 earlier, you could purchase RECs to meet your  
25 requirements from anywhere, nationally, regionally.

1 and we were talking about PJM and other places to get  
2 RECs. I am just asking his opinion.

3 MS. BOJKO: Your Honor, I have an  
4 additional objection. I understand there is a  
5 pending objection that he has not seen these  
6 contracts, but even though Mr. Nourse alluded to the  
7 fact that these are contracts that should be able to  
8 be used to impeach him, I don't think we have a  
9 foundation that these contracts are related to the  
10 Apples to Apples chart or where these are found or  
11 the date of these contracts or the existence of these  
12 contracts, so I either missed that step or I don't  
13 think that it's been established for each of these  
14 contracts.

15 MS. LEPPLA: Your Honor --

16 MS. BOJKO: Do we know the effectiveness  
17 of these contracts.

18 MS. LEPPLA: Your Honor, these were  
19 downloaded from Apples to Apples this week.

20 MR. HEALEY: Your Honor, there is no  
21 evidence of that in the record. That's Counsel's  
22 statement and she is not a witness to testify to  
23 that. That's why, when using these documents, you  
24 need a witness to say, "I personally pulled this from  
25 the website this week," and then it becomes evidence.

1 Counsel's statements to that effect are not evidence  
2 which is the reason for my foundation objection to  
3 avoid this precise issue.

4 MS. LEPPLA: And, your Honor --

5 MR. NOURSE: Your Honor, we have hundreds  
6 of pages in this record already, if not thousands,  
7 from other websites that counsel has represented and  
8 they are indicated as to what they are. Again, these  
9 are -- these are documents that are required, under  
10 the Commission's rules, to be attached to the Apples  
11 to Apples website, which this witness is addressing  
12 and making claims about it in his testimony.  
13 There's -- they are entirely consistent with the  
14 types of records that have been used during  
15 cross-examination throughout this proceeding.

16 MS. BOJKO: But, your Honor, there is no  
17 attachment. That's the problem. We don't know that  
18 link. We don't know that these came from the Apples  
19 to Apples that are required to be put on the Apples  
20 to Apples chart as Mr. Nourse just testified to. We  
21 don't know that.

22 And there is no link that shows that  
23 these are, in fact, the ones that are on the Apples  
24 to Apples currently. And as you look through the  
25 Apples to Apples, we don't know if these are the

1 exact contracts with that link. That's what we are  
2 missing is that foundational link.

3 And I would also add that many of us have  
4 objected to many of the document dumps, so I don't  
5 think that should be the standard. I think we need  
6 to make sure that we have a foundation and a link  
7 that these are, in fact, the contracts that are  
8 associated with the Apples to Apples that are  
9 required to be put on Apples to Apples and are  
10 effective.

11 MS. LEPPLA: Well, your Honor, if I may  
12 just briefly respond. As Mr. Nourse said, I agree  
13 with everything he already said, but the witness has  
14 testified he is familiar with the Apples to Apples  
15 website and he is familiar with CRES offerings and he  
16 testified to that as part of his testimony, and I am  
17 trying to get an understanding and it is impeachment,  
18 Mr. Nourse is correct, and if the Commission wants to  
19 take administrative notice of the Apples to Apples  
20 website, they can do so, and these are the documents  
21 that were pulled directly from there.

22 EXAMINER SEE: The objections are  
23 overruled. There is a question outstanding and  
24 Mr. Benedict can take some time if he needs  
25 additional time to look at the contract before him.

1 Do you need to have the question reread?

2 THE WITNESS: Yes, your Honor, please.

3 (Record read.)

4 A. I don't know where the RECs are coming  
5 from.

6 Q. Okay. Okay. Mr. Benedict, if you would  
7 turn to the next document in that packet that has a  
8 lighthouse on it and says Liberty Power at the top.

9 MS. LEPPLA: I would like to mark this as  
10 OEC Exhibit 4.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Do you have that document in front of  
13 you?

14 A. I do.

15 MS. WHITFIELD: Your Honor, I have an  
16 objection to this document because it appears to be a  
17 combination of two documents. If you look at page 1,  
18 it says page 1 of 3 and then the other -- the rest of  
19 them say page 2 of 4, 3 of 4, and 4 of 4, and I would  
20 note that on the Apples to Apples chart that's been  
21 admitted into evidence, IEU Exhibit 4, of the 36  
22 records, three of them relate to Liberty Power, so we  
23 have no way of knowing which of those offers this  
24 combined contract would go to.

25 MS. LEPPLA: That's fair, your Honor. I



1 didn't realize it had different numbers, so I am  
2 happy to move on from it.

3 EXAMINER SEE: Okay.

4 Q. (By Ms. Leppla) Mr. Benedict, the next  
5 document in your packet that says "Clearview Energy"  
6 at the top.

7 A. Yes, I see it.

8 Q. Do you have it?

9 MS. LEPPLA: And, your Honor, I am not  
10 sure what document number we are at. Did we want  
11 to -- is it 4? We are not marking this at all,  
12 right?

13 EXAMINER SEE: Liberty -- well --

14 MS. LEPPLA: For clarity of the record, I  
15 wanted to --

16 EXAMINER SEE: You can make this, just to  
17 be sure, let's make it OEC 5.

18 MS. LEPPLA: Okay. Thank you, your  
19 Honor.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. So this will be marked, the "Clearview  
22 Energy - Your Choice for Green Energy" at the top  
23 with the date of 1-24-2019 will be OEC Exhibit 5.  
24 And you said you have that document, Mr. Benedict?

25 A. Yes, I do.

1           Q.    Okay.  And does that appear to be a  
2   residential customer offering from Clearview Energy,  
3   Green Energy?

4           A.    Quite honestly, I don't know what this  
5   document is.

6           Q.    If you turn to page 2 of that document.  
7   Does that say "Residential Plans for ColumbusPower?  
8   Does that help you understand what this document is?

9           A.    The previous documents appeared to be  
10  terms and conditions of service.  This looks like a  
11  printout from a website.  I don't know what this  
12  document is.

13          Q.    You said you are familiar with the Apples  
14  to Apples website, correct, and the CRES provider  
15  offerings on there?

16          A.    Generally, yes.

17          Q.    At the bottom of page 1, is 43215 a zip  
18  code that is a Columbus zip code in AEP territory?

19               MR. McNAMEE:  Objection.  This witness  
20  has said he doesn't know what this thing is.  And I  
21  don't believe it's really appropriate to  
22  cross-examine him on an object that he can't  
23  recognize -- or a document that he can't recognize.

24               MS. LEPPLA:  Your Honor, I am happy to  
25  let him take the time he needs to look at this, but

1 it says "Enter your zip code to find the prices and  
2 plans that are right for you" and this is a document  
3 pulled directly from Apples to Apples. As we  
4 discussed before, it is a Public Utilities Commission  
5 website, run by them, and Mr. Benedict has testified  
6 that he is familiar with that website and familiar  
7 with the offerings, and I would assume he is familiar  
8 with the way that some of those work, not all.

9 MR. WHITT: Your Honor, I am going to  
10 lodge an additional objection because as I go and  
11 look at the website, there are links from the Apples  
12 to Apples website to other company websites, but  
13 contracts aren't housed on the PUCO website. So I  
14 think this information is a little further removed  
15 from the Commission's computer system than has been  
16 represented.

17 MS. WHITFIELD: And to follow up on  
18 Mr. Whitt, if you look on page 6 of 7 of what's been  
19 marked OEC Exhibit 5, there is actually a reference  
20 to "Terms of Service" and "Terms of Use" which look  
21 to be other documents you would get from Clearview  
22 Energy's website.

23 MS. LEPLA: Just to respond, I think  
24 those are legal disclosures that have nothing to do  
25 with the actual document. But I would just say

1 again, your Honor, Staff has provided a witness that  
2 is testifying on Apples to Apples and that consumers,  
3 in Ohio, are able to get 100-percent renewable energy  
4 offerings by going to the Public Utilities  
5 Commission's website, Apples to Apples, and apply in  
6 this manner; this is how our system works. And so I  
7 am trying to ask the Staff witness questions about  
8 their site.

9 EXAMINER SEE: Just a minute.

10 Mr. Benedict, have you had an opportunity  
11 to look at what was previously marked as OEC 5?

12 THE WITNESS: I have.

13 EXAMINER SEE: Is it familiar to you?  
14 You said previously --

15 THE WITNESS: So the previous documents  
16 appeared to be the typical legal disclosures that a  
17 company -- in a CRES provider offering. This appears  
18 to be just a printout from a website, so I don't  
19 really know what this one is.

20 EXAMINER SEE: Okay.

21 MS. LEPPLA: We can move on, your Honor.

22 Q. (By Ms. Leppla) Mr. Benedict, this one  
23 hopefully looks more familiar to you. If you turn to  
24 the document in your packet, it should be the last  
25 document with a headline of "Verde Energy USA Ohio,

1 LLC - Terms and Conditions of Service" that I would  
2 like to ask be marked as OEC Exhibit 6.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Do you have that document in front of  
5 you?

6 A. I do.

7 Q. Does that appear to be the terms and  
8 conditions of service for a CRES provider offering  
9 from the Apples to Apples site?

10 A. Very well could be.

11 Q. Okay. And if you look at the line  
12 starting with No. 1, does it appear this is a  
13 100-percent renewable fixed generation plan offered  
14 by Verde Energy?

15 A. That's what it appears to be.

16 Q. Okay. And in that same paragraph, it  
17 appears, to your understanding of this document, that  
18 Verde will purchase and retire RECs if this plan is  
19 purchased by a customer?

20 A. I believe in your question you said they  
21 would retire RECs. I believe this says -- oh, okay,  
22 purchase and retire, okay, yes, I agree.

23 Q. Thank you.

24 If you'll turn to the fourth page of that  
25 document, the one that looks like a certificate.

1           A.    Okay, I'm there.

2           Q.    And this page provides information  
3   indicating that they are going to buy those RECs with  
4   100 percent -- I am sorry, strike that.  I'll start  
5   over.  I apologize.

6                    This page also indicates that this is a  
7   100-percent renewable energy offer from Verde Energy  
8   that will be accomplished by purchasing RECs,  
9   correct?

10          A.    That's correct.

11          Q.    And it doesn't indicate where those RECs  
12   are coming from, correct?

13          A.    It does indicate the type of energy  
14   resources that they come from.

15          Q.    I apologize.  I meant it doesn't indicate  
16   which states those RECs are coming from, correct?  Or  
17   what location or project?

18          A.    That's correct.

19          Q.    Okay.  All right.  If we can go back to  
20   your testimony, if you can turn to page 10, lines 19  
21   to 20.  And in this paragraph you reference Ohio's  
22   third-largest city, correct?

23          A.    I do.

24          Q.    And that city is Cincinnati?

25          A.    Yes, it is.

1           Q.    And Cincinnati is not in AEP Ohio's  
2 service territory, is it?

3           A.    No.  It's in Duke Energy Ohio's service  
4 territory.

5           Q.    Okay.  And on page 11, lines 5 through 7,  
6 you note that "Staff is concerned that the existence  
7 of such a directive could potentially serve to crowd  
8 out the other types of programs described above,  
9 correct?

10          A.    That's correct.

11          Q.    And the City of Cincinnati is aggregated,  
12 correct?

13          A.    Yes.

14          Q.    Okay.  And their aggregation procurements  
15 won't be impacted by a decision in this case,  
16 correct?

