BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	Case No. 14-0375-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	Case No. 14-0376-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	Case No. 15-0452-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	Case No. 15-0453-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	case No. 16-0542-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	Case No. 16-0543-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	Case No. 17-0596-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	Case No. 17-0597-GA-ATA

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In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	Case No. 18-0283-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	Case No. 18-0284-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017.	Case No. 18-1830-GA-UNC
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Tariff Amendments.	Case No. 18-1831-GA-UNC
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	Case No. 19-0174-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	Case No. 19-0175-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs.	Case No. 19-1085-GA-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	Case No. 19-1086-GA-UNC

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1 In the Matter of the :
Application of Duke Energy:
2 Ohio, Inc., for an : Case No. 20-0053-GA-RDR
Adjustment to Rider MGP :
3 Rates. :
:
4 In the Matter of the :
Application of Duke Energy:
5 Ohio, Inc., for Tariff : Case No. 20-0054-GA-ATA
Approval. :
6 - - -

7 PROCEEDINGS

8 before Ms. Megan Addison and Mr. Matthew Sandor,

9 Attorney Examiners, at the Public Utilities

10 Commission of Ohio, via Webex, called at 11:09 a.m.

11 on Thursday, November 18, 2021.

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On behalf of the Duke Energy Ohio, Inc.

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On behalf of the Residential Consumers of Duke Energy Ohio, Inc.

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On behalf of the Ohio Energy Group.

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On behalf of the Ohio Manufacturers' Association Energy Group.

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On behalf of the The Kroger Company.

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On behalf of the Ohio Partners for Affordable Energy.

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On behalf of the Retail Energy Supply Association.

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On behalf of the Interstate Gas Supply, Inc.

Dave Yost, Ohio Attorney General
John Jones, Section Chief
By Mr. Werner L. Margard III,
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Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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1 Thursday Morning Session,
2 November 18, 2021.
3 - - -
4 EXAMINER SANDOR: Let's go on the record.
5 The Public Utilities Commission of Ohio
6 has set for hearing at this time and place Case No.
7 14-375-GA-RDR, et al., which is captioned in the
8 Matter of the Application of Duke Energy Ohio, Inc.
9 Good morning, everyone. My name is Matt
10 Sandor, and with me is Megan Addison. We are the
11 Attorney Examiners assigned by the Commission to hear
12 this case.
13 At this time, we will take the
14 appearances of the parties. First on behalf of Duke
15 Energy Ohio, Inc.
16 MR. ALEXANDER: Good morning, your Honor.
17 Trevor Alexander and Sarah Siewe from the Benesch law
18 firm. Also with us today is counsel for Company,
19 Rocco D'Ascenzo.
20 EXAMINER SANDOR: Thank you. Next,
21 counsel on behalf of the Ohio Consumers' Counsel.
22 MR. HEALEY: Good morning, your Honor.
23 On behalf of the Ohio Consumers' Counsel, Christopher
24 Healey, 65 East State Street, Columbus, Ohio. Thank
25 you.

EXAMINER SANDOR: Counsel on behalf of the Ohio Energy Group.

MS. COHN: Good morning, your Honor. On behalf of Ohio Energy Group, Jody Kyler Cohn and Michael L. Kurtz from the law firm Boehm, Kurtz & Lowry, 36 East Seventh Street, Cincinnati, Ohio 45202.

EXAMINER SANDOR: Counsel on behalf of the Ohio Manufacturers' Association Energy Group.

MS. BOJKO: Thank you, your Honor. On behalf of the Ohio Manufacturers' Association Energy Group, Kimberly W. Bojko, Thomas Donadio with the law firm Carpenter Lipps & Leland, 280 North High Street, Suite 1300, Columbus, Ohio 43215.

EXAMINER SANDOR: Counsel on behalf of The Kroger Company.

MS. WHITFIELD: Yes, thank you, your Honor. On behalf of The Kroger Company, Angela Paul Whitfield with the law firm Carpenter Lipps & Leland, 280 North High Street, Suite 1300, Columbus, Ohio 43215. Thank you.

EXAMINER SANDOR: Counsel on behalf of the Ohio Partners for Affordable Energy.

MR. DOVE: Good morning, your Honor. On behalf of Ohio Partners for Affordable Energy, this

is Robert Dove with the law firm Kegler Brown Hill & Ritter, 65 East State Street, Suite 1800, Columbus, Ohio 43215.

EXAMINER SANDOR: Counsel on behalf of Retail Energy Supply Association.

MR. SETTINERI: Good morning, your Honors. On behalf of the Retail Energy Supply Association, Michael Settineri and Gretchen Petrucci with the law firm of Vorys, Sater, Seymour and Pease, 52 East Gay Street, Columbus, Ohio 43215.

EXAMINER SANDOR: Counsel on behalf of the Interstate Gas Supply, Inc.

MR. OLIKER: Good morning, your Honor. On behalf of Interstate Supply, Inc., Joe Oliker, Mike Nugent, and Evan Betterton, 6100 Emerald Parkway, Dublin, Ohio 43016. Thank you.

EXAMINER SANDOR: And then counsel on behalf of Commission staff.

MR. MARGARD: Thank you, your Honor. On behalf of the Staff of the Public Utilities Commission of Ohio, David Yost, Ohio Attorney General, John H. Jones, Section Chief, Public Utilities Section by Assistant Attorneys General Werner L. Margard, Robert A. Eubanks, Jodi J. Bair, Kyle L. Kern, 30 East Broad Street, 16th Floor,

1 Columbus, Ohio.
2 EXAMINER SANDOR: Thank you, everyone.
3 I will note that this evidentiary hearing
4 is taking place via Webex due to issues surrounding
5 the COVID-19 pandemic and pursuant to parameters set
6 forth in the entries issued on October 15 and
7 November 3, 2021.
8 Additionally, since we are conducting
9 this hearing via Webex, please be mindful of the
10 court reporter. You should speak clearly and at a
11 reasonable space so that the court reporter can
12 accurately transcribe the hearing.
13 As a reminder, everyone should do their
14 best to avoid speaking over each other by taking
15 proactive steps like intentionally allowing for a
16 pause at the end of questions to the witness and
17 generally slowing down in order to allow for
18 connectivity lags and objections from counsel.
19 During their testimony, witnesses will
20 have access only to the filings in this case docket
21 as well as other documents that have been identified
22 as potential exhibits and previously exchanged among
23 the parties and shared with the Bench. Witnesses
24 should not access or seek other information and
25 documents while testifying nor should they

1 communicate through any means with anyone privately
2 during their testimony.
3 If the parties have any procedural
4 questions as it relates to the above ground rules or
5 hearing in general, please feel free to ask the
6 Attorney Examiners at any time throughout the
7 hearing. Also given the number of witnesses,
8 witnesses set to hear today, and the time constraints
9 involved as we will try to finish up today, we plan
10 to proceed as expeditiously as possible to taking
11 testimony.
12 Given that, are there any preliminary
13 matters that the parties wish to address at this
14 time?
15 MR. ALEXANDER: Yes, your Honor. This is
16 Trevor Alexander on behalf of Duke Energy Ohio. At
17 this time I would like to, if it's okay with your
18 Honor, mark for identification Duke Exhibits 1, 2, 3,
19 4, and 5 and Joint Exhibits 1 and 2.
20 EXAMINER SANDOR: Those exhibits are so
21 marked.
22 (EXHIBITS MARKED FOR IDENTIFICATION.)
23 MR. SETTINERI: Your Honor, if I may just
24 briefly interrupt, is this preliminary, or are we
25 starting the Duke presentation marking these

1 exhibits? Because I wasn't ready. My pen wasn't
2 ready. I thought we were going to talk preliminary
3 matters, your Honor.
4 EXAMINER SANDOR: I had the sense this is
5 part of preliminary matters; is that correct,
6 Mr. Alexander?
7 MR. ALEXANDER: That's right. I want to
8 mark the documents for identification and then
9 proceed into sort of the next step.
10 MR. SETTINERI: I'm sorry, Mr. Alexander.
11 Could you just redo that list for me again, please?
12 MR. ALEXANDER: Certainly. We have
13 marked for identification Duke Exhibits 1 to 5 and
14 Joint Exhibits 1 and 2. And, your Honor, if it would
15 be okay, I would like to briefly describe what those
16 exhibits are and where they are from.
17 EXAMINER SANDOR: Yes. Go ahead.
18 MR. ALEXANDER: Duke Exhibit 1 is the
19 Application in Case No. 20-53 with exhibits as
20 amended July 7, 2020. Duke Exhibit 2 is the direct
21 testimony of Sarah Lawler filed in Case No. 20-53 as
22 amended July 7, 2020. Duke Exhibit 3 is the direct
23 testimony of Shawn Fiore, Case No. 20-53, including
24 exhibits. Duke Exhibit 4 is the direct testimony of
25 Keith Butler in that same case, Case No. 20-53. Duke