17               MR. McNAMEE:  Objection.  I don't know  
18 how -- I don't know how he would know if there would  
19 be some effect on what the City of Cincinnati might  
20 do as a result of anything that happens anywhere.

21               MS. LEPPLA:  Your Honor, I am asking for  
22 his opinion.  He directly states the -- he references  
23 Ohio's third-largest city, and then in his testimony  
24 where he is saying they are concerned about crowding  
25 out the market, he references the programs described

1 above which includes the City of Cincinnati as the  
2 third-largest city.

3 MR. McNAMEE: He testifies to a fact that  
4 the City of Cincinnati is aggregated. The question  
5 asks him to speculate what Cincinnati might do or  
6 something as a result of this case, I guess.

7 MS. LEPPLA: Respectfully, your Honor,  
8 this is what Staff -- exactly what Staff is opining  
9 on.

10 EXAMINER SEE: The witness can answer the  
11 question if he knows.

12 A. Could you repeat the question? I'm  
13 sorry.

14 Q. Sure. That's okay.

15 My question was, the City of Cincinnati's  
16 aggregation procurements won't be directly impacted  
17 by a decision in this case, correct?

18 A. Not directly, given it's in a different  
19 EDU service territory, but it certainly could be  
20 affected indirectly.

21 Q. And the ability of homeowners to install  
22 solar panels won't be impacted by a decision in this  
23 case, correct?

24 A. I think it certainly would.

25 Q. Will the Commission's net metering rules



1 be impacted by a decision in this case?

2 A. The rules themselves, no.

3 Q. And will CRES providers still be able to  
4 market national RECs to Ohio consumers regardless of  
5 the decision in this case?

6 A. They could.

7 Q. And CRES providers will still be able to  
8 market regional RECs to Ohio consumers regardless of  
9 the outcome of this case?

10 A. Might be a bit harder.

11 Q. But they could still do it, correct?

12 A. They could try.

13 MS. LEPPLA: No further questions, your  
14 Honor. Thank you, Mr. Benedict.

15 EXAMINER SEE: Mr. Kurtz?

16 MR. KURTZ: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Kurtz:

20 Q. Good evening, Mr. Benedict.

21 A. Good evening, Mr. Kurtz.

22 Q. I want to ask you a little bit about your  
23 background here at the Commission. You work at the  
24 Office of the Federal Energy Advocate?

25 A. That's correct.

1           Q.    And that's an office specifically  
2 dictated by statute, Senate Bill 221?

3           A.    That's correct.

4           Q.    Okay.  Who works in that office?

5           A.    So Dr. Choueiki, to your immediate left,  
6 is the Federal Energy Advocate, and he has a team who  
7 works for him.  I am one of that team.

8           Q.    Okay.  Now, you say that your  
9 "responsibilities include economic analysis of  
10 wholesale markets"; would that be PJM?

11          A.    Primarily.

12          Q.    Okay.  And "advocacy on regional and  
13 federal issues as they pertain at the state of Ohio,"  
14 does that mean you assist in drafting comments to PJM  
15 and other things like that?

16          A.    In part.

17          Q.    What else do you do then as part of your  
18 advocacy?

19          A.    So other than drafting comments,  
20 certainly we'll monitor activities at the federal and  
21 regional level, be it PJM, the USDOE, the FERC, and  
22 obviously we'll submit comments.  We're active in  
23 OPSI, which is O-P-S-I, the Organization of PJM  
24 States, so we work with the other jurisdictions to  
25 advocate for states' interests and, more

1 specifically, ensure that Ohio's interests are  
2 adequately represents at the federal and regional  
3 level.

4 Q. Okay. Are you following the PJM FERC  
5 capacity repricing case, the Calpine complaint case,  
6 Docket EL18-178?

7 A. I'm generally familiar with the case,  
8 yes.

9 Q. Did you assist in drafting the  
10 Commission's comments to FERC on that case?

11 A. I did.

12 Q. Okay. Just generally about PJM, it's 13  
13 states plus the District of Columbia, correct?

14 A. That's correct; 14 jurisdictions.

15 Q. Okay. And it serves 65 million people?

16 A. Sounds about right.

17 Q. Okay. The 900 megawatts of generic  
18 renewables here would represent approximately  
19 one-half of 1 percent of PJM's capacity; is that  
20 correct?

21 A. I haven't done the math, but any one unit  
22 in PJM represents a small proportion of the total.

23 Q. Okay. And there was testimony earlier by  
24 Dr. Lesser, I think, that the projected  
25 megawatt-hours from the 900 megawatts of renewables

1 would represent approximately 0.3 percent of the  
2 energy used by PJM consumers. Do you know if that's  
3 correct?

4 A. I don't know that specific number, but  
5 the output of any one generator in PJM, which is a  
6 very large system obviously, represents a very small  
7 portion of the total.

8 Q. Okay. The 14 jurisdictions that comprise  
9 PJM are made up of both regulated and unregulated  
10 states; is that correct?

11 A. That's true.

12 Q. And it includes investor-owned utilities,  
13 municipal units, and cooperative utilities?

14 A. Also true.

15 Q. Okay. And the generation resources  
16 within the PJM footprint include coal, gas, nuclear,  
17 wind, solar, imports as well as, I guess, demand  
18 response and energy efficiency?

19 A. Amongst others.

20 Q. What else would there be?

21 A. Diesel, I don't believe you said,  
22 oil-fired beakers.

23 Q. Okay.

24 A. Energy -- energy efficiency demand  
25 response are considered resources for the purposes of

1 the capacity auction, yes.

2 Q. Landfill gas, to name them all.

3 A. Anaerobic digesters, you name it.

4 Q. Okay. Now, within PJM, there are FRR  
5 entities, fixed resource requirement entities?

6 A. There are.

7 Q. Okay. That would include the three AEP  
8 Ohio affiliates: I&M, Appalachian Power, and  
9 Kentucky Power?

10 A. Yes. It's my understanding that every  
11 other AEP East operating company is operating under  
12 FRR except for Ohio Power.

13 Q. Okay. And then there are RPM utilities  
14 that rely on the PJM capacity market for their  
15 resources like AEP Ohio?

16 A. That's right.

17 Q. There are also RPM utilities that  
18 self-supply like Dominion and East Kentucky Power  
19 Cooperative?

20 A. That's right.

21 Q. Okay. And some of the states have  
22 renewable portfolio standards in PJM and other states  
23 don't; is that correct? Kentucky and Tennessee  
24 don't.

25 A. If you say so. I don't know. I know

1 that the vast majority of them do. Perhaps there are  
2 some that don't.

3 Q. The point I am trying to make, it's a big  
4 system made up of very diverse players that have  
5 different rules and different things, and part of  
6 PJM's job is to make an efficient market out of all  
7 those diverse players, would you agree?

8 A. In part.

9 Q. Okay. What part would you agree with?

10 A. I believe they have jobs other than the  
11 specific one you described.

12 Q. But isn't a big part of their job is to  
13 create efficient energy and capacity and ancillary  
14 services markets for the PJM region?

15 A. Yeah, I would say that's a big part of  
16 their job, yes.

17 Q. Okay. Now, on page -- you obviously  
18 testify there is no resource planning need based upon  
19 the fact that there is -- there are adequate reserves  
20 in PJM; is that -- did I paraphrase that correctly?

21 A. That is the evidence I cite to  
22 demonstrate there is no resource planning need.

23 Q. Okay. Now, would you turn to page 8 of  
24 your testimony. The chart.

25 A. Yes, I'm there.

1 Q. Okay. You list the results of the base  
2 residual auctions within PJM over the last 15 years;  
3 is that correct?

4 A. 15 planning years; yes, that's correct.

5 Q. And you demonstrate, through this chart,  
6 that the reserve margin achieved by PJM, each of  
7 these 15 years, is greater than their target reserve  
8 or their planning reserve margin; is that correct?

9 A. That's correct.

10 Q. Okay. Now, we are going to have to wait  
11 a while to fill in the next blank, what the results  
12 of the next BRA will be, isn't that correct, for the  
13 2022-2023 planning year?

14 A. Yes. It's my understanding that FERC has  
15 delayed that auction until August of this year.

16 Q. Typically it's in May, the BRA auctions?

17 A. Correct.

18 Q. And, for example, and PJM, as part of  
19 this capacity repricing docket we talked about, the  
20 FERC and PJM have to set the new rules before they  
21 can hold an auction; is that correct?

22 A. Well, FERC needs to adopt new rules for  
23 PJM, yes.

24 Q. Right. In fact, FERC has already ruled  
25 that the existing rules are invalid under the Federal

1 Power Act.

2 A. They did, although I believe they've  
3 granted rehearing on that finding.

4 Q. Okay. Now, the thing -- tell me -- this  
5 capacity repricing proposal is basically PJM's  
6 attempt to balance state interests and subsidizing  
7 certain preferred resources like renewables and solar  
8 with their other major interest of ensuring that  
9 there's efficient market outcomes for the system; is  
10 that -- that a fair characterization of one -- at  
11 least one of the things they are working on?

12 A. The only thing I disagree with is your  
13 characterization of the subsidized units as being  
14 wind and solar. I believe that there is far more  
15 units besides wind and solar that are seeking  
16 subsidies within the PJM footprint.

17 Q. I thought I said renewables and nuclear,  
18 but it would be wind, solar, nuclear, and other  
19 subsidized units. I guess that could include units  
20 in a utility's rate base theoretic -- possibly,  
21 right?

22 A. Units receiving out-of-market subsidies,  
23 yes.

24 Q. But, in any event, they are trying to  
25 address -- and PJM has recognized in their pleadings,



1 have they not, that states have a legitimate interest  
2 in subsidizing the resources that they prefer?

3 MR. HEALEY: Objection. Hearsay. We are  
4 talking about what PJM said in documents that are not  
5 before this witness. I would also object on best  
6 evidence grounds as documents speak for themselves,  
7 and if Mr. Kurtz would like to put them before the  
8 witness, then we will know what they say, rather than  
9 asking for his potentially unclear recollection of  
10 what unknown documents might say.

11 MR. KURTZ: Well, he is one of the  
12 Commission's experts on federal -- on the PJM  
13 matters. He's helped and draft comments on this  
14 exact docket. He's -- I'll ask, have you read what  
15 PJM has filed in this capacity repricing docket?

16 EXAMINER SEE: Okay. Go ahead.

17 A. I've only read summaries of PJM's  
18 proposals. I haven't actually read what exists on  
19 the FERC docket.

20 Q. Okay. In the summaries that you've read  
21 of PJM's proposal, do those summaries indicate that  
22 PJM recognizes legitimate state interests in  
23 subsidizing certain preferred resources?

24 MR. HEALEY: Objection. Now we are in  
25 double hearsay because we are talking about summaries

1 of other documents and now asking this witness to  
2 discuss those summaries of other documents which are  
3 also themselves hearsay, so we are getting three  
4 steps removed now in asking Mr. Benedict to testify  
5 on what PJM thinks about this issue.

6 MR. KURTZ: I am asking his -- if he  
7 knows as one of the Commission's experts in the  
8 federal advocacy division. It's his job to know what  
9 PJM is doing basically.

10 EXAMINER SEE: The objection is  
11 overruled.

12 Mr. Benedict, you can answer the  
13 question.

14 A. PJM certainly recognizes that states  
15 reserve the right to regulate their electric  
16 generating sectors as they deem fit.

17 Q. Okay. Here is my question because I see  
18 sort of an inconsistency, you've testified earlier  
19 that you think resource diversity is best left to  
20 PJM, yet PJM recognizes that's a legitimate state  
21 interest. How would you reconcile that?

22 MR. McNAMEE: Objection. Different --  
23 different entities have different opinions. There's  
24 nothing to reconcile.

25 EXAMINER SEE: And the witness can answer

1 the question. Objection is overruled.

2 A. So I don't see an inconsistency there.  
3 So earlier I stated resa -- resource diversity is  
4 best addressed or best evaluated from a regional  
5 level, given the fact that Ohio is in a regional  
6 transmission organization. That doesn't change the  
7 fact that Ohio certainly has, within its rights, its  
8 ability to regulate its electric-generating sector as  
9 it deems fit.

10 Q. Good reconciliation.

11 Okay. You would agree, as I am sure  
12 would most people, that PJM does provide benefits to  
13 Ohio consumers through efficient and -- efficient  
14 pricing and other benefits. PJM is a benefit to Ohio  
15 in a lot of ways.

16 A. So the biggest benefit to Ohio being a  
17 member of PJM is the pooling of generation and  
18 transmission resources. So Ohio gets the benefit of  
19 resources, the cheapest resource available to serve  
20 the load, whether that unit is located geographically  
21 within Ohio or whether it's geographically located  
22 anywhere else in PJM; so that's a significant  
23 economic benefit, yes.

24 Q. And as long as AEP complies with whatever  
25 the new PJM capacity rules are, nothing in this case

1 would dilute or reduce or change those benefits. Do  
2 you agree?

3 A. It certainly would.

4 Q. Well, if -- if AEP complies with the PJM  
5 rules, then we're getting whatever PJM says we're  
6 entitled to. Are we not?

7 A. I believe Ohio picking and choosing which  
8 resources to build and subsidize within the state,  
9 directly contradicts the benefits of being a member  
10 of an integrated system and taking advantage of  
11 economies of scale and scope.

12 Q. But PJM and FERC recognize the states  
13 have the right to do that, and if a state wants to do  
14 it, PJM will accommodate that desire; isn't that  
15 true?

16 A. Yes. The states reserve the right to  
17 regulate their electric-generating sector as they  
18 deem fit.

19 Q. Okay. Final question. It's a  
20 hypothetical. It's a longer version of the  
21 hypothetical I did before. Assume that -- assume  
22 it's true that granting AEP's application will  
23 promote resource diversity consistent with the PJM  
24 rules, will lower rates for consumers in Ohio, will  
25 provide a fixed-cost 20-year hedge that promotes rate

1 stability, and will increase jobs, property tax  
2 revenue, and school tax revenue, assuming all those  
3 things are true, would your opinion change about the  
4 need determination?

5 MR. McNAMEE: Can we have that question  
6 reread, please, that very long question?

7 (Record read.)

8 A. First, recognizing that I don't agree  
9 with the hypothetical, the answer to your question is  
10 no. Staff does not believe those purported benefits  
11 relate to need as we define the term.

12 Q. Okay. Consistent with your testimony.

13 But now, you recognize, in your last  
14 answer on page 11, that the Commission --  
15 second-to-last question on page -- well, page 11, you  
16 recognize the Commission may adopt a broader  
17 definition of "need" than the one that Staff is  
18 proposing here.

19 A. The Commission is not bound to agree with  
20 its Staff.

21 MR. KURTZ: Thank you, Mr. Benedict.

22 Thank you, your Honor.

23 EXAMINER SEE: Mr. Nourse?

24 MR. NOURSE: Thank you, your Honor.

25 - - -

## 1 CROSS-EXAMINATION

2 By Mr. Nourse:

3 Q. Good evening, Mr. Benedict. I will say  
4 that it wasn't my plan to start my questioning at  
5 6:40 in the evening, so I apologize for that, but I  
6 think you'll understand, as Company counsel, with the  
7 significant conclusions in your testimony, I do have  
8 some questions for you. Good news is some of my  
9 questions have already been covered.

10 Okay. So, Mr. Benedict, you are Staff's  
11 expert in this case to address the -- the need  
12 requirement that's been raised in the Company's  
13 application, correct?

14 A. One of two experts, yes.

15 Q. Okay. The other expert, Mr. Siegfried,  
16 simply addressed the matter, that the Company agreed  
17 with in its application already, that we didn't need  
18 RECs for purposes of compliance with the Alternative  
19 Energy Portfolio Standard, correct?

20 A. Yeah, that's a fair characterization of  
21 Mr. Siegfried's testimony.

22 Q. Sure. And we don't forget about Stuart.  
23 We didn't have any questions for him, but his  
24 testimony is in the record. So, but you've been  
25 asked earlier that the definition of "need" is not

1 really determined or defined in the statute, correct?

2 A. Well, I think the statute actually does  
3 provide guidance.

4 Q. Okay. And I didn't mean to --

5 MR. McNAMEE: Excuse me. Were you done?

6 THE WITNESS: Yes.

7 Q. And I didn't mean to cut out the point  
8 you made about the "resource planning" language in  
9 the statute. That's fine.

10 A. I actually meant beyond that.

11 Q. Okay. All right. But what I want to  
12 talk to you about is the rules. The OAC rules that  
13 define the LTFR proceedings and the integrated  
14 resource plan matters; are you familiar with those  
15 rules?

16 A. Generally, yes.

17 Q. And did you -- did you apply those rules  
18 to the Company's filing when you made the conclusions  
19 in your testimony?

20 A. I believe the conclusions in my testimony  
21 are based on a plain and ordinary reading of the  
22 statutory language contained within 4928.143 and  
23 4928.35, not the Commission's administrative rules.

24 Q. Okay. So you're saying you did not apply  
25 the Commission's rules regarding LTFR and IRP,

1 integrated resource planning, when you arrived at  
2 your conclusions about the Company's filing?

3 A. Not as it pertains to the need  
4 determination, no.

5 Q. Okay. Is it your understanding that the  
6 Commission's rules do indicate factors that can be  
7 considered by the Commission in determining the  
8 reasonableness of an integrated resource plan?

9 A. I don't recall without seeing the rules  
10 in front of me.

11 MR. NOURSE: All right. I am going to --  
12 I don't think we need to mark this, your Honor, but I  
13 am going to provide the witness a copy of the rules.

14 Q. Mr. Benedict, I have handed you a copy of  
15 OAC 4901:5-5-06 entitled "Integrated resource plans."  
16 Do you see that?

17 A. I do.

18 Q. Okay. And integrated resource planning,  
19 IRPs, resource planning, is -- is the main topic in  
20 your testimony, is it not?

21 A. No.

22 Q. Okay. Let me ask you this way,  
23 Mr. Benedict. I thought this was going to be a  
24 little bit more of an easier conversation but let's  
25 back up. Look at page 2 of your testimony, line 13.



1 You make a statement that "The concept of traditional  
2 resource planning has largely become obsolete in  
3 Ohio, due to the restructured nature of the state's  
4 utility industry." Do you see that?

5 A. I do.

6 Q. So at the beginning, at the outset of  
7 your testimony, you're concluding that the  
8 traditional resource planning concept is -- has  
9 become obsolete, correct?

10 A. That's right.

11 Q. Okay. And let's start with what you  
12 meant by that concept, by that statement.

13 A. So what I meant by that is AEP no longer  
14 owns a fleet of units that are dedicated to serve its  
15 Ohio load.

16 Q. Okay. And that's -- and that's why it's  
17 obsolete. So are you saying the pre-2000 integrated  
18 resource planning rules that the Commission -- have  
19 become obsolete, that the concept, that was captured  
20 prior to Senate Bill 3 in the Commission's resource  
21 planning rules, is obsolete?

22 A. Honestly, I don't know about the pre-2000  
23 period to be honest.

24 Q. Well, you are opining on traditional  
25 resource planning. Did you mean it -- when you say

1 traditional, did you mean pre-2000?

2 A. No. I meant as it -- as it's conducted  
3 in vertically-integrated jurisdictions that conduct  
4 traditional resource planning and they have utilities  
5 that own generation, have a portfolio of resources  
6 that are dedicated to serve the native load. That's  
7 not the situation here in Ohio, hence my conclusion  
8 that traditional resource planning, as it's practiced  
9 in those jurisdictions, is largely obsolete in Ohio  
10 because AEP sources 100 percent of its nonshopping  
11 load from the competitive marketplace.

12 Q. Okay. Well, so isn't it the case that in  
13 Ohio, prior to the year 2000, that we had integrated  
14 utilities and the PUCO applied traditional resource  
15 planning?

16 A. Again, as I've stated, I am not  
17 intimately familiar with Ohio regulatory structure  
18 going back that far.

19 Q. Okay. But you are making this statement  
20 about Ohio and after deregulation, so are you saying  
21 you're not familiar with traditional resource  
22 planning conceptually?

23 A. No, I am, as it's practiced in  
24 vertically-integrated jurisdictions. What you are  
25 asking me to do is go back 20 years and describe what

1 happened and quite honestly, sir, I was a child back  
2 then.

3 Q. Right, right, but you are making a key  
4 statement to open your testimony about this.

5 MR. NOURSE: Your Honor, I would like to  
6 mark an exhibit. Your Honor, I would like to mark  
7 AEP Ohio Exhibit 20. And this is a large document  
8 but I -- we can take time to look at it but I have  
9 some very specific references I would like the  
10 witness to look at.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Mr. Nourse) Mr. Benedict, this is an  
13 Opinion and Order in Case No. 08-888 -- I'm sorry.  
14 Yeah, I'm sorry. I will start with that. I think I  
15 can do it with this one document. 08-888-EL-ORD,  
16 it's -- do you recognize this as an Opinion and Order  
17 of the Commission?

18 A. It appears to be so.

19 Q. And let me ask you to -- let's look at  
20 page 4, the first two sentences on page 4. Could you  
21 read those.

22 MR. HEALEY: Objection. There is still  
23 no foundation, your Honor. The only foundational  
24 question he asked was whether this appeared to be an  
25 Order. We don't know if Mr. Benedict has ever seen

1 this letter, knows what it's about, et cetera.

2 MR. NOURSE: Yeah, your Honor. This is  
3 impeachment or refreshing, one of the two, because  
4 he's making -- he opens his testimony with the  
5 statement about the obsolete nature of resource  
6 planning in Ohio. And so this Order, I think, will  
7 help either explain it to him or refresh his  
8 recollection.

9 MR. COLLIER: Your Honor, I would object  
10 that the Company has already admitted, in its  
11 filings, that this proposal does not comport with  
12 traditional resource filing.

13 MR. NOURSE: Your Honor, this will just  
14 take a couple of minutes. I think it will become  
15 more evident when I ask a couple of questions here.

16 MR. DARR: That he will inquire --

17 MR. COLLIER: Deny that.

18 EXAMINER SEE: Just a second. What were  
19 you saying, Mr. Collier?

20 MR. COLLIER: The Company's taken the  
21 position that this proposal does not meet capacity  
22 needs and is not consistent with traditional resource  
23 planning.

24 MR. NOURSE: Yeah, your Honor -- sorry.  
25 Go ahead.

1                   EXAMINER SEE: There was another  
2 objection on this side?

3                   MR. DARR: I was reinforcing what  
4 Mr. Collier just said and, unfortunately, spoke over  
5 him but I agree. This is not relevant at this point  
6 because the difference here is that AEP has foregone  
7 the application of the requirements of 143(B)(2)(c)  
8 and the application of the Commission rule.