1 Exhibit 5 is the direct testimony of Todd Bachand in
2 Case No. 20-53. Joint Exhibit 1 is the Joint
3 Stipulation and Recommendation filed in these
4 proceedings that we are here to talk about today, and
5 Joint Exhibit 2 is the revised tariff sheet
6 associated with the Stipulation.
7 EXAMINER SANDOR: I'll go ahead and
8 mark -- I already mentioned that, but I feel it's
9 more appropriate now after descriptions but proceed.
10 MR. ALEXANDER: Your Honor, these
11 exhibits were agreed to be stipulated into the
12 evidentiary record by the stipulating parties to the
13 Stipulation and Recommendation filed on August 31,
14 2021. And I would point your Honor to paragraph 29
15 which is where these -- these exhibits are identified
16 and stipulated, and the Companies would move for the
17 admission of those exhibits pursuant to the agreement
18 in the Stipulation.
19 MR. MARGARD: Your Honor, if I may.
20 EXAMINER SANDOR: Yes.
21 MR. MARGARD: Staff would also like to
22 mark as Staff Exhibit No. 1 the Staff Report in Case
23 No. 20-53 filed on July 23 of 2021 -- 2020 rather,
24 also referenced in the Stipulation in the same
25 paragraph referred to by Mr. Alexander.

1 EXAMINER SANDOR: So marked.
2 (EXHIBIT MARKED FOR IDENTIFICATION.)
3 MR. MARGARD: And also respectfully move
4 for its admission.
5 EXAMINER SANDOR: Okay. Any objections
6 to the admission of those exhibits?
7 MR. SETTINERI: Well, your Honor, yes,
8 the answer is yes. First of all, I would defer any
9 ruling -- in fact, I would ask that any stipulated
10 exhibits of this nature, that we should defer that to
11 the end of Duke's presentation. I note that we have
12 a number -- I see of those marked Exhibits four are
13 direct testimony. In my experience when a party does
14 not object -- does not consent to stipulating
15 testimony, the witness appears for cross. And so I
16 think, No. 1, that's one basis for objection.
17 No. 2, I think we should be given time to
18 review these closely to see if we have questions for
19 these witnesses and, yes, depending on the subject
20 matter may, and I say may, be as to the MGP and TCJA
21 cases which are the subject matter of these
22 proceedings, but certainly we should be allowed to
23 consider whether we have questions for these
24 witnesses and also whether we -- they should be
25 present to answer questions.

1 I would also say by deferring this issue
2 to the end of Duke's presentation, it would give us
3 time also to consider whether we could ask Duke --
4 Duke for some stipulations on the record as to what
5 that testimony does not represent, right, because
6 that testimony obviously is being presented in
7 support of the Stipulation. That's why it's being
8 proposed to go into the record.
9 And I would say the same thing with the
10 Staff Report. The Staff Report is quite short, but I
11 would ask that our arguments against -- I am
12 basically asking you to defer this issue to the end
13 of the Duke presentation so we can then present
14 either a resolution or full arguments as to why they
15 should be present here. And hopefully that makes
16 sense.
17 MR. OLIKER: I'm sorry, Mr. Settineri.
18 Are you done?
19 MR. SETTINERI: I'm done.
20 MR. OLIKER: IGS would join in that
21 objection, and we would further note our continuing
22 objection to the limitation on our ability to
23 cross-examine every element of the Stipulation in
24 this case. For purposes of not reiterating
25 everything said in all of the various pleadings going

1 up to this point, I would incorporate them by
2 reference, note that we continue to reserve our right
3 to contest the limitation on our intervention in our
4 post-hearing brief, but for purposes of moving things
5 along, I will leave it at that and save the rest for
6 the papers.
7 EXAMINER SANDOR: Okay. Thank you.
8 Mr. Alexander?
9 MR. ALEXANDER: Thank you, your Honor.
10 With regard to the first issue which was a request to
11 defer this to the end of Duke's presentation, it's
12 unnecessary. Those witnesses are not present today.
13 The parties have stipulated to this admission in
14 paragraph 29 and so there is nothing to be gained by
15 waiting, although, of course, we always defer to the
16 Bench's discretion on when you would like to rule on
17 motions.
18 As to the second point which was
19 additional time is needed to review this testimony, I
20 don't believe that is particularly credible when this
21 testimony has been on file since 2020. It has been
22 identified in the Stipulation as documents to be
23 stipulated into the record since August 31 of 2021 so
24 quite time prior to now.
25 And then with regard to the need to

1 potentially cross-examine those witnesses depending
2 on that review of the testimony, I don't find that
3 necessary in light of the limited intervention which
4 has been granted to RESA and IGS. This testimony
5 does not relate to the three competitive issues for
6 which we are here today. It is clearly related to
7 issues associated with the manufactured gas case in
8 which they have been filed. And it goes to show the
9 underlying evidence which was used in part between
10 the parties as part of their serious bargaining to
11 resolve those matters, those matters that are beyond
12 the scope of the limited intervention granted to RESA
13 and IGS. And so we believe this is squarely teed up
14 and ready for decision at the Bench's convenience.
15 MR. SETTINERI: Your Honor, if I may very
16 briefly respond.
17 EXAMINER SANDOR: Briefly, yes, please.
18 MR. SETTINERI: Brief sur-reply, I guess,
19 your Honor. The Stipulation is not approved, No. 1.
20 These exhibits were sent around yesterday, No. 2.
21 And, No. 3, certainly we should be allowed to ask a
22 witness your testimony is not supporting the
23 Stipulation today; is that correct, things like that.
24 We should be allowed to ask what their testimony is
25 not intended to do. When you wrote your testimony,

1 were -- were you aware of the Stipulation being
2 drafted or negotiated, things like that. So there is
3 a host of things. It's what's not in the testimony
4 that we can ask a witness about and things like that.
5 And so we certainly are allowed to ensure
6 on the record that these witnesses are not supporting
7 the retail market provisions in the record and that
8 they are not -- frankly not supporting the
9 Stipulation.
10 MR. MARGARD: Your Honor, if I may
11 briefly, I would like to join Mr. Alexander's
12 arguments and in response to Mr. Settineri indicate
13 that the Stipulation -- or the Staff Report, rather,
14 does not address the Stipulation nor the
15 market-related issues, and we certainly would make
16 those stipulations.
17 EXAMINER SANDOR: Thank you, Mr. Margard.
18 MR. SETTINERI: And, your Honor, that's
19 why I want the time to defer this to the end of the
20 presentation so we can come up with a resolution like
21 that across the board.
22 EXAMINER SANDOR: So as of right now,
23 I -- I am choosing to defer until the end of Duke's
24 presentation whether to admit them or not, and we can
25 address these points at that point -- address these

1 issues at that point.
2 So having said that, please proceed,
3 Mr. Alexander, with your first witness.
4 MR. SETTINERI: Your Honor, I have one
5 more preliminary matter, I'm sorry.
6 EXAMINER SANDOR: Oh, yes, yes.
7 MR. SETTINERI: Yes, your Honor. I
8 wanted to raise to the Bench's attention I was
9 looking at the dockets here, and it appears to me
10 that there has not been a motion to reopen the record
11 in these proceedings and the -- there is a rule, I
12 believe it's 4901-1-34 would apply in this
13 circumstance, and I had to find it here on my screen,
14 your Honor, but I found it. Rule 4901-1-34,
15 reopening of the proceedings, "The Commission, the
16 legal director, the deputy legal director, or an
17 Attorney Examiner may, upon their own motion or upon
18 motion of any person for good cause shown, reopen a
19 proceeding at any time prior to the issuance of a
20 final order."
21 I believe, your Honors -- I don't believe
22 that has occurred, and I think we have at least is it
23 16 -- well, I'll say 16 but there are a host of
24 proceedings in this matter where the evidentiary
25 record is closed, and the matter has been fully

1 briefed, so I wanted to bring that to the Bench's
2 attention with a discussion of how to proceed with
3 that issue.
4 EXAMINER SANDOR: Okay. Judge Addison.
5 EXAMINER ADDISON: Yes. Mr. Settineri --
6 I'm sorry, Mr. Alexander. If you would like to weigh
7 in, of course, please proceed.
8 MR. ALEXANDER: I didn't know if there
9 had been a motion. I didn't know what the purpose
10 was for raising that question. I didn't hear a
11 motion, I guess, as part of the presentation.
12 MR. SETTINERI: I'm not motioning. I'm
13 raising the issue for everybody. The parties to
14 reopen a proceeding should have filed a motion to
15 reopen the record. That has not occurred in any of
16 these proceedings.
17 EXAMINER ADDISON: Mr. Settineri, if I
18 recall your reading of the rule correctly, the
19 Examiner or the Commission sua sponte may reopen the
20 proceedings; is that correct?
21 MR. SETTINERI: That is correct, your
22 Honor, and I don't know if that's occurred or it
23 clearly occurred.
24 EXAMINER ADDISON: Well, my reading of
25 the October 5, 2021, entry would, in fact, constitute