9                   MS. LEPPLA: Your Honor, if I may, I  
10 think that's the interpretation we are here to  
11 discuss and AEP has the right to cross-examine the  
12 witness on different topics, and I am not even sure  
13 exactly what Mr. Nourse is about to do because he  
14 hasn't gotten that far, so I think perhaps he should  
15 be permitted to ask the questions.

16                  MR. NOURSE: What I'll show with this  
17 document is that the Commission reinstated the  
18 resource planning rules that existed prior to  
19 deregulation after passage of Senate Bill 221. The  
20 Commission states that very clearly, and the  
21 provisions we're relying on in this case were  
22 reenacted as being necessary to implement Senate Bill  
23 221.

24                  EXAMINER SEE: Okay.

25                  MR. WHITT: If I may, your Honor, I think

1 we know that because the case was filed under the  
2 rules that were just alluded to.

3 EXAMINER SEE: The objection is  
4 overruled.

5 MR. NOURSE: I don't know if Mr. Whitt  
6 knows, but I just want to discuss with the witness.

7 EXAMINER SEE: Just -- okay. Go ahead.

8 Q. (By Mr. Nourse) All right. So,  
9 Mr. Benedict, can you read the two sentences at the  
10 top of page 4.

11 EXAMINER SEE: I'm sorry. Repeat that,  
12 Mr. Nourse.

13 MR. NOURSE: I am asking him to read the  
14 two sentences at the top of page 4, the Opinion and  
15 Order.

16 EXAMINER SEE: Okay.

17 A. You are asking me to read them aloud?

18 Q. Yes, read them out loud.

19 A. I can do that. "Therefore, we will limit  
20 changes in this proceeding to those required by SB  
21 221. Additional suggestions or modifications may be  
22 considered in next year's proceeding, which will  
23 include both gas and electric forecasting chapters."

24 Q. And let me back up and ask you another  
25 question about this, the front of this document. Do

1 you recognize this is an EL-ORD proceeding by the  
2 Commission which is an electric industry rulemaking,  
3 correct?

4 A. I'm actually not familiar with the ORD  
5 suffix.

6 Q. Okay. All right. Then turn to page 41  
7 of this document. And I'll read a couple sentences  
8 out of the heading "Long-Term Forecast Chapters" at  
9 the bottom of page 41. "As noted previously, the  
10 Commission's forecast rules are being modified to  
11 restore the IRP requirements under Chapter 4901:5-5  
12 in response to Senate Bill 221...." It goes on to  
13 conclude in that paragraph "Therefore, our  
14 modifications focus on those required by Senate Bill  
15 221." Did I read that correctly?

16 A. You did.

17 Q. All right. And on page?

18 MR. HEALEY: I am going to object, your  
19 Honor, and move to strike. We're just -- Mr. Nourse  
20 is just reading an Order and asking the witness to  
21 confirm whether he is able to read. Mr. Nourse can  
22 cite this in his briefs. It's a Commission Order.  
23 I'm not sure there is any benefit to anyone,  
24 especially at this late hour, of continuing to read  
25 this into the record.

1 MR. NOURSE: Your Honor, the late hour is  
2 completely beside the point. I started a couple  
3 minutes ago. And I indicated, transparently, that I  
4 want to challenge the witness about his opening  
5 statement in his testimony based on undisputed  
6 developments that the Commission had undertaken, as a  
7 matter of public record, in his area of expertise, so  
8 that's all I am doing.

9 MR. COLLIER: Your Honor, again, I would  
10 reference the application, page 3, an admission.  
11 "The PJM wholesale markets are adequately supplying  
12 capacity and energy in the AEP Ohio load zone, nor is  
13 the Company proposing, through this filing, that it  
14 has a traditional resource planning need for  
15 generation."

16 MR. NOURSE: Again --

17 MR. COLLIER: Taking a witness through an  
18 Order, a number of pages long, which he has not  
19 established any foundation that he really has any  
20 personal knowledge about, when he's already conceded  
21 the essential issue, I think is a total waste of  
22 resources.

23 MR. NOURSE: Your Honor, we are -- it's  
24 not inconsistent with what we said in our  
25 application. The -- we are not contesting resource



1 adequacy from a PJM standpoint. What we are  
2 contesting is the definition of "need" and what the  
3 concept of "resource planning" encompasses. And this  
4 witness takes direct issue and direct aim at that in  
5 his testimony, and he concluded that traditional  
6 resource planning is obsolete in Ohio, so I think  
7 this is directly germane to that, and I have a  
8 summation question here I would like to make before I  
9 move on.

10 EXAMINER SEE: Okay. The objection is  
11 overruled. Go ahead, Mr. Nourse.

12 Q. (By Mr. Nourse) Mr. Benedict, can you  
13 turn to the rules that are attached to the Commission  
14 Order adopting these rules and if you -- if you look  
15 at what I'll call Rule 6, 4901:5-5-06, "Integrated  
16 resource plans for electric utilities." They are  
17 unnumbered pages. Let me know when you find that  
18 rule.

19 A. You said 5-5-06 is what I am looking for?

20 Q. Yes.

21 A. Okay.

22 Q. "Integrated resource plans for electric  
23 utilities," are you with me?

24 A. I'm there.

25 Q. And if you turn a few pages in where

1 there is a heading, small (c), that's just above  
2 capital (E), so it's the fourth page of that rule.

3 A. Yes. I'm there.

4 Q. There is a lot of subsections so I just  
5 want to kind of give this context. If you turn one  
6 page back to the No. 5, it says "The reporting person  
7 shall provide information sufficient for the  
8 Commission to determine the reasonableness of the  
9 integrated resource plan. In determining the  
10 reasonableness of an integrated resource plan, the  
11 Commission will consider," and it goes on with (a),  
12 (b), and (c), and what I want to ask you about is  
13 part (c) there and part (d). So is it your  
14 understanding that -- first of all, do you think it's  
15 reasonable -- it's important for the Commission in  
16 this proceeding to determine the reasonableness of  
17 AEP Ohio's resource plan, integrated resource plan,  
18 that it filed?

19 MS. BOJKO: Objection. Your Honor, as I  
20 look at the PUCO docketing, there is at least six  
21 entries on rehearing on these rules, and my guess is  
22 that the Opinion and Order and the rules attached to  
23 the Opinion and Order are actually not the final  
24 rules that were adopted and are part of the OAC. I  
25 fail to see the reason why we are reading draft rules

1 or not final rules from the Commission as opposed to  
2 looking at the actual rule that's been codified in  
3 the Ohio Administrative Code.

4 We are reading things into the record  
5 that I'm not sure is the correct rule, or this  
6 witness has no ability to determine if it's the  
7 actual correct rule.

8 MR. NOURSE: Yeah, your Honor, and I did  
9 hand the witness also a copy of Rule 6, the current  
10 one that I printed out last night from Westlaw, and  
11 that's exactly where I am headed right now, your  
12 Honor --

13 EXAMINER SEE: Okay.

14 MR. NOURSE: -- so.

15 MS. BOJKO: Thank you for that  
16 clarification.

17 MR. NOURSE: Yeah. None of the rehearing  
18 entries changed this part of the rule. I wouldn't  
19 mislead a witness like that.

20 Q. (By Mr. Nourse) So, Mr. Benedict, my  
21 question was whether it's important for the  
22 Commission to consider the reasonableness of AEP  
23 Ohio's integrated resource plan that was filed as  
24 part of this case.

25 A. I believe it's largely irrelevant without

1 the Commission first determining there is a need for  
2 a facility.

3 Q. Okay. And we'll come back to that but  
4 this -- this language that I pointed out in subpart  
5 (c), and then (d) says "Such other matters the  
6 Commission considers appropriate." You see those,  
7 right, in this rule that was reinstated from the  
8 traditional pre-deregulation resource planning days  
9 in Ohio? Now, I would like you to look at those same  
10 provisions and then also look at the current version  
11 of the Rule 6 that I handed you that's a printout  
12 from Westlaw and has the date January 24, 2019, at  
13 the bottom. Do you have that document?

14 A. I do.

15 Q. Okay. And I would like you to compare  
16 the passage I just -- that I just showed you from the  
17 08-888 Order to this current Rule 6 and -- should  
18 have marked this. It's on page 3 of 4 and it's under  
19 part small (e) where it says "The reporting person  
20 shall provide information sufficient for the  
21 Commission to determine the reasonableness of the  
22 resource plan including...." Do you see those?

23 A. I don't know where you are at, I'm sorry.

24 Q. On page 3 of 4.

25 A. On the Westlaw?

1 Q. Do you have the Westlaw document?

2 A. Yeah.

3 Q. Okay.

4 A. Mine is only three pages long.

5 Q. Well, okay. See your copy.

6 A. 1, 2, 4.

7 Q. Can I see your copy?

8 A. That's better.

9 Q. Okay. With me on page 3?

10 MS. BOJKO: Your Honor, I am going to  
11 object at this time. I don't think that -- even  
12 though Mr. Nourse testified to the fact that this  
13 rule was put back in after it was taken out, there's  
14 been no testimony from the witness to that fact. We  
15 don't know from the Commission Order. He hasn't  
16 pointed to any section of the Commission Order. The  
17 two sentences he read does not say that. We have not  
18 laid a foundation that the rule was put back in or  
19 which part of the rules were put back in after there  
20 was a change in the Commission decision for  
21 eliminating this part of the OAC.

22 MR. NOURSE: Yeah, we did, your Honor. I  
23 just went through that in the Order, and to again  
24 confirm that to the Bench, and incidentally to  
25 Ms. Bojko, that these provisions still are in the

1 Revised Code today -- in the Administrative Code  
2 today. That's why I handed the witness this current  
3 provision, under Rule 6, entitled "Integrated  
4 resource plans for electric utilities" and I am  
5 asking the witness about that to confirm that these  
6 same provisions are still in the rule which is  
7 exactly where I was at, at the point of the  
8 questioning.

9 MS. BOJKO: That's not what the beginning  
10 of his question said two questions ago. He made a  
11 statement of fact that he believed that this was put  
12 back in after it was taken out and that's part --

13 MR. NOURSE: I read from the Commission  
14 Order that they said they were reinstating the  
15 pre-deregulation rules, and I showed you the part of  
16 the attachment to the Order where the new rule was  
17 adopted, and I will confirm right here that it is  
18 still in place today. So can I ask that question,  
19 your Honor?

20 EXAMINER SEE: Yes, go ahead.

21 Q. (By Mr. Nourse) Mr. Benedict, if you look  
22 at page 3 of 4 toward the bottom of the page and, you  
23 know, again, this is under small (e) where it says  
24 "information sufficient for the Commission to  
25 determine the reasonableness of the resource plan,

1 including" and it goes down to (iii). Are those  
2 factors the -- are those substantially the same as  
3 the ones I showed you from the Commission Order -- we  
4 can go down them individually if we need to, but I am  
5 trying to save time.

6 A. Yes. It appears the first one had been  
7 removed, but they are substantially similar.

8 Q. And is it your understanding or your  
9 expectation that the Commission would require the  
10 person filing an LTFR to provide information  
11 sufficient for the Commission to determine the  
12 reasonableness of the resource plan if the Commission  
13 didn't feel it was a part of what should be  
14 considered?

15 A. I'm sorry. If that was a question, I  
16 didn't understand it.

17 Q. Okay. I'm sorry. I'll rephrase.

18 So is it your understanding or  
19 expectation that when the Commission adopts rules  
20 that require filing requirements, that the Commission  
21 is saying that those things are germane to the filing  
22 and should be considered as part of the filing?

23 MR. COLLIER: Could we be clear as to  
24 what part, the need issue or resource response  
25 issues?

1           Q.    Mr. Benedict, do you understand my  
2 question?

3           EXAMINER SEE:   If the witness needs  
4 clarification, he'll ask for it, or he'll put his  
5 answer in context.

6           MS. BOJKO:   Your Honor, I am going to  
7 object for speculation. This Staff witness cannot  
8 testify to what the Commission was thinking when this  
9 Order was issued in -- oh, goodness.

10          MR. NOURSE:   I didn't ask him that  
11 question, your Honor.

12          MR. McNAMEE:   Could I have whatever the  
13 question is reread?

14          EXAMINER SEE:   Certainly.

15          (Record read.)

16          MR. HEALEY:   I am going to join  
17 Ms. Bojko's objection. He is asking the witness to  
18 interpret the intent in passing a rule, not to  
19 interpret a rule, not to state what it says, what the  
20 Commission was intending to convey by passing a rule  
21 and that calls for speculation.

22          MR. NOURSE:   Your Honor, I asked him his  
23 understanding, but I will try to rephrase to be  
24 helpful here.

25          Q.    (By Mr. Nourse) So, Mr. Benedict, as an



1 expert on LTFR in one of the most challenging and  
2 interesting LTFR cases, that you're the star witness  
3 here, I'm asking you about LTFR filing requirements  
4 and is it your expectation, as a Staff witness, that  
5 things that are required in the filing requirements  
6 are things that are germane to the proceeding?

7 A. If the Commission adopted the rules, they  
8 likely found some utility or some reason to do so.

9 Q. And, but you didn't look at this rule  
10 when you evaluated the Company's filing in this case,  
11 correct?

12 A. So I lay out a three-part process. The  
13 first process is to determine whether the forecasts  
14 are reasonable. The second part of the process would  
15 be to determine whether there was sufficient  
16 resources to meet that need. Given that Staff found  
17 that there are sufficient resources to meet AEP's  
18 projected need, we did not feel it was necessary to  
19 evaluate the merits or the deficiencies of any  
20 proposed project. There simply was no need.

21 Q. Okay. And did you -- were you aware of  
22 this rule before today?

23 A. Yes. I'm generally aware Senate Bill 221  
24 allowed AEP to seek a need determination as they are  
25 doing in this proceeding and that required to bring

1 back this concept of integrated resource planning.

2 Now, that being said, integrated resource  
3 planning in Ohio is not traditional integrated  
4 resource planning because of the restructured nature  
5 of Ohio's electric utility industry. AEP no longer  
6 has a fleet of assets or a portfolio of assets that  
7 are dedicated to serve a native load, and AEP's  
8 procuring 100 percent of its Standard Service Offer  
9 through competitive solicitations.

10 Q. Okay. Mr. Benedict, did Staff evaluate  
11 the reasonableness of the Company's integrated  
12 resource plan, based on the OAC provisions we've been  
13 talking about today, prior to you filing your  
14 testimony?

15 MR. McNAMEE: Your Honor, I believe he  
16 just answered that question.

17 MR. NOURSE: I believe he sidestepped the  
18 question, your Honor.

19 MS. WHITFIELD: He said it was a two-step  
20 process.

21 MS. BOJKO: Three-step.

22 MS. WHITFIELD: Three-step process.

23 EXAMINER SEE: You can answer the  
24 question, Mr. Benedict.

25 A. The extent of Staff's analysis is

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1 described in Question 7 on page 3 of my testimony. I  
2 lay out a three-step process that Staff evaluated.

3 Q. And that process did not include  
4 consideration of the reasonableness of the Company's  
5 integrated resource plan under the Rule 6 we've been  
6 discussing, correct?

7 MR. DARR: Objection, asked and answered.

8 MR. NOURSE: No, your Honor. I don't  
9 think he has answered it. It is a very simple  
10 question.

11 EXAMINER SEE: Answer the question,  
12 Mr. Benedict. The objection is overruled.

13 A. Given that Staff had not found a need for  
14 any resources to be built, Staff did not evaluate the  
15 merits or deficiencies of any resources, generic or  
16 specific, contained within AEP's filing.

17 Q. Thank you, Mr. Benedict.

18 And if you'll turn -- I actually do want  
19 to talk about your testimony. Let's turn to page 11.  
20 I will start at the end, and then we'll come back  
21 toward the front. So a couple of things I wanted to  
22 discuss about Answer 13 on page 11, starting on line  
23 14. First of all -- and I will try to paraphrase.  
24 You tell me if I am misstating your testimony. It's  
25 your bottom line conclusion in this answer that the

1 Commission may decide that there's a broader  
2 definition of a need than Staff has adopted in your  
3 testimony, correct?

4 A. Staff is providing its advice and  
5 guidance to the Commission as it would in any  
6 proceeding. Obviously the Commission is not bound to  
7 agree with Staff. The Commission can do what it  
8 wants.

9 Q. Okay. But there must have been a reason  
10 you included this statement. Do you always say, at  
11 the end of your testimony, the Commission may want to  
12 reject my views?

13 MR. HEALEY: Objection, argumentative.

14 MR. COLLIER: That's argumentative.

15 Q. Okay. Well, I will rephrase but there  
16 must have been a reason why you included this other  
17 than the general truism that the Commission might do  
18 something different than what you recommend. Can you  
19 tell me what that reason is?

20 A. I generally agree it's a rather  
21 unremarkable observation on my part.

22 Q. Well, if it's any consolation, it was the  
23 one sentence I liked in your testimony. That's why I  
24 am asking you that first. All right. Did I unfairly  
25 rephrase your answer that you're recognizing that the

1 Commission may, in deciding this case, adopt a  
2 broader view of need than what you've set forth in  
3 your testimony?

4 A. While Staff certainly believes that its  
5 interpretation, which is based on a very plain and  
6 ordinary reading of the relevant statutory language,  
7 is the correct one, Staff, of course, recognizes that  
8 the Commission may interpret need in the way it sees  
9 fit which is their right to do so.

10 Q. Okay. Mr. Benedict, the other thing I  
11 was going to ask you about this answer is you also  
12 state here that -- again, it's sort of an alternative  
13 statement here of, in your first sentence, you say  
14 that the purported benefits that the Company set  
15 forth do not relate to need as you define the term.  
16 You go on to say that various parties, and I gather  
17 ultimately the Commission, may find these benefits  
18 compelling. Do you see that?

19 A. I do.

20 Q. Okay. And so the benefits -- the  
21 benefits you're talking about, could you zero in a  
22 little bit more and tell me what you are referring to  
23 here?

24 A. No, because I'm referencing various  
25 parties. All I am saying, various parties may have

1 various opinions on whether they find the benefits  
2 compelling or not, so I don't want to speak on their  
3 behalf.

4 Q. Well, okay. But in line 14 you're saying  
5 Staff believes the purported benefits do not relate  
6 to need, right?

7 A. That's correct.

8 Q. So what purported benefits are you  
9 referring to in the answer, Mr. Benedict?

10 A. The benefits that the Company has  
11 identified in its supplemental LTFR filing that was  
12 filed back in September of 2018.

13 Q. Okay. And do you feel that you've  
14 addressed those in your testimony or that you're  
15 saying they weren't relevant so I didn't address  
16 them?

17 A. The latter.

18 Q. Okay. Now, I wanted to talk to you  
19 briefly about the concept of an electric security  
20 plan that was implemented as part of Senate Bill 221.  
21 You're familiar with that concept?

22 A. Generally, yes.

23 Q. Okay. And is it your understanding that  
24 you've mentioned earlier that the -- that I guess the  
25 reason we're here with this filing because there's

1 the provision in the ESP statute for a utility having  
2 a new generation resource, correct?

3 A. That's right.

4 Q. And based on the various conditions and  
5 provisos that are in that statute, correct?

6 A. I didn't follow that question.

7 Q. I was trying to help but that's fine.  
8 We'll move on. So do you know what the overall  
9 standard is for approving an ESP?

10 MR. McNAMEE: Objection. It's outside  
11 the scope of his testimony, and I'm not sure how it's  
12 relevant either.

13 MR. NOURSE: I don't know if it's outside  
14 the scope, your Honor, when he's making definitive  
15 claims about interpretation of the ESP statute, so I  
16 think it's right there next to the heart of his  
17 conclusion.

18 MR. McNAMEE: We're not passing on an ESP  
19 in this case, your Honor. I don't see the point but.

20 Q. Okay. I'll try to rephrase. I don't  
21 know if it will help, but, Mr. Benedict, are you  
22 familiar with the so-called MRO test that is applied  
23 to ESP plans?

24 A. Yes, I am.

25 Q. And is it your understanding that the

1 test determines whether the plan's pricing is more  
2 favorable in the aggregate as compared to the  
3 expected results that would otherwise apply under a  
4 market rate offer?

5 MR. HEALEY: Objection.

6 Q. Sound right to you?

7 MR. HEALEY: Objection.

8 MR. McNAMEE: I'll object as well.

9 MR. HEALEY: Your Honor, relevance. This  
10 is not the ESP and there is no MRO versus ESP test in  
11 this case. I can't see how this is relevant to the  
12 current question of need.

13 MR. NOURSE: Your Honor, his, you know,  
14 main conclusions here are interpreting the ESP  
15 statute, so I have a couple of questions about the  
16 context of that provision within the ESP statute. He  
17 already stated he's familiar with the MRO test.

18 EXAMINER SEE: The objection is -- the  
19 objection is sustained.

20 Q. (By Mr. Nourse) Okay. Mr. Benedict, is  
21 it your understanding that the Commission approved  
22 the Renewable Generation Rider for AEP Ohio as part  
23 of its -- the last ESP Order the Commission issued?

24 A. Yes, I believe the Commission authorized  
25 the zero placeholder rider, Rider RGR, correct.



1           Q.    And it is -- just confirm for me, because  
2   we were talking about the resource planning rules  
3   before, that the Staff did not look at pricing  
4   associated with the Company's break-even proposal in  
5   this case and did not examine whether there was an  
6   economic advantage that would relate to need under  
7   the ESP statute; is that correct?

8           A.    Staff did not evaluate any issues related  
9   to pricing or cost in Phase I of this proceeding, but  
10   we certainly reserve the right to do so in Phase II.

11          Q.    Okay.  And let me follow up on a couple  
12   of questions -- statements you made earlier about PJM  
13   and fuel diversity.  First of all, I want to ask you,  
14   would you agree that renewable energy plays an  
15   integral role in promoting a reliable and  
16   cost-effective grid?  Do you agree with that  
17   statement?

18          A.    No, no, I don't.

19          Q.    All right.  Are you aware of whether  
20   supply diversity is something that's listed in the  
21   codified Ohio energy policy?

22          A.    I believe it is.

23          Q.    Okay.  But just to be clear, your  
24   testimony, as I understood it earlier, was that the  
25   fuel diversity is a matter that PJM should be

1 concerned with, not the PUCO, correct?

2 A. No. I believe that it's best evaluated  
3 from a regional level given that Ohio is a member of  
4 a 15-jurisdictional regional transmission  
5 organization. It's not to say Ohio can't evaluate  
6 resource diversity on its own.

7 Q. Do you -- do you recall that PJM takes  
8 fuel diversity as a goal and tries to address that  
9 relative to any PJM area or Ohio specifically?

10 A. I believe that PJM is generally resource  
11 agnostic, although PJM has done studies to ensure  
12 obviously reliability is paramount that intermittent  
13 renewable generations don't threaten its primary  
14 mission of reliability.