1 the reopening of the proceedings for the purposes of
2 evaluating the Stipulation for the Commission's
3 consideration. So if I -- if I may give you a quick
4 answer, yes, the proceedings have been reopened, and
5 we are here today.
6 This, of course, would have been a more
7 timely issue to raise before this morning, but my
8 answer would have been the same regardless if you had
9 raised it last week versus today. We are here, the
10 proceedings have been reopened, and we will be
11 proceeding with the hearing this morning.
12 MR. SETTINERI: And, your Honor, the only
13 thing I would note I didn't -- I haven't scoured
14 through this entry to look at, but I would just note
15 an objection for the record that to the -- with the
16 extent the order and, as you are saying today, that
17 these proceedings are being reopened, I would object
18 to the extent they are being reopened to include
19 provisions that are wholly unrelated to the
20 proceedings in this matter. So I just want to
21 register that objection, your Honor.
22 EXAMINER ADDISON: Thank you. Your
23 objection is noted.
24 MR. SETTINERI: And I would further note
25 that based on that -- well, I will do it anyway.

I'll -- I would also move that these re -- these proceedings being reopened, that they should be limited to only the issues for the MGP and the TCJA proceedings.

EXAMINER ADDISON: Would anyone like to weigh in on that one?

MR. OLIKER: Your Honor, IGS would also join in that statement.

MR. ALEXANDER: Your Honor, this is Trevor Alexander for the Companies. May I be heard?

EXAMINER ADDISON: Yes, you may.

MR. ALEXANDER: Thank you, your Honor. I believe that would be inappropriate and frankly unnecessary, and I would point the court to Revised Code Section -- excuse me, Administrative Code Section 4901-1-30 which is where we address stipulations. And that's what we are here to do today is address the Stipulation which has been submitted in these proceedings.

And what that rule requires is that any two or more parties may enter into a written stipulation relating to, among other things, the proposed resolution of some or all of the proceedings. That's why we're here.

There has been a proposed resolution by

all of the parties to these proceedings besides RESA and IGS. As such, the motion to artificially adjust the record is unnecessary. We can proceed on the Stipulation. We can proceed as the Bench has laid out in multiple entries at this point, and we are ready to go forward today.

MR. SETTINERI: And, your Honor, if I may briefly.

EXAMINER ADDISON: Briefly.

MR. SETTINERI: For the record as well the recognition of -- of Duke of the Stipulation rule re-enforces my motion that we -- as you recognize in your October 15 entry, the retail market provisions of the Stipulation are wholly unrelated to these proceedings. Now is the time where the Bench can end this proceeding and take action to potentially move this case forward without the retail market provisions because this -- these reopened proceedings should be limited to only the issues of the MGP and the TCJA.

Thank you, your Honor.

EXAMINER ADDISON: Thank you. And I will note you are correct that we use the phrase wholly unrelated in that entry. However, not to be taken out of context, that entry was aimed to address the

1 motions for leave to intervene by RESA and IGS. In
2 no way were we making any sort of determination on
3 the Stipulation filed. That's why we are here today.
4 We will proceed as planned, and the
5 Commission will certainly -- will certainly be able
6 to evaluate whether they find the Stipulation to be
7 reasonable pursuant to the three-prong test.
8 MR. SETTINERI: Thank you for considering
9 my motion, your Honor.
10 EXAMINER ADDISON: Of course.
11 Are there any other preliminary matters?
12 We have a lot to get through today. I would like to
13 get started with witnesses, if we can; but, of
14 course, I will open it up to any more prelim --
15 preliminary matters that we need to address.
16 MR. ALEXANDER: None from the Company,
17 your Honor.
18 EXAMINER ADDISON: Okay.
19 MR. ALEXANDER: Your Honor, our first --
20 our first witness is going to be presented by
21 Mr. D'Ascenzo, Sarah Lawler.
22 MR. SCHMIDT: Ms. Lawler, you have been
23 promoted. If you can enable your audio and video.
24 EXAMINER SANDOR: Good morning,
25 Ms. Lawler. Please raise your right hand.

MS. LAWLER: Good morning.

(Witness sworn.)

EXAMINER SANDOR: Thank you.

Mr. D'Ascenzo, you may proceed.

MR. D'ASCENZO: Thank you, your Honor. Your Honor, for purposes of the record I would like to mark as Duke Energy Exhibit 6 the supplemental testimony of Sarah Lawler in support of the Stipulation filed on August 31, 2021.

EXAMINER SANDOR: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. D'ASCENZO: Thank you.

- - -

SARAH LAWLER

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

DIRECT EXAMINATION

By Mr. D'Ascenzo:

Q. Ms. Lawler, would you please state your name, position with the Company, and business address for the record.

A. Yes. Good morning. My name is Sarah Lawler. I am Vice President of Rates and Regulatory Strategy for Duke Energy Ohio and Kentucky. My address is 139 East Fourth Street, Cincinnati, Ohio

45202.

Q. And, Ms. Lawler, do you have what has just been marked as Duke Energy Ohio Exhibit 6 in front of you?

A. Yes, I do.

Q. And would you please identify that.

A. It's my supplemental testimony supporting the Stipulation.

Q. And do you have any changes or corrections to that testimony?

A. I do not.

Q. So if you were asked those same questions today, would your responses be the same?

A. They would.

MR. D'ASCENZO: Thank you. Your Honor, the witness is available for cross-examination.

EXAMINER SANDOR: Thank you.

Okay. Are -- Mr. Settineri or Mr. Oliker, who is -- actually let me step back a moment. Let me go through the parties here.

Any cross-examination for the witness from Ohio Consumers' Counsel?

MR. HEALEY: No cross, your Honor. Thank you.

EXAMINER SANDOR: Thank you.

Any cross from Ohio Energy Group?

MS. COHN: No, your Honor. Thank you.

EXAMINER SANDOR: Any cross from Ohio Manufacturers' Association Energy Group?

MS. BOJKO: No cross, your Honor. Thank you.

EXAMINER SANDOR: The Kroger Company?

MS. WHITFIELD: No cross, your Honor. Thank you.

EXAMINER SANDOR: OPAE? Mr. Dove? I think you might be on mute, Mr. Dove.

Let me first go to Commission Staff. Any cross?

MR. MARGARD: No, your Honor. Thank you.

EXAMINER SANDOR: Okay. Then, Mr. Dove, if you can hear me, if you are by your computer, please unmute yourself and turn your video on.

Okay. Well, we will circle back to Mr. Dove. Let's proceed with --

MR. DOVE: I'm sorry, your Honor. I had stepped away for a moment.

EXAMINER SANDOR: Thank you, Mr. Dove. Any cross-examination for the witness, for Ms. Lawler?

MR. DOVE: No, your Honor.

EXAMINER SANDOR: Thank you.

Okay. Now any cross from IGS or RESA. And I will defer to you on whoever would like to go first.

MR. OLIKER: Thank you, your Honor. IGS will be going first.

EXAMINER SANDOR: All right. Please proceed.

MR. OLIKER: Your Honor, as a preliminary matter, in order to streamline my cross-examination, I would like to mark some requests for admission.

EXAMINER SANDOR: Please proceed.

MR. OLIKER: As IGS Exhibit 1, I would like to mark IGS request for admission 0-3-001 which contains the reply comments of Duke Energy Ohio filed in Case No. 19-1429.

EXAMINER SANDOR: Mr. Oliker, do you mind holding on one moment? Is this -- you said that was IGS Exhibit 1? Is that in line with the exhibit list that you sent around to the parties? Just because I'm showing at least a different premarked IGS 1.

MR. OLIKER: It is not. Maybe this is a good time to go off the record then for a second just so I can not muddy the record any further.

EXAMINER SANDOR: Yes.

(Discussion off the record.)

EXAMINER SANDOR: All right. Let's go back on the record.

MR. OLIKER: Okay. Your Honor, I would like to mark as IGS Exhibit No. 28 IGS's request for admission 3-001 which -- which contains the reply comments of Duke Energy Ohio filed in Case No. 19-1429.

EXAMINER SANDOR: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER ADDISON: And just to be clear, Mr. Oliker, that you are replacing the Exhibit No. -- IGS Exhibit No. 1 with IGS Exhibit No. 28 instead, correct?

MR. OLIKER: Yes, your Honor.

EXAMINER ADDISON: Thank you.

EXAMINER SANDOR: Thank you. Please proceed.