15 Q. Well, are you familiar with the MOPR  
16 proposal that PJM has advanced as part of the  
17 capacity repricing larger docket that Mr. Kurtz asked  
18 you a few questions about?

19 A. I am.

20 Q. Is it your understanding that the MOPR is  
21 aimed, in part, at eliminating the capacity revenue  
22 for renewable resources?

23 A. No. I believe it's primarily designed to  
24 remove subsidized generating resources, be they  
25 renewable or otherwise, from the market, to preserve

1 the integrity of the competitive market.

2 Q. And by "subsidized generating resources"  
3 that that is referring to PJM's target on state  
4 renewable mandates, correct?

5 A. I don't understand the question. I'm  
6 sorry.

7 Q. It's your understanding that -- do you  
8 believe that PJM proposed the MOPR and its effect on  
9 new renewable resources to promote renewables? Do  
10 you think it has that effect?

11 A. I believe it has the effect of attempting  
12 to preserve the integrity of the market and to keep  
13 units, that are receiving out-of-market subsidies,  
14 from undermining the market.

15 Q. And do you know whether the MOPR  
16 specifically calls out renewable resources as a key  
17 issue in that area?

18 A. I don't know.

19 Q. Okay. And do you know whether -- do you  
20 know what percentage of PJM capacity resources are  
21 solar today?

22 A. The last I checked, I believe it was as  
23 of 2016, 6 percent of PJM was renewable. I don't  
24 know what portion of solar -- of -- subset of that  
25 6 percent was solar but I would -- I would assume

1 it's probably a very small amount.

2 Q. Less than a percent?

3 A. Certainly smaller than 6 percent and a  
4 fraction thereof but I don't know the actual  
5 percentage as I sit here today.

6 Q. All right. Would you accept, subject to  
7 check, and based on Kevin Murray's exhibit that's  
8 already in evidence, that a 0.7 percent is listed as  
9 solar among the PJM capacity resources?

10 A. That sounds about right. I'll accept  
11 that subject -- subject to check.

12 Q. That's a lot less than 6 percent, isn't  
13 it?

14 A. It's certainly less, yes.

15 Q. And do you feel that's adequate to check  
16 the box on renewable fuel diversity in PJM?

17 MR. McNAMEE: Objection. I have no idea  
18 what "check the box" means.

19 Q. Okay. Mr. Benedict, do you feel that 0.7  
20 percent solar resources within capacity -- PJM's  
21 capacity market is adequate to conclude that PJM has  
22 effectively promoted fuel diversity?

23 MR. DARR: Objection, your Honor.  
24 Adequate for what? The question is vague.

25 MR. NOURSE: It's an opinion. I am

1 asking his opinion.

2 MR. DARR: It's still vague. You are  
3 asking him to make some sort of comparison and there  
4 is nothing you are offering him to compare it to.

5 MS. LEPPLA: Your Honor, if I can just  
6 interject. I mean, we have had this happen  
7 repeatedly throughout this hearing. Words have  
8 definitions, and if he doesn't understand it, he can  
9 ask Mr. Nourse for clarification.

10 EXAMINER SEE: And the witness can answer  
11 the question. With any clarification or context  
12 needed.

13 A. So PJM's resource fleet, as we sit here  
14 today, is more diverse than it's ever been in the  
15 decade of utility regulatory experience I have.  
16 PJM's rules are resource agnostic. I believe that  
17 any resource has any right to compete in PJM on a  
18 nondiscriminatory basis.

19 Q. Great. Thank you.

20 And on page 9 you talk about Navigant's  
21 study. And that's referring to the Voice of the  
22 Customer survey that's already been admitted into  
23 evidence, correct?

24 A. Yes, it is.

25 Q. Okay. And do you have any formal

1 education or credentials regarding the design or  
2 implementation of surveys?

3 A. I do in terms of random sampling  
4 methodologies but not in terms of surveys per se.

5 Q. Okay. And Staff did not present any  
6 analysis regarding the random sampling related to the  
7 Navigant survey, correct?

8 A. Not in my testimony, no.

9 Q. Okay. Now, I want to clarify a couple of  
10 statements there at the bottom of page 9. You know,  
11 I want to try to again rephrase just because I don't  
12 know that you -- I want to clarify the phrase that  
13 you used, okay, and see -- I don't think you intended  
14 it this way, but on line 21 you say "The Company  
15 provides insufficient evidence that customer  
16 preferences are not being adequately met," et cetera.  
17 Do you see that?

18 A. I do.

19 Q. Okay. Now, you're not suggesting it's  
20 Staff's role, in this case, to weigh the sufficiency  
21 of the evidence that's been presented, right?

22 A. Well, I believe the Company's case is  
23 predicated upon a demonstration of customer  
24 preferences that it -- it is making a claim that are  
25 not being met.

1           Q.    Let me ask it this way, do you agree it's  
2   the Commission's role in this case to weigh the  
3   sufficiency of the evidence relative to not only the  
4   Company's case but all the evidence?

5           A.    Ultimately, yes.

6           Q.    Okay. Now, is it your view that AEP Ohio  
7   customers, in responding to the Navigant survey, were  
8   not aware of renewable energy options available to  
9   them in the marketplace?

10          A.    The way the questions were worded,  
11   presupposed that AEP Ohio would be the entity that  
12   was providing incremental resources, so I don't think  
13   you can make a determination about that specific  
14   question from the survey itself.

15          Q.    Who do you think is providing the service  
16   that we're proposing under the RGR?

17          A.    I guess that would be the Company.

18          Q.    Okay. But my question was about -- let  
19   me ask you this way, do you think customers, in  
20   answering surveys, are aware of existing marketplace  
21   options that -- that are out there?

22          A.    I don't know.

23          Q.    Okay. Let me -- let me address -- or ask  
24   you questions about the material on pages 10 and 11.  
25   So starting on line 4 on page 10 and I think carrying

1 over to line 7 on page 11, you touch on three areas,  
2 and you can correct me if I'm stating -- misstating  
3 anything here, but I am just trying to set this line  
4 of questioning up. So you talk about net metering,  
5 you talk about CRES renewable options, and you talk  
6 about aggregation renewable power options. Am I  
7 correct so far?

8 A. That's right.

9 Q. And I guess the topic sentence that opens  
10 this -- this discussion on lines 4 and 5 of page 10  
11 is that "under Ohio's current regulatory structure,  
12 environmental preferences could be acted upon in a  
13 number of ways," correct?

14 A. That's right.

15 Q. Okay. Now, let me talk -- first, I have  
16 a couple of general questions, and then I want to  
17 talk about each of the three areas. So are any of  
18 these three market options that you reference listed  
19 in the LTFR statute or the Commission's rules?

20 A. Not that I know of.

21 Q. Okay. Do any of the three options go to  
22 resource adequacy in PJM?

23 A. No, they do not.

24 Q. All right. Now, let me ask you about net  
25 metering, first, and I am going to try to skip



1 anything that's been covered here. Are -- you do  
2 indicate approximately 15 -- or over 1,500 customers  
3 in AEP's territory are on net metering tariffs,  
4 correct?

5 A. As of the date I pulled that data, yes.

6 Q. Okay. And out of the 1.1 million-plus  
7 residential customers, that's about 0.1 percent,  
8 correct?

9 A. I haven't done the math, but I'll accept  
10 that.

11 Q. And are all the net metering customers  
12 involving behind-the-meter renewable generation, if  
13 you know?

14 A. I don't know.

15 Q. Are you aware of any net metering  
16 behind-the-meter generation that is not solar or  
17 wind?

18 A. I am not aware of the generation type of  
19 any of the customers on the net metering tariff, no.

20 Q. Okay. And do you agree that  
21 behind-the-meter solar or renewable is not part of  
22 the grid?

23 A. It generally doesn't feed onto the grid,  
24 although it can at times. It certainly does affect  
25 the grid in the sense that it changes the demand

1 profiles.

2 Q. It impacts the grid, but it's not part of  
3 the grid, is it?

4 A. Well, it's behind the meter on the  
5 customer's premises.

6 Q. I thought it was an easy question, thank  
7 you. How about is it considered a generation  
8 resource for PJM?

9 A. Under the existing rules, I don't believe  
10 so, but I do believe PJM is looking into how  
11 distributed resources could aggregate and be able to  
12 bid into the PJM-administered energy and capacity  
13 auctions.

14 Q. Okay. Let me shift to the CRES, the  
15 second thing that you mentioned in this section; CRES  
16 renewable options. Now, is what you're portraying  
17 here to suggest that in the context of evaluating the  
18 Company's application, you did a -- you essentially  
19 did a thorough search of the Apples to Apples  
20 website, looking for renewable product offerings?

21 A. Yes. I evaluated whether 100-percent  
22 renewable products were available to customers on the  
23 Apples to Apples website.

24 Q. Okay. And I stated it correctly that you  
25 did a thorough search?

1           A.    I evaluated the data that was there the  
2 day that I conducted this search, yes.

3           Q.    Now, in your search, did you -- and with  
4 any general personal knowledge you have, do you know  
5 how many CRES offerings for renewable energy based on  
6 Ohio RECs existed at the time of the Company's  
7 Application in this case?

8           A.    I don't know as of the time of the  
9 Company's Application, but as of the time that I  
10 conducted this analysis, none of the CRES provider  
11 options were identified as in-state Ohio RECs.

12          Q.    Okay. And do you know whether any  
13 utility-scale solar projects have been constructed  
14 based on these CRES offerings?

15          A.    I don't know.

16          Q.    Do you know how many of them offer fixed  
17 prices for any period exceeding three years?

18          A.    Generally it's difficult for a CRES  
19 provider to offer an offering that's longer than  
20 three years due to the PJM capacity market only looks  
21 out three years. But in the past I have been aware  
22 of CRES offerings that were of a length of seven  
23 years.

24          Q.    Those are residential offerings or  
25 commercial?

1           A.    They were residential offerings, yes.

2           Q.    Okay.  And any such offerings -- any  
3 offer that's in the CRES market today, providers are  
4 not obligated to keep those offers available for any  
5 given period of time, correct?

6           A.    Yes.  That's my understanding, they are  
7 not even obligated to post them to Apples to Apples  
8 to begin with.

9           Q.    Well, all right.  So does the Company's  
10 proposal preclude CRES renewable power options from  
11 entering or exiting the market?

12          A.    Not that I'm aware of.

13          Q.    Okay.  I do want to give you an exhibit  
14 that I think we cleared with your counsel and you had  
15 an opportunity to look at earlier.

16               MR. NOURSE:  Your Honor, this is so  
17 voluminous so we are going to try to -- try to  
18 distribute this now.  So we'll mark this AEP Ohio  
19 Exhibit 21.  I'll represent that this is a stack  
20 of -- let me know, did we give one to the Bench yet?

21               EXAMINER SEE:  The Bench has the  
22 requisite two copies needed.

23               (EXHIBIT MARKED FOR IDENTIFICATION.)

24               MR. NOURSE:  So to better complete the  
25 record on this, your Honor, and the state of the

1 Apples to Apples CRES offerings. Since the --  
2 essentially since the time we filed in late  
3 September, we've got each batch of -- I think they're  
4 updated weekly through the most recent. So each one  
5 of these stapled copies is a batch as it existed, and  
6 you can see that they are archived and they are dated  
7 per the Apples to Apples chart.

8 Q. So, Mr. Benedict, you had an opportunity,  
9 I believe, to look at these earlier and verified that  
10 they were consistent with what you are aware is on  
11 the Apples to Apples website at the Commission?

12 A. Yes, that's correct.

13 Q. Okay. So in each one of these, this is  
14 not just renewable offerings but the renewable  
15 offerings are indicated in the -- within each segment  
16 of the offers that are summarized, correct?

17 A. That's right.

18 Q. Okay. And so this looks to be an  
19 accurate and full copy of what -- as I described it,  
20 correct?

21 A. Yes. It appears to be a printout  
22 directly from the Apples to Apples website.

23 Q. Okay. Thank you.

24 MR. NOURSE: I'll set that aside, and I  
25 won't do us the torture of going through a lot of

1 stuff there if it's going to be admitted into the  
2 record, your Honor, and I think Staff counsel has  
3 stipulated to that.

4 MR. McNAMEE: Yes.

5 MR. NOURSE: We'll curtail and delete  
6 those questions.

7 Q. Mr. Benedict, let me move on to the third  
8 category here in this passage we've been discussing,  
9 the aggregation of renewable power, okay? And as of  
10 the date of the Company's application, do you know  
11 how many municipal aggregation offerings for  
12 renewable energy are based on Ohio RECs?

13 A. I have not performed that analysis.

14 Q. Okay. Are you aware of any that are  
15 based on Ohio RECs?

16 A. I don't know.

17 Q. Do you know whether the renewable  
18 aggregation in Ohio's third-largest city is based on  
19 Ohio's RECs?

20 A. I don't know.

21 Q. Okay. By the way, are you from  
22 Cincinnati?

23 A. I'm a Cleveland boy.

24 Q. Oh, okay. It sounded like -- almost like  
25 an affectionate way to refer to Cincinnati but pretty

1 provocative. Are these programs that -- that exist  
2 in municipal aggregation offerings, available to all  
3 AEP Ohio customers?

4 A. No. They are, I believe, available to  
5 customers who reside within -- or their business or  
6 home is within the municipality or whatever the  
7 relevant government entity is. It could be a county,  
8 a city, what have you.

9 Q. Okay. And are municipalities obligated  
10 to keep these offerings available for any period of  
11 time?

12 A. Not that I am aware of.

13 Q. Are you aware of any aggregation programs  
14 longer than three years?

15 A. I haven't done that analysis.

16 Q. But you are not aware of any that are  
17 longer than three years, correct?

18 A. Again, I haven't looked into it so, yes,  
19 no, I am not aware of any that are of any length.

20 Q. All right. And you may have implied this  
21 earlier, but just to be clear, how many utility-scale  
22 solar projects have been constructed based on  
23 municipal aggregation and renewable offerings, if you  
24 know?

25 A. I don't know.

1           Q.    All right.  And does the Company's  
2   proposal preclude -- the proposal in this case  
3   preclude municipal aggregation for renewable power?

4           A.    Not that I am aware of.

5           Q.    Okay.  And so then at the top of page 11,  
6   you kind of conclude this section by saying, line 5,  
7   Staff is concerned that the existing -- existence of  
8   such a directive -- I'm sorry, let me give you more  
9   context here.

10                  At the top of page 11, you are talking  
11   about the -- basically the Company's proposal, all  
12   right, to recover this through the RGR, correct?

13           A.    Yes, that's what I generally mean by the  
14   directive.

15           Q.    Right.  And then you are referring to --  
16   in the last sentence what I was getting at is that  
17   you say your Staff is concerned that the existence of  
18   that RGR could potentially serve to crowd out the  
19   other types of programs described, correct?

20           A.    That's correct.

21           Q.    So, you know, as we've gone through those  
22   limited market options, what's your conclusion for  
23   being concerned that those would be crowded out by  
24   utility-scale solar?

25           A.    So I suppose there is two ways to look at



1 it. You can either look at it from the perspective  
2 of a customer or you can look at it from the  
3 perspective of a business who is seeking to install  
4 solar within Ohio.

5 So from a customer perspective, if I  
6 wanted to, say, look into net metering but I  
7 recognize that I also had to pay a nonbypassable  
8 rider for renewable generation already, I may  
9 determine that my preferences would result in me  
10 having to pay twice for renewables; so I could see  
11 someone deciding maybe I'm not going to do a rooftop  
12 solar project.

13 Then if you evaluate it from the  
14 perspective of a developer, if they perceive that in  
15 Ohio they are going to have to compete against an  
16 incumbent monopoly in a privileged position, they are  
17 going to seek greener pastures elsewhere.

18 Q. Okay. Well, first, your point about the  
19 developer, were you here earlier when MAREC witness  
20 Burcat testified?

21 A. Not for the entire cross but I was here  
22 for portions of it, yes.

23 Q. All right. Well, we can -- I guess we  
24 don't have to speculate what developers think based  
25 on that testimony, but regarding net metering, do you

1 think -- is it your understanding that net metering  
2 customers engage in net metering basically to be able  
3 to get -- to get energy and strictly generation  
4 service offset?

5 A. I believe there is any number of reasons  
6 why a customer might do that.

7 Q. Are you familiar with the Commission's  
8 net metering rules?

9 A. Only vaguely, not in any detail.

10 Q. Would you agree that net metering  
11 customers experience significant savings on kWh wires  
12 charges as a result of net metering?

13 A. By "wires charges" do you mean  
14 distribution charges?

15 Q. Anything that's not generation service.

16 A. Right. So to the extent that  
17 transmission or distribution charges are being --  
18 what's the word I am looking for, are being billed --

19 Q. Subsidized maybe?

20 A. -- volumetrically, meaning based on their  
21 energy consumption, they are able to avoid those  
22 charges by producing their own electricity on-site.

23 Q. Do you know if a net metering customer  
24 that may, let's say they have 500-kWh worth of  
25 behind-the-meter generation and they use -- without

1 the -- without off -- the offset, they would use  
2 1,500 kWh. Are you with me?

3 A. Sure.

4 Q. Does that customer use -- generate the  
5 power when they need it? Does that always line up?

6 A. No, not necessarily.

7 Q. So they actually use the grid even more  
8 than -- they can potentially use the grid even more,  
9 in terms of throughput of energy back and forth, than  
10 a regular customer, right?

11 A. That certainly could be the case.

12 Q. And yet, they are offsetting wires  
13 charges. So do you think that -- do you think net  
14 metering customers have plenty of incentives to  
15 consider net metering with or without the Company's  
16 proposal?

17 A. I guess it depends on what motivated them  
18 to seek the net metering installation in the first  
19 place.

20 Q. Okay. And now, just with respect to  
21 these three things we've talked about in the  
22 aggregate here, as being you want to -- you want to,  
23 I guess, protect them, right, from being crowded out?  
24 Did I say that correctly?

25 A. So I'd refer you to line 17 on page 9 of

1 my testimony, where I observe that we're committed to  
2 facilitating an environment where customers are fully  
3 empowered to engage with a competitive marketplace to  
4 produce outcomes that are consistent with their  
5 preferences.

6 Q. And does that suggest the exclusion of  
7 utility options, Mr. Benedict? Is that what you are  
8 saying PowerForward is all about?

9 A. Not necessarily.

10 Q. Would you agree that it's been two  
11 decades since the State of Ohio went down the path of  
12 deregulation?

13 A. That is true.

14 Q. So we've waited two decades for adequate  
15 marketplace options. How long is Staff willing to  
16 wait before it would -- before it would support a  
17 utility option?

18 MR. DARR: Objection.

19 MS. BOJKO: Objection.

20 MR. HEALEY: Objection. Argumentative,  
21 your Honor.

22 MR. DARR: And that's only the beginning.

23 MR. NOURSE: Okay. I'll rephrase, your  
24 Honor.

25 Q. (By Mr. Nourse) You agree it's been --

1 this is the 20th anniversary of Senate Bill 3,  
2 Mr. Benedict? You indicated earlier, I think you  
3 might have been in grade school, but you can still do  
4 that math, right?

5 A. That's right.

6 Q. Okay. And do you -- do you agree that  
7 competitive market options have had plenty of time to  
8 develop already to date?

9 MS. BOJKO: Objection. I think it  
10 mischaracterizes the state of affairs here in Ohio.  
11 Senate Bill 3 did not get developed for 20 years that  
12 it was supposed to. We had a thing called Senate  
13 Bill 221 that intervened and stopped the competitive  
14 market from clearly evolving as Mr. Nourse is  
15 alluding to, so I think he's misstating the  
16 legislative affairs and the State of Ohio regulatory  
17 regime.

18 MR. NOURSE: Your Honor, what I said was  
19 it's the 20th anniversary of Senate Bill 3 since we  
20 started down the path of deregulation. I don't think  
21 that's inaccurate, but Mr. Benedict has already said  
22 he's already testifying on Senate Bill 221, and he  
23 can respond with whatever he wants to caveat.

24 EXAMINER SEE: And the witness can answer  
25 the question.

1           A.    It certainly has been a long and arduous  
2 process. I observed that it took until I believe it  
3 was June 1, 2015, for AEP to finally get to the point  
4 where they were sourcing 100 percent of their  
5 Standard Service Offer from the competitive market.  
6 It's taken us a long time to get to this point and,  
7 yes, you correctly observed we still have got a ways  
8 to go.

9                   And I believe the Commission and its  
10 staff -- and I don't like to speak for the  
11 Commission, but I think as evidenced by the  
12 PowerForward proceeding, both the Commission and its  
13 staff are committed to facilitating an environment  
14 that allows customers to be able to engage in a  
15 competitive marketplace to find various products and  
16 services that meet their customer needs and wants.

17           Q.    So just to follow up on that,  
18 Mr. Benedict, when you say that in June 2015, AEP  
19 Ohio finally got to the point of sourcing SSO from  
20 market, is it your understanding that that's a  
21 requirement under the law? SSO competitive  
22 procurement by AEP Ohio?

23           A.    I don't believe it's a requirement under  
24 the law, no.

25           Q.    In fact, that's an apt description for

1 the market rate offer option, is it not?

2 A. Yes, a market rate offer would function  
3 in essentially the same way.

4 Q. Did you -- is it your understanding that  
5 the Commission, in accepting the rate stabilization  
6 plan for AEP Ohio and in accepting ESP I and II  
7 during those periods leading up to June 2015, found  
8 that AEP customers benefited by billions of dollars  
9 of savings over market prices during that period?

10 MR. McNAMEE: Objection.

11 MR. DARR: Objection, relevance.

12 MR. NOURSE: I am going to his criticism  
13 of June 2015, your Honor. I think it's a  
14 well-documented fact in the Commission Orders; I'm  
15 just asking if he is aware of it.

16 EXAMINER SEE: Mr. McNamee.

17 MR. McNAMEE: I don't understand how this  
18 is related to anything that's going on in this case.

19 MR. NOURSE: It's a follow-up to his last  
20 answer, your Honor. I just indicated that.

21 EXAMINER SEE: The objection is  
22 sustained.

23 MR. NOURSE: All right. Thank you,  
24 Mr. Benedict. Have a nice evening. I appreciate  
25 your patience.

1 THE WITNESS: Thank you.

2 EXAMINER SEE: Any redirect, Mr. McNamee?

3 MR. McNAMEE: Could I have just a moment?  
4 I need to run down the hall, if nothing else.

5 EXAMINER SEE: Yes. We're off the  
6 record.

7 (Recess taken.)

8 EXAMINER SEE: Let's go back on the  
9 record.

10 MR. McNAMEE: Thank you, your Honor. If  
11 I could delay it 5 more minutes, this would be the  
12 longest hearing I've ever been in, but I won't do  
13 that. We have no redirect for Mr. Benedict, and I  
14 would move the admission of Staff Exhibit 2.