MR. HEALEY: Your Honor, I don't mean to hold things up, but I don't believe I received any of IGS's exhibits. I got a whole bunch of RESA, and I don't think I was copied on anything that IGS sent.

EXAMINER SANDOR: Okay. Let's go off the record.

(Discussion off the record.)

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

We were just off the record briefly. There were some issues with regard to distributing exhibits to some counsel, so we would just like to confirm from the parties who said they had not received exhibits from IGS that they do now have them. I'll start with OCC.

MR. HEALEY: Yes, your Honor, I now have IGS's exhibits. Thank you.

EXAMINER SANDOR: Okay. Commission Staff?

MR. MARGARD: Yes, your Honor, I have received them.

EXAMINER SANDOR: Okay. And any of the other parties? I apologize if I don't remember the specific parties. Any other parties not have them?

Okay. Hearing none, please proceed, Mr. Oliker.

MR. OLIKER: Thank you, your Honor. I believe I left off marking IGS Exhibit 28. I believe I already identified that exhibit, so I would also like to mark IGS Exhibit 29, IGS Exhibit 30, and IGS Exhibit 31.

EXAMINER SANDOR: Okay. Do you mind

1 offering descriptions of those, please?
2 MR. OLIKER: Of course, your Honor. IGS
3 Exhibit 29 contains Duke's response to IGS request
4 for admission 3-002. That document contains the
5 post-hearing reply brief of Duke Energy Ohio filed in
6 Case No. 2 -- or 18-218-GA-GCR. And IGS Exhibit 30
7 contains Duke's response to IGS RFA-03-003 and that
8 document contains Duke's reply brief filed in Case
9 18-218-GA-GCR. IGS Exhibit 31 is Duke's response to
10 IGS RFA-03-004. And that document contains Duke's
11 reply brief filed in Case 15-218-GA-GCR.
12 EXAMINER SANDOR: Those exhibits are so
13 marked.
14 (EXHIBITS MARKED FOR IDENTIFICATION.)
15 MR. HEALEY: Your Honor, I apologize
16 again. But none of the exhibits I received have any
17 of the attachments, so Mr. Oliker was describing them
18 as including the attachments. The ones I have do not
19 appear to include that, so I didn't want them to be
20 assumed to have been marked correctly if that's not
21 case.
22 MR. OLIKER: Your Honor, I was about to
23 clarify because Duke had -- had locked those PDFs,
24 and we were unable to attach them to the request for
25 admission verifying those documents. If you were to

1 look up further in our exhibit list, you can see
2 copies of each of the specific documents that are
3 referenced in those requests for admissions, but due
4 to the fact that we are in the virtual world, we were
5 unable to combine the document because they were
6 locked. They can't be accessed.
7 EXAMINER SANDOR: Which documents further
8 up in the list -- because all the documents I have in
9 the list are all marked as separate exhibits.
10 MR. OLIKER: They are, your Honor, and
11 they may potentially be used as such, if needed. But
12 the reason why we have offered them in this fashion
13 is to avoid having to reference them as exhibits in
14 the hearing, and due to the technical limitations
15 presented by Duke's locking the documents, for
16 example, IGS RFA3)-001, that represents Duke's reply
17 brief in Case No. 19-1429. That document is actually
18 also marked as IGS Exhibit 10. And we provided them
19 to the parties as a courtesy and hopeful that the
20 references themselves would be sufficient given that
21 they are technically a publicly-available document.
22 We just want to make sure they are admitted into the
23 record here.
24 EXAMINER SANDOR: And I understand what
25 you are saying. Just for the ease of the parties'

1 references, and I understand they might not be
2 presented, can you reference the specific IGS exhibit
3 and tie it to 28, 29, 30, and 31 so that the parties,
4 if they need to bring it up, it kind of streamlines
5 it for everyone.
6 MR. OLIKER: Of course, your Honor. IGS
7 Exhibit 28 is the request for admission verifying
8 that IGS Exhibit 10 is a true and accurate copy of
9 Duke's reply comments in Case 19-1429. Likewise, IGS
10 Exhibit 29 is --
11 EXAMINER ADDISON: Mr. Oliker, I hate to
12 interrupt you once more. I am so sorry. If we are
13 going to reference exhibits though, I think it would
14 be prudent to go ahead and mark those as well at this
15 time.
16 MR. OLIKER: Okay. Of course, your
17 Honor. I love the virtual world. Given the
18 Examiner's suggestion, I would also like to mark IGS
19 Exhibit 5, IGS Exhibit 6, IGS Exhibit 7, and IGS
20 Exhibit 10. And some additional clarity on those
21 Exhibits, IGS Exhibit 5 represents Duke's reply
22 comments, reply brief in Case No. 15-218. IGS
23 Exhibit 6 represents Duke's initial brief in Case No.
24 18-218. IGS Exhibit 7 pertains to its reply brief in
25 Case No. 18-218. And IGS Exhibit 10 contains Duke's

1 reply comments in Case No. 19-1429.
2 The previously marked admissions in IGS
3 Exhibits 28, 29, 30, and 31 are simply the admissions
4 verifying IGS Exhibit 5, 6, 7, and 10 are true and
5 accurate copies of those documents.
6 EXAMINER SANDOR: Okay. IGS Exhibit 5,
7 6, 7, and 10 are so marked.
8 (EXHIBITS MARKED FOR IDENTIFICATION.)
9 MR. OLIKER: Thank you, your Honor. And
10 given Mr. Healey's prior -- prior comment regarding
11 the dockets themselves, I would ask that at this
12 point these documents actually be admitted into the
13 record given that they have been verified by counsel
14 of Duke.
15 EXAMINER SANDOR: Any objections?
16 MR. D'ASCENZO: No objection, your Honor.
17 EXAMINER SANDOR: Okay. So IGS Exhibits
18 28, 29, 30, 31, requests for admissions, as well as
19 the associated exhibits, IGS Exhibits 5, 6, 7, and
20 10, are admitted into the record.
21 (EXHIBITS ADMITTED INTO EVIDENCE.)
22 MR. OLIKER: Thank you, your Honor.
23 EXAMINER SANDOR: You may proceed.
24 - - -
25

CROSS-EXAMINATION

By Mr. Oliker:

Q. Good morning, Ms. Lawler.

A. Good morning.

Q. Just a few questions for you today. Now, regarding your background, you do not have experience working for a competitive retail natural gas provider; is that correct?

A. That's correct.

Q. And in the roles you've identified in your testimony from current day going back to 2003, you did not perform any analysis or provide recommendations regarding the competitiveness of the retail natural gas market?

A. I did not.

Q. And you have not reviewed the state policy contained in the Ohio Revised Code, correct?

A. I have not.

Q. You are familiar with the Stipulation that has been presented in these cases, correct?

A. Yes.

Q. And you were involved in the settlement negotiations leading up to the formulation of the Stipulation, correct?

A. Yes.

1 Q. You agree that the Stipulation seeks to
2 address -- you agree that the Stipulation seeks to
3 address several different cases, correct?
4 A. Yes.
5 Q. And the underlying subject matter of the
6 Applications in those various cases relate to two
7 types of categories, correct?
8 A. The underlying cases in this proceeding
9 relate to the MGP cases and the Tax Cuts and Jobs
10 Act.
11 Q. Thank you. You anticipated my next
12 question. Okay. So for simplicity, can we agree to
13 bucket the underlying cases in the two categories, as
14 the tax cases and the MGP cases?
15 A. Yes.
16 Q. And MGP stands for manufactured gas
17 plants, correct?
18 A. Correct.
19 Q. And from a high level, you would agree
20 that the subject matter of the tax cases related to
21 the appropriate level of Duke's distribution rates
22 given the reduction in federal income tax to
23 35 percent down to 21 percent.
24 A. The subject of the tax case was to
25 address how the Tax Cuts and Jobs Act impacted the

1 Company's base rates.
2 Q. Okay. And you agree there were no issues
3 in the tax cases related to the competitive retail
4 natural gas market.
5 A. None that I am aware, no.
6 Q. Okay. And the second category of
7 costs -- or strike that.
8 You agree that the second category of
9 cases known as the MGP cases related to environmental
10 cleanup costs for Duke's former manufactured gas
11 plant sites.
12 A. Yes.
13 Q. And the general subject matter of those
14 cases, the MGP cases, related to how much money Duke
15 can collect for environmental cleanup and what to do
16 with insurance proceeds that Duke received for such
17 cleanup, correct?
18 A. That was part of the proceedings, yes.
19 Q. And do you agree that there were no
20 issues raised in the MGP cases related to the
21 competitive retail natural gas market?
22 A. None that I'm aware, no.
23 Q. And you would agree that on August 31,
24 2021, there was a Stipulation filed to resolve the
25 MGP and tax cases.

A. I would agree that there was a Stipulation filed to resolve those issues, and it included other issues as well.

Q. Okay. And the other issues that you are referencing have been commonly known as the three market-related commitments, correct?

A. If that's how we are referring to them today, yes.

Q. And your understanding is that the three market-related commitments relate to the provision of aggregate shadow billing data to the Office of the Ohio Consumers' Counsel, the transition from a gas cost recovery mechanism to a standard service offer, and the inclusion of the SSO price on the bills of all shopping customers from a high level; would you agree?

A. From a high level, yes.

Q. And on page 8 of your testimony -- I will give you a minute to get there.

A. Okay. I'm there.

Q. You state that "Finally, this Stipulation will support Duke Energy Ohio's financial health in a manner that provides certainty and cost recovery all the while reducing natural gas rates for customers." Regarding this statement, am I correct that, standing

on its own, putting a price to compare statement on customer bills with respect to the SSO, that does not impact Duke's financial health?

EXAMINER SANDOR: Mr. Oliker, what lines were you on? I'm sorry.

MR. OLIKER: I believe the line is 16.

EXAMINER SANDOR: Okay. Sorry about that. Please proceed.

MR. OLIKER: I will try to ask the question again, your Honor.

EXAMINER SANDOR: Yes, please.

Q. (By Mr. Oliker) And this will be page 8, line 16. Your testimony says "Finally, this Stipulation will support Duke Energy Ohio's financial health in a manner that provides certainty and cost recovery all the while reducing natural gas rates for customers." Regarding this statement, am I correct that, standing on its own, putting a price to compare statement on customer bills with respect to the SSO price, that does not impact Duke's financial health?

A. That statement doesn't say anything about that component standing on its own. The statement says "The Stipulation will support Duke Energy's Ohio financial health."

Q. Okay. Then let's ask the question this

way, would you agree, standing on its own, putting a price to compare statement on customers' bills with respect to the SSO price, that does not impact Duke's financial health?

A. The Stipulation doesn't call for that provision to stand on its own.

MR. OLIKER: Your Honor.

EXAMINER SANDOR: Yes.

MR. OLIKER: Can I please have the witness access to her deposition?

EXAMINER SANDOR: You may.

Q. (By Mr. Oliker) Can you take a look at your deposition, Ms. Lawler.

A. Yes.

EXAMINER SANDOR: And give everyone a moment to get there, please.

A. Okay. I have it.

Q. And does this appear to be -- first, you were deposed in this proceeding, correct?

A. Yes.

Q. And you had an opportunity to review that transcript?

A. Yes.

Q. And did you make any corrections to that transcript?

A. I did make some corrections, yes.

Q. Okay. Were they provided to the parties?

A. Was that a question for me?

Q. If you know.

A. I don't know if they were provided to the parties.

Q. Okay. So let's take a look at page 25 of your deposition. Tell me when you are there.

A. Okay. I think I'm there. Yeah, I'm there. I'm there.

Q. Sorry. Go to page 26 and let me know if I read this right. On line 7, "Okay. And standing on its own, putting a price to compare statement on customers' bills with respect to the SSO price, that does not impact Duke's financial health or certainty, correct? Standing on its own, no, it does not." Did I read that right?

A. You did read that right.

Q. And you would agree that, standing on its own, providing shadow billing data to OCC does not impact Duke's financial certainty.

A. The Stipulation isn't calling for that provision to be standing on its own.

Q. Turning to page 26 of your deposition, let me know if I read this correct, "Okay. Let's

1 take you to the market-related commitments one at a
2 time. Standing on its own, does the provision of
3 shadow billing to OCC provide Duke with financial
4 certainty? Answer: It doesn't provide financial
5 certainty negatively or positively, no." Did I read
6 that correct?
7 A. Yes, you did.
8 Q. Okay. Thank you. Switching to page 13
9 of your testimony, you indicate that customers will
10 receive approximately $107 in bill credits; is that
11 correct?
12 A. Yes. That's the number as of July 31,
13 2021.
14 Q. Is there a possibility that a bill credit
15 of this size will cause customer confusion for
16 shopping customers and default service customers
17 alike?
18 A. I don't know what customers will think.
19 Q. And you don't know if Duke has ever
20 provided a one-month credit to customers of $107 at
21 any point in time?
22 A. I don't know.
23 Q. And you are not offering any reasoning of
24 why the credit shouldn't be spread out over multiple
25 months?

A. My Stipulation supports -- I'm sorry. My testimony supports what the Stipulation says, we are going to be giving a one-time bill credit to customers.

Q. Switching to page 16 of your testimony and let me know when you're there.

EXAMINER SANDOR: And also please remember to refer to the line you are focusing on if you are.

A. Okay. I'm there.

Q. And this is on line 8 of page 16.

A. Okay. I'm there.

Q. Actually I apologize, line 5. You state "The Stipulation was many months in the making." Regarding this statement, you would agree the Stipulation was actually closer to a year in the making, correct?

A. It was several months. I don't recall exactly the amount of months.

Q. Closer to 12 than 1 though, correct?

A. Yes.

Q. And am I correct that in those many months no attempt was made to negotiate with competitive retail natural gas suppliers regarding the market-related commitments or any other element

of the Stipulation?

A. All parties that were part of all of these proceedings were invited to settlement negotiations.

Q. And is the answer to my question, no, competitive retail natural gas suppliers were not invited to the negotiations because they had not --

A. I am not aware -- sorry.

Q. -- been part of the underlying cases?

A. I'm not aware of any competitive retail natural gas supplier intervening in these cases until now.

Q. And, therefore, you are also not aware of any attempts to negotiate with competitive retail natural gas suppliers, correct?

A. Correct.

Q. And on page 16, line 10, where you indicate "All were provided with an opportunity to express their concerns that resulted in the resolution of the issues contained in the Stipulation." While you use the word "all" here, you agree that no competitive retail natural gas suppliers were provided with an opportunity to express their concerns with regard to the market-related commitments or any other element in

the Stipulations.

A. All parties that intervened in the proceedings were provided with an opportunity to express their concerns.

MR. OLIKER: Your Honor, I would ask that the witness -- I'm okay with an explanation but there should be a "yes" or "no" before that. The record is otherwise quite muddy.

EXAMINER SANDOR: I do ask the witness to answer the questions, especially with regard to competitive retail natural gas questions, and feel free to explain your answer but please answer his questions directly.

A. There were no competitive retail natural gas suppliers as part of the proceedings at that time so they could not have been involved in the proceedings.

Q. You would agree that the Stipulation seeks to resolve several dockets, correct? 17 or 18, I don't know if I have the exact number.

A. There's a lot of dockets, yes.

Q. And you would agree that all of the signatory parties and nonopposing parties have not intervened in every case that is sought to be resolved by the Stipulation.

A. That's correct. All parties did not intervene in all of the cases and all of the dockets.

Q. Okay.

MR. OLIKER: Your Honor, at this time I would like to mark IGS Exhibit 23.

EXAMINER SANDOR: Please proceed.

MR. OLIKER: And I would like to mark as IGS Exhibit 23 the docket sheet for Case Nos. 18-1830 and 18-1831.

EXAMINER SANDOR: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Oliker) And, Ms. Lawler, let me know when you have that document in front of you.

A. It's IGS Exhibit 23?

Q. Yes.

MR. D'ASCENZO: For another clarification did you say you are leaving it as 23, my audio clicked out, or are you remarking as No. 3?

MR. OLIKER: No. 23.

MR. D'ASCENZO: Okay. Thank you.

MR. HEALEY: Your Honor, may I ask a question? Can I get clarification on what -- what docket sheet this is for, IGS 23?

MR. OLIKER: This is 1880 and 1881, I believe.

1 MR. HEALEY: 1830 and 1831?
2 MR. OLIKER: 18-30 and 18-31.
3 MR. HEALEY: I guess I'm going to object
4 to that marking because it only shows 18-1831, and I
5 don't know that we have necessarily identified that
6 those are identical dockets, so I am going to object
7 to the characterization of this being 1830 and 1831.
8 EXAMINER SANDOR: Mr. Oliker, I do see
9 this document only does list 18-1831.
10 MR. OLIKER: Your Honor, then we can
11 leave it as 18-31 if that's what it says.
12 EXAMINER SANDOR: Okay. We will revise
13 that to IGS 23 will only refer to the docket card for
14 18-1831.
15 MR. SETTINERI: Your Honor, could you --
16 I may have -- I'm sorry, but I may have missed it.
17 Did you say IGS 3 or 23?
18 EXAMINER SANDOR: 23.
19 MR. SETTINERI: Thank you, your Honor.
20 Q. (By Mr. Oliker) And, Ms. Lawler, do you
21 have that docket sheet in front of you?
22 A. Yes, I do.
23 Q. There may be another way to also get at
24 this. First, you are familiar with the parties that
25 intervened in the tax cases, correct?

A. I'm sorry. You cut out there a little bit at the end.

Q. You are familiar with the parties that were participating in the tax cases?

A. Yes.

Q. And do you agree OCC intervened in the tax cases?

A. Yes.

Q. Any other parties intervened in the tax cases?

A. I don't believe there were any other parties besides the Companies, Staff, and the OCC.

Q. And the Staff doesn't typically file a formal intervention, do they?

A. That's my understanding, yes.

Q. So as far as motions to intervene, you would agree that OCC is the only entity that intervened in the tax cases?

A. Yes.

Q. And, in fact, there are two tax cases, correct? There is 18-1830 and 18-1831?

A. Yes.

Q. And would you agree that OCC is the only party to intervene in both of those cases, or any of those cases, in fact?

1 MR. D'ASCENZO: Your Honor, I am going to
2 object. The dockets are what they are. They are
3 publicly available. Mr. Oliker doesn't need the
4 witness to confirm what's in the docket and who
5 intervened.
6 EXAMINER SANDOR: Mr. Oliker?
7 MR. OLIKER: Your Honor, we are talking
8 about whether there was serious bargaining here, and
9 I am exploring who, in fact, intervened in the cases
10 when they were doing the negotiations, and I will tie
11 this up pretty quickly.
12 EXAMINER SANDOR: Okay. With that in
13 mind, please proceed.
14 Q. (By Mr. Oliker) Just so I can get an
15 answer to my question, Ms. Lawler, am I correct that
16 OCC is the only party that intervened in any of the
17 tax cases?
18 A. You cut out at the end. I think what you
19 asked was that OCC was the only party to intervene in
20 the tax cases and, yes, that's correct.
21 MR. OLIKER: Got my headphones just in
22 case I need them.
23 Q. (By Mr. Oliker) Okay. And am I correct
24 that although OCC is the only party that intervened
25 in the tax cases, OEG was involved in the Stipulation

negotiations related to the tax cases?

A. OEG was part of the settlement discussions that included the tax cases but also other cases that they had intervened as well.

Q. Would you agree that OMA didn't intervene in the tax cases, but they were also involved in settlement discussions regarding tax cases?

A. Yes.

Q. And you would agree that OPAE did not intervene in the tax cases, but they were also invited to settlement negotiations regarding those cases.

A. They were part of the overall settlement negotiations in these proceedings. They were part of one of the cases that was involved in these settlement discussions.

Q. The answer is "yes," correct?

A. Yes.

Q. And you agree that although Kroger did not intervene in the tax cases, they were also invited to negotiations regarding those cases.

A. They were -- they were invited to negotiations, yes, in all of these proceedings that they were a part of.

Q. They were also invited to negotiations

for proceedings they were not a part of, correct?

A. These negotiations were to negotiate and settle numerous cases. They were parties to some of those cases.

Q. The answer is "yes."

A. Yes, they were invited to settlement negotiations for these proceedings that they were part of.

Q. Switching gears -- you know what, would you look at --

MR. OLIKER: Actually, your Honor, I would like to mark IGS Exhibit 17.

EXAMINER SANDOR: Please proceed with marking -- describing it, sorry.

MR. OLIKER: Exhibit 17, I would like to identify this as a summary of party interventions.

MR. D'ASCENZO: Your Honor, I am going to object.

EXAMINER SANDOR: Okay. Please proceed.

MR. D'ASCENZO: This summary is inaccurate. I see one error already on -- looking at it. I would object to the mischaracterization of the summary for what it's purporting to be, a summary of party interventions filed in the MGP/TCJA cases.

MR. OLIKER: And, your Honor, we did

1 attempt to reach a stipulation regarding this summary
2 before the cross-examination, so to the extent there
3 are errors, we would, you know, entertain discussions
4 to try to correct it. We were simply trying to
5 streamline the record.
6 The alternative way to do this is to
7 simply take administrative notice of all of the
8 interventions that have been filed in all of these
9 cases. Through this document we were simply trying
10 to put it all on one piece of paper. Of course, to
11 the extent there are any errors, we would like to
12 submit the most accurate document possible, but
13 ideally we would have this in a document.
14 MR. D'ASCENZO: And, your Honor, I -- I
15 do not object to stipulating that the dockets are
16 what they are and that they -- the dockets themselves
17 on the Commission's website accurately reflect when
18 parties intervened, filed to intervene in
19 proceedings, and who participated.
20 MS. BOJKO: Your Honor, at this time I am
21 also going to object because OMAEG is on this
22 document but -- actually OMA, so that's an error, but
23 OMAEG was not consulted about this document and there
24 was not a stipulation attempted to be reached with
25 all parties. I think that's different than what

Mr. Oliker implied.

MR. OLIKER: And I don't mean to imply we contacted everyone, your Honor, so I apologize if it came across that way.

EXAMINER SANDOR: Did I hear, Mr. Oliker, a -- a motion to take administrative notice that these -- that the parties that intervened in these dockets are who they are in these dockets?

MR. OLIKER: Yes. Simply so that we may refer to the docket sheets, your Honor.

EXAMINER SANDOR: Any objections to that?

MR. D'ASCENZO: None by the company, your Honor.

MS. BOJKO: No, your Honor. Thank you.

MR. HEALEY: Can I ask a clarification? So the motion is they will be able to say X party intervened in X case on X date essentially?

EXAMINER SANDOR: Correct.

MR. HEALEY: Okay. I'm okay with that. Thank you.

EXAMINER SANDOR: All right. With that in mind, please proceed and I will grant that motion as limited as we just discussed.

Q. (By Mr. Oliker) And to put a bow on all of this, Ms. Lawler, would you agree OCC is the only

1 party that has intervened in every docket?
2 A. I do believe OCC did intervene in all of
3 the cases that are part of this Stipulation.
4 Q. And you can't identify any other party
5 that intervened in all the cases, correct?
6 A. I don't believe there was another party
7 that intervened in all of the cases.
8 Q. Switching gears to other parts of the
9 Stipulation, you agree that the Stipulation commits
10 Duke to transition to an SSO, correct, or a Standard
11 Service Offer that it's commonly referred to?
12 A. No, I don't agree with that.
13 Q. Okay. You would agree that the
14 Stipulation commits Duke to file an application to
15 transition to a Standard Service Offer.
16 A. Yes.
17 Q. Okay. Today Duke operates under a gas
18 cost recovery mechanism, correct?
19 A. Yes.
20 Q. And Duke has an asset manager to procure
21 natural gas on its behalf, correct?
22 A. We do have an asset manager, yes.
23 Q. But you do not know the specific role of
24 the asset manager, correct?
25 A. I don't know the specifics, no.

Q. You do not know the specifics of how the GCR is procured, correct?

A. Correct.

Q. You would agree that there are four investor-owned natural gas utilities in Ohio with the Choice Program, correct?

A. Yes.

Q. And besides Duke the other three are Columbia Gas, Dominion Energy, and Vectren, correct?

A. Yes.

Q. And those other three utilities I just named have each ceased providing a GCR, correct?

A. Yes, that's my understanding.

Q. And to cease providing a GCR, you would agree that those utilities have to file cases before the Commission getting permission to stop offering the GCR?

A. Yes, that's my understanding.

Q. And you have not read any of the documents filed in those cases, correct?

A. That's correct.

Q. You have not read any of the orders issued by the Commission regarding those cases, correct?

A. That's correct.

Q. Okay. And you are familiar with the term "Standard Choice Offer," correct?

A. Yes, I'm familiar with the term, yes.

Q. Are you okay calling that an SCO?

A. Yes.

Q. Under an SCO, you agree that there is an auction?

A. That's my understanding.

Q. And auction winners are assigned to -- assigned customers to serve, correct?

A. Yes. That's my understanding at a high level.

Q. And the auction winner's name appears on the bill of the customer they are serving, correct?

A. That's my understanding, yes.

Q. You are not aware if SCO auction bidders must be licensed as a competitive retail natural gas service provider.

A. I am not aware, correct.

Q. And under a Standard Service Offer, or SSO, you would agree there is an auction for a wholesale product.

A. That's my understanding, yes.

Q. And in the case of an SSO, the wholesale suppliers bid on a slice of the system, correct?

A. Can you repeat the question?

Q. In the case of an SSO, would you agree that wholesale bidders are bidding on a slice of Duke's full service system?

A. There are wholesale bidders bidding in the process, yes.

Q. But Duke Energy Ohio would remain the ultimate default service provider, correct?

A. That's my understanding. We have the obligation to be the provider of last resort.

Q. And Duke's name would appear on the bill of the full service customers as the commodity supplier, correct?

A. Yes.

Q. And under an SSO, the customer would -- would not know which auction winner supplied their gas, correct?

A. I don't know what a customer would know. It wouldn't be on the bill.

Q. And you do not know if SSO auction bidders would have to be licensed as competitive retail natural gas suppliers.

A. I don't know, no.

Q. You agree the Stipulation establishes parameters for the future SSO application.

A. It establishes the minimum parameters, yes.

Q. Okay. So, for example, the Stipulation specifically provides that Duke shall file an SSO and not an SCO, correct?

A. That's what the Stipulation provides, yes.

Q. And the Stipulation also specifies the manner in which Duke will propose to recover transition costs, correct?

A. It outlines some basic parameters of how those transition costs should be handled and how we would ask for them to be handled in that future application filing.

Q. Okay. And turn to page 14 of your testimony, please.

A. Okay. I'm there.

Q. Maybe we don't need your testimony for this. In general would you agree under the Stipulation that transition costs are proposed to be recovered bypassable basis for nonresidential customers and a nonbypassable basis for residential customers?

A. Did you say nonbypassable for residential customers and bypassable for nonresidential

1 customers?
2 Q. Yes, I did.
3 A. Okay. Yes, that's how the transition
4 costs are proposed. That's how the transition costs
5 are proposed to be recovered.
6 Q. And other than the Stipulation requiring
7 it, you are not offering any reasoning as to why SSO
8 transition costs should be nonbypassable for
9 residential customers and bypassable for
10 nonresidential customers?
11 A. No, not other than this was -- these are
12 terms of the Stipulation.
13 Q. Okay. And your Stipulation -- your
14 testimony in the Stipulation indicates that Duke
15 Energy Ohio will conduct stakeholder sessions with
16 interested parties to discuss the transition to the
17 SSO auction and for it to gain agreement from
18 interested parties, correct?
19 A. Are you reading from my testimony?
20 EXAMINER SANDOR: If we could have a page
21 and line if that's the case.
22 Q. (By Mr. Oliker) On page 13 on the bottom
23 to page 14.
24 A. Okay. I see that, yes.
25 Q. Your testimony indicated that Duke will

1 conduct stakeholder sessions, correct?
2 A. Yes.
3 Q. And you attended one stakeholder meeting,
4 correct?
5 A. That's correct.
6 Q. And there was a PowerPoint provided in
7 that stakeholders meeting, correct?
8 A. Yes.
9 Q. And you reviewed that PowerPoint, did you
10 not?
11 A. I did not review it before the
12 stakeholder session, no.
13 Q. But you reviewed it at the stakeholder
14 session, correct?
15 A. Yes, as it was being presented.
16 MR. OLIKER: Can we go off the record for
17 a second?
18 EXAMINER SANDOR: Yes. Off the record.
19 (Discussion off the record.)
20 EXAMINER SANDOR: Okay. Let's go back on
21 the record.
22 Please proceed, Mr. Oliker.
23 MR. OLIKER: Okay. Your Honor, I would
24 like to mark RESA Exhibit 28.
25 EXAMINER SANDOR: Please proceed with the

1 description.
2 MR. OLIKER: Okay. As RESA Exhibit 28, I
3 would like to mark the standard sales offer service
4 presentation.
5 EXAMINER SANDOR: So marked.
6 (EXHIBIT MARKED FOR IDENTIFICATION.)
7 Q. (By Mr. Oliker) Okay. Ms. Lawler, do you
8 see the document marked as RESA Exhibit 28?
9 A. Yes.
10 Q. And is this the presentation from the
11 stakeholder session?
12 A. I have no reason to believe that it's
13 not.
14 Q. Please take a minute and look at it and
15 let me know if it appears to be a true and accurate
16 copy.
17 A. Yes, I believe that it is.
18 Q. Okay. And turning to what is marked as
19 page 4.
20 A. Okay. I'm there.
21 Q. The fourth bullet point down, does this
22 indicate that the bids for the auction shall be a
23 retail price adjustment to the monthly NYMEX
24 settlement price?
25 A. That's what it says.

1 Q. The same retail price adjustment
2 regardless of Duke delivery location, be fixed for
3 the entire 17-month term applicable to 2022-2024 SSO
4 phase?
5 A. Yes, that's what the bullet point says,
6 you've read correctly.
7 Q. Okay. And do you agree in that
8 stakeholder meeting parties raised concerns regarding
9 Duke's plan transition to an SSO?
10 MR. HEALEY: Objection. This is calling
11 for hearsay, your Honor.
12 MR. OLIKER: I'm not asking for what the
13 objections were, your Honor. I was trying to show
14 that they were made. Exception to the hearsay
15 doctrine.
16 EXAMINER SANDOR: I'm sorry. You trailed
17 off there. I didn't hear the end of your response
18 before hearsay doctrine.
19 MR. OLIKER: I'm not offering them for
20 the truth of the matter asserted. I'm offering them
21 for the fact that it occurred.
22 EXAMINER SANDOR: You may answer the
23 question, Ms. Lawler.
24 MS. BOJKO: Your Honor, may I have the
25 question reread, please?

1 EXAMINER SANDOR: Yes, you may.
2 Ms. Gibson.
3 (Record read.)
4 MS. BOJKO: Your Honor, I am going to
5 object to the use of the word "parties." I think
6 it's a very vague reference, and I am not sure what
7 it is referring to, so I don't know how we can have a
8 hearsay exception if we don't know who we are talking
9 about.
10 EXAMINER SANDOR: Mr. Oliker, if you
11 could clarify.
12 MR. OLIKER: Okay. That's fine, your
13 Honor.
14 Q. (By Mr. Oliker) Ms. Lawler, in the
15 stakeholder session, would you agree that some of the
16 attendees raised concerns regarding Duke's planned
17 transition to an SSO?
18 A. I recall that there were issues raised
19 and discussed by different attendees in the meeting.
20 Q. And you're familiar with the Stipulation
21 proposed -- proposed specific timing around the
22 transition to the SSO, correct?
23 A. There is some timing provisions set forth
24 in the Stipulation.
25 Q. And, for example --

1 MR. OLIKER: I'm sorry, your Honor.
2 Q. (By Mr. Oliker) Are you still going,
3 Ms. Lawler? I don't want to interrupt you.
4 A. No. Go ahead. I'm done.
5 Q. Okay. And am I correct that the
6 Stipulation indicates that the auction delivery
7 period will be no sooner than November 2022?
8 A. The Stipulation states that that's what
9 the Company will request in their auction
10 application.
11 Q. And am I correct that you are not
12 familiar with what is known as the gas year?
13 A. That's correct.
14 Q. And, therefore, you cannot provide
15 testimony on whether November 2022 lands in the
16 middle of the gas year?
17 MR. HEALEY: Objection.
18 EXAMINER SANDOR: Proceed.
19 MR. HEALEY: My objection is there is no
20 foundation in the record of this case that there is
21 any such thing as a gas year.
22 EXAMINER SANDOR: Mr. Oliker.
23 MR. OLIKER: I think the witness's answer
24 is no, that she can't testify either way and she's
25 free to say that. Not trying to necessarily elicit a

1 response if she doesn't have the knowledge to answer
2 the question.
3 EXAMINER SANDOR: I agree. Ms. Lawler,
4 you can answer the response to your knowledge.
5 A. Can you repeat the question, please?
6 Q. (By Mr. Oliker) Because you don't know
7 what the gas year is you are not testifying one way
8 or another whether November of 2022 lands right in
9 the middle of the gas year.
10 A. I don't know how I could testify to that
11 if I don't know what the definition of a gas year is.
12 Q. Okay. And you are also not familiar with
13 the manner in which Duke assigns capacity or storage
14 assets to suppliers, correct?
15 A. Correct.
16 Q. Okay. With respect to the shadow billing
17 amendment in the Stipulation, would you agree that
18 there are two types of shadow billing that have been
19 commonly used in Ohio regulatory proceedings, one
20 being in the aggregate shadow billing for a
21 population of customers and the other being on bill
22 shadow billing for a specific customer?
23 A. I would agree that those two types of
24 shadow billing concepts have been proposed in
25 different proceedings in the past.

Q. Okay. And for purposes of the Stipulation, it addresses aggregate shadow billing data, correct?

A. Yes.

Q. Okay. And do you agree whether we are talking about shadow billing or on bill shadow billing for a specific customer, both concepts entail a price comparison of default service to the shopping customer's rate, correct?

A. Yes.

Q. So you would also agree that all forms of shadow billing are simply a financial comparison, does not take into consideration any other element of a customer's rate or product?

A. I didn't hear the last word, Mr. Oliker.

Q. I will try one more time. Would you agree that all forms of shadow billing represent simply a financial comparison? It does not take into consideration any other element or attribute of a customer's rate or product?

MR. D'ASCENZO: Objection, your Honor, as to foundation to all forms of shadow billing.

MR. OLIKER: We've already gone through and described what the two types of shadow billing are and this is simply an extension of those

1 questions.
2 EXAMINER SANDOR: You may answer the
3 question, Ms. Lawler.
4 A. I'm sorry. I might need the question
5 repeated again.
6 Q. Third time's the charm. Ms. Lawler,
7 would you agree that the shadow billing concepts that
8 we are discussing in both of them, they represent
9 a -- simply a financial comparison of default service
10 rate to a shopping customer rate without taking into
11 consideration of any other element of the customer's
12 rate or product?
13 A. It's a financial calculation, but I don't
14 know if I could say, yes, it doesn't take into
15 consideration anything else on the customer billing.
16 I don't know what that means. It's a financial
17 calculation.
18 Q. So, for example, you would agree that
19 shadow billing has no way of determining if a
20 customer is on a carbon neutral product? It's simply
21 a financial comparison, right?
22 A. The shadow billing we are proposing to
23 provide to OCC is a financial calculation, yes.
24 Q. Okay. And when you filed your testimony,
25 you were not aware that IGS Energy only offers carbon

1 neutral gas to residential customers?
2 MR. HEALEY: Objection, lack of
3 foundation. There is no foundation that that is what
4 IGS offers to residential consumers. It's not proper
5 to ask the witness are you aware that X until we know
6 that X has been established.
7 EXAMINER SANDOR: Mr. Oliker, if you
8 don't mind rephrasing.
9 Q. (By Mr. Oliker) Let me ask it this way,
10 Ms. Lawler, did you evaluate the types of products
11 that IGS Energy offers before you submitted your
12 testimony?
13 A. No.
14 Q. And in your testimony you mentioned
15 regulatory practice and principles. Would you agree
16 that a regulatory practice or principle is something
17 that Duke is required to do from a regulatory
18 perspective?
19 A. Yes.
20 Q. Commission precedent may be a regulatory
21 practice or principle.
22 A. It depends on what the Commission
23 precedent was.
24 Q. And Commission rules may be considered
25 regulatory practices or principles?

A. It would depend on what the Commission rule was.

Q. But the answer is, yes, it can be.

A. My answer is it depends.

Q. And go to page 17 of your testimony, please.

A. Okay. I am on page 17.

Q. You state in response -- in response to the question on page 17, line 13, "Does the Stipulation benefit ratepayers and the public interest," am I correct that in this portion of your testimony you do not identify any of the three market-related commitments?

A. That's correct. The question asks if the Stipulation benefits ratepayers and the public interest. The Stipulation as a whole benefits ratepayers and the public interest.

Q. Could you turn to page 58 of your deposition. Let me know when you are there.

A. Okay. I'm there.

Q. Let me know if I read this correct. On line 18, "Okay. On page 17 of your testimony, you say the Stipulation benefits ratepayers and the public interest. Within that portion of your testimony, you provide support for your conclusion.

1 Am I correct that your testimony does not identify
2 any of the three market-related commitments? Yes."
3 Did I read that right?
4 A. I did, and I believe that's what I just
5 said now too.
6 Q. Thank you. And, Ms. Lawler, are you
7 aware if Duke filed a bill format case in 2019?
8 A. I don't -- I don't know if we did or not,
9 no.
10 Q. Okay. But you are aware the Commission
11 issued a rulemaking Case No. 19-1429 that impacts the
12 bill format, correct?
13 A. Yes, I am aware of that rule, yes, or the
14 rulemaking.
15 Q. Okay.
16 MR. OLIKER: At this time, your Honor, I
17 would like to mark this as an exhibit, although I
18 don't have any intention of admitting it because it's
19 a Commission order. I would like to mark IGS Exhibit
20 No. 11.
21 EXAMINER SANDOR: Okay. So marked.
22 (EXHIBIT MARKED FOR IDENTIFICATION.)
23 MR. OLIKER: And this document is the
24 Finding and Order in Case No. 19-1429.
25 EXAMINER SANDOR: Okay.

Q. (By Mr. Oliker) And, Ms. Lawler, let me know when you have the document.

A. I do have the document.

Q. Okay. And does this appear to be the Commission's Finding and Order in Case No. 19-1429?

A. Yes, it does.

Q. Does it appear to be a true and accurate copy of that document?

A. Yes.

Q. Okay. And could you turn to paragraph 69 and let me know when you are there.

A. Okay. I'm there.

Q. Now I have to get there too.

Okay. Would you agree that this paragraph adopted specific price-to-compare language for natural gas utilities?

MR. HEALEY: I am going to object to the lack of foundation for this document with respect to this witness. I don't think we have established --

MR. OLIKER: She just earlier said she reviewed this document.

MR. HEALEY: If she did, I missed it, and I apologize. I thought she said she was aware of this case generally. I didn't hear her say she had read this specific document.

1 MR. OLIKER: I am happy to lay additional
2 foundation, if necessary.
3 EXAMINER SANDOR: Please proceed with
4 additional.
5 Q. (By Mr. Oliker) Ms. Lawler, you have seen
6 this document before, correct?
7 A. I have seen this document. I have not
8 read it in its entirety. I have skimmed some of it.
9 Q. But you have read paragraph 69, correct?
10 A. Yes.
11 Q. In paragraph 69 -- and you believe from
12 what you have seen this is a true and accurate copy
13 of the document?
14 A. Yes.
15 Q. And you agree paragraph 69 adopted
16 specific price-to-compare language to be included on
17 the bills of natural gas customers, correct?
18 A. Yes. I believe that there is language
19 here that the Commission is ordering this be included
20 on customer bills.
21 Q. You would agree that the statement
22 adopted by the Commission does not require natural
23 gas utilities to include the default service rate on
24 shopping customer bills.
25 A. It does not require it. It does preclude

it.

Q. Well, and you are not aware if the Commission Staff had originally proposed including the price of default service on natural gas customers' bills, correct?

A. Correct.

Q. And sticking with the statement in paragraph 69, would you agree that the Commission order required the price-to-compare statement to state that the GCR and SCO varies monthly?

A. I apologize, but we might need to take a break. My computer is saying the battery is running low even though it's plugged in.

EXAMINER SANDOR: Yes, yes. Let's go off the record.

(Discussion off the record.)

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

Mr. Oliker, please proceed.

MR. OLIKER: I am not sure I got an answer to the prior question, so I am going to ask it again, your Honor.

EXAMINER SANDOR: Sure.

Q. (By Mr. Oliker) Ms. Lawler, sticking with the statement authorized by the Commission in

1 paragraph 69, would you agree that the Commission
2 required the price-to-compare statement to state that
3 the GCR and SCO price varies monthly?
4 A. Yes. That's -- that's part of the bill
5 statement in this paragraph.
6 Q. And the Commission further required that
7 the -- that the utility state that the price
8 represents one feature of any offer, that there may
9 be other features you may consider of value; is that
10 correct?
11 A. That's a correct reading of the sentence,
12 yes.
13 Q. And would you agree that that statement
14 would not be present in the language recommended by
15 the Stipulation?
16 A. The language in the Stipulation though
17 does not call for that but that doesn't mean we can't
18 say what we will include in that future filing we
19 will make.
20 Q. You would agree that the future filing
21 that Duke is committed to would, in fact, include the
22 price, the rate itself for default service, correct?
23 A. Correct.
24 Q. And, Ms. Lawler, am I correct you did not
25 review the Entry on Rehearing in Case No. 19-1429?

A. That's correct.

Q. And did you read any other paragraphs of what's been marked as IGS Exhibit 11, the Finding and Order?

A. No, I didn't, not -- not other than a scan.

Q. Can you turn to paragraph 89.

A. Okay. I'm there.

Q. Did you read the paragraph that starts with the words "Consistent with our decisions in prior cases, the Commission declines to adopt OCC's shadow billing proposal"?

A. I don't believe that I read this paragraph.

Q. Okay. Earlier you testified the Stipulation is the product of serious bargaining amongst knowledgeable and capable parties, correct?

A. I believe my supplemental testimony states that.

Q. And you would agree that the first time you read the Finding and Order in Case No. 19-1429 was after the Stipulation was submitted in this case?

A. Yes.

Q. First time you read this Finding and Order was a few weeks ago, correct?

A. Around that, yes.

MR. OLIKER: Thank you. No more questions, your Honor.

EXAMINER SANDOR: Thank you.

Now let's shift over to RESA and then after that, we will contemplate taking a brief break.

MR. SETTINERI: That would be great. May I proceed, your Honor?

EXAMINER SANDOR: Yes, you may.

- - -

CROSS-EXAMINATION

By Mr. Settineri:

Q. All right. Good morning, Ms. Lawler. My name is Mike Settineri with the Retail Energy Supply Association.

A. Good afternoon.

Q. It is afternoon, thank you. Ms. Lawler