15 EXAMINER SEE: Are there any objections  
16 to the admission of Staff Exhibit 2?

17 MR. NOURSE: No, your Honor.

18 EXAMINER SEE: Staff Exhibit 2 is  
19 admitted into the record.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER SEE: Ms. Leppla?

22 MS. LEPLA: Yes. I move for the  
23 admission of OEC Exhibits 1, 2, 3, and 6.

24 EXAMINER SEE: Are there any objections  
25 to the admission of OEC Exhibits 2 -- I'm sorry, 1,



1 2, 3, and 6?

2 MR. HEALEY: Just a continuing objection  
3 on the lack of foundation for all those documents,  
4 your Honor.

5 EXAMINER SEE: So noted, Mr. Healey.

6 MR. McNAMEE: I am not sure I have them  
7 all marked correctly. Are you moving the one he  
8 didn't recognize?

9 MS. LEPPLA: No. There were six total  
10 documents, and the one that had different pages and  
11 the one that --

12 MR. McNAMEE: Oh, okay. That's the only  
13 one I was worried about.

14 MS. BOJKO: You didn't move 4 or 6?

15 MS. WHITFIELD: 4 or 5.

16 MS. LEPPLA: 4 or 5.

17 MS. BOJKO: Thank you.

18 MS. LEPPLA: And if anyone is confused, I  
19 am happy to show you.

20 EXAMINER SEE: With that, OEC Exhibit 1,  
21 2, 3, and 6 are admitted into the record.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 MS. LEPPLA: Thank you, your Honor.

24 MR. NOURSE: Your Honor, AEP would move  
25 for the admission of Exhibits 20 and 21.

1 MS. BOJKO: Your Honor, I don't believe  
2 Exhibit 20 needs to be admitted. I think the  
3 Commission is allowed to take administrative notice  
4 or you can cite freely to the Commission's Orders.

5 MR. NOURSE: I am happy to move for  
6 administrative notice, but we did talk about things  
7 throughout that Order, and I think the record would  
8 be clearer if the entire thing is in there,  
9 especially when some of the questions about accuracy  
10 were raised by counsel.

11 EXAMINER SEE: Okay. There are no -- if  
12 there are no other objections to the admission of AEP  
13 Exhibits 20 and 21, AEP 20 and 21 are admitted into  
14 the record.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 MR. NOURSE: Thank you, your Honor.

17 EXAMINER SEE: I think there is one more  
18 issue we need to take up on the record.

19 MR. HEALEY: Yes, your Honor, very  
20 briefly. I would ask the Bench please reconsider the  
21 schedule on filing the papers regarding Mr. Dormady  
22 for next week. This was Mr. Dove's motion which was  
23 made earlier. We ask that he be required to file his  
24 motion for exclusion, or whatever it might be, on  
25 Monday, and then OCC have a reasonable opportunity to

1 file a memo contra by Wednesday.

2 This would be similar to the January 8  
3 Entry in this case regarding motions to strike and  
4 with Rule 4901.112 in which parties have a reasonable  
5 opportunity for a memo contra. We wouldn't know what  
6 we were filing a memo contra to until we see his  
7 motion, your Honors, as to ethical, you know, various  
8 sources, but we don't know what those are to be able  
9 to respond effectively.

10 MR. NOURSE: Your Honor, I would suggest,  
11 first of all, I think there were advanced notices and  
12 discussions, from what I've heard, but Mr. Dove can  
13 address that, but I would -- I did talk to Mr. Dove  
14 and I think he was willing to file a motion, if it's  
15 helpful, in advance of Monday or at least e-mail it  
16 around to folks. You know, we have been working to  
17 complete this hearing and don't want to delay it any  
18 further and so I am not sure what -- what you guys  
19 want to do, it's up to you, but that's my  
20 perspective.

21 MS. BOJKO: Your Honor, we would support  
22 the filing of a motion because although Mr. Dove  
23 offered to send around his -- what he relied upon to  
24 make the statements he did, he didn't really assert,  
25 besides the citation, any other authorities for his

1 motion or any kind of details to why he is stating  
2 what he is stating, so we would support the filing  
3 first so that parties could do a memo contra and  
4 there are many parties that this affects that were  
5 not in those pre-discussions, so I was not aware of  
6 his motion that he was going to make today and the  
7 details, so I don't think it's fair to characterize  
8 that parties knew.

9 MR. NOURSE: No. I wasn't involved  
10 either, but I said Mr. Dove can address, it's my  
11 understanding, that he raised with OCC at least a day  
12 in advance but.

13 MR. DOVE: That is an accurate  
14 characterization. I didn't involve other parties  
15 because it didn't involve other parties' witnesses.  
16 I didn't see the need for that. I am fine with the  
17 schedule you ordered. I'll abide by whatever you  
18 order, but I don't want to delay this proceeding any  
19 longer than it already has been.

20 MR. NOURSE: And, your Honor, could I  
21 just point out that, I mean, I think the issue has  
22 been clearly raised. OCC is aware of exactly what it  
23 is. And you are not going to do a reply,  
24 so everybody can address their perspective on it, I  
25 think, at once.

1 MS. WHITFIELD: Actually, your Honor,  
2 this actually could impact Kroger. As you saw  
3 whenever Mr. Bieber was on the stand, AEP did try to  
4 raise the issue because Mr. Denis, at Kroger, is also  
5 a candidate for the Commission, that that somehow --

6 MR. NOURSE: I don't think we made any  
7 allegations about that. We asked a couple of factual  
8 questions. We didn't make any motions. We are not  
9 trying to exclude his testimony; simple and factual  
10 testimony.

11 MS. WHITFIELD: But also I would ask -- I  
12 would because your Honors said that Mr. Dove did not  
13 need to send around the Ethics Commission Orders he  
14 was referring to, I asked him for them and,  
15 consistent with your direction to him, he is just  
16 going to wait and put them in his motion, so I would  
17 also ask to have a day or two to actually see what he  
18 is relying upon.

19 MS. WILLIS: And, your Honor, if I could  
20 add, in the discussions earlier with Mr. Dove,  
21 Mr. Dove did not indicate that he -- the premise of  
22 his argument appears to be that Mr. Dormady is an  
23 employee of OCC and not an independent contractor.  
24 The conversations were rather vague that -- just that  
25 there would be a motion to exclude and that there was

1 some ethical and/or prejudicial issue.

2 MR. DOVE: If it would enable the parties  
3 to file on Monday to get this done, I am happy to  
4 send around what I was prepared to send around  
5 earlier today, with the understanding that I have the  
6 right to supplement it now that I am writing a brief.  
7 I am not going to preview my brief for them.

8 MS. WILLIS: Well, your Honor, this is --  
9 typical Commission procedure is when a motion is  
10 made, you have an opportunity to reply through a memo  
11 contra. It's highly unusual for a motion to be made  
12 and a reply to that motion to be filed  
13 simultaneously.

14 I think it defeats the whole purpose, and  
15 it undermines, you know, the rules of the Commission  
16 to try to have both of them filed at once, and OCC  
17 would be certainly willing to expedite and file a  
18 response in a very expedited manner, either one or  
19 two days, so that there is no further delay. And it  
20 would seem to me, your Honors, that we have a full  
21 line up on Monday. We will not get through our  
22 witnesses all on Monday, my guess, probably going to  
23 Tuesday. So if -- if we can resolve this issue by  
24 allowing us to have additional time, we can go  
25 forward in an expeditious manner and have it

1 resolved, understanding that your Honors will take  
2 some time to review the documents.

3 MS. BOJKO: Your Honor, I would also note  
4 this magnitude of a motion is typically done in  
5 writing and ahead of time, and I think that this  
6 motion in particular should have and could have been  
7 done before the witness appeared on the stand today,  
8 and I think that something with this policy type of  
9 decision needs to be carefully considered by the  
10 Commission and done properly through the motion  
11 practice.

12 MR. DOVE: Respectfully, I would like to  
13 respond because I did bring this up with the party,  
14 with OCC yesterday. I purposefully was not  
15 attempting to try and sandbag anyone. I didn't even  
16 intend to make the motion until he was announced as  
17 an interviewee because if he didn't have an  
18 interview, it may not have been as relevant if we  
19 knew it was done and over with.

20 So I don't appreciate the  
21 characterization that I waited until the last minute  
22 because I did not. I brought this up yesterday. We  
23 didn't even know he had applied until Friday. That  
24 was not public information until Friday.

25 MR. NOURSE: Your Honor, I would just add

1 in, if you are going to do the filings Monday  
2 simultaneously, I think that's what you said earlier,  
3 that the Commission make every effort to try to rule,  
4 I guess, and if we are talking about tentatively  
5 scheduling Dormady for Tuesday with the expectation  
6 of a ruling, you know, that would be fine with us,  
7 and then obviously we'll defer to you but that's our  
8 request.

9 MR. HEALEY: I'm sorry, but Dormady is  
10 not available Tuesday, so that's moot. He teaches  
11 all day long on Tuesday.

12 MR. ALLWEIN: How about Thursday?

13 MS. WILLIS: Well, Monday -- Monday,  
14 Tuesday -- we already indicated Monday, Tuesday he is  
15 not available. So we will be getting to him  
16 Wednesday anyways.

17 MS. LEPPLA: Your Honor, just because the  
18 witness is not available doesn't mean we should not  
19 address this issue in a timely manner and, you know,  
20 thoroughly, and I think that your proposal to have  
21 briefs due Monday makes sense, and Mr. Dove has  
22 offered to provide all the citations to all the  
23 parties, and they can review those in advance of  
24 filing Monday, and I think that makes the most sense  
25 and will make this the most expeditious so that it



1 can be --

2 MS. WILLIS: I am not sure Mr. Dove made  
3 that representation. He said he wanted to hold back,  
4 he is not going to give us his brief ahead of time,  
5 so I don't think that's true.

6 MR. DOVE: I just said I would offer the  
7 same citations I offered to offer earlier today.

8 MS. WILLIS: And you wanted to  
9 supplement.

10 (Discussion off the record.)

11 EXAMINER PARROT: Thank you, everyone.  
12 All right. We are on the record.

13 Mr. Dove, we are going to ask that you  
14 file your written motion and memorandum in support by  
15 Monday. As we previously indicated, any memoranda  
16 contra will be due Tuesday at noon.

17 MR. HEALEY: Thank you, your Honor. We  
18 certainly can do that.

19 EXAMINER SEE: At noon.

20 MS. WILLIS: Appreciate that.

21 EXAMINER PARROT: We will reconvene  
22 Monday at 9:00 a.m.

23 We are off the record.

24 (Thereupon, at 8:08 p.m., the hearing was  
25 adjourned.)

2406

## 1 CERTIFICATE

2 I do hereby certify that the foregoing is a  
3 true and correct transcript of the proceedings taken  
4 by me in this matter on Friday, January 25, 2019, and  
5 carefully compared with my original stenographic  
6 notes.

7  
8 

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Karen Sue Gibson, Registered  
Merit Reporter.

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Carolyn M. Burke, Registered  
11 Professional Reporter.

12 (KSG-6683)

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**Case No(s). 18-0501-EL-FOR, 18-1392-EL-RDR, 18-1393-EL-ATA**

Summary: Transcript in the matter of the Long-Term Forecast Report of the Ohio Power Company hearing held on 01/25/19 - Volume VIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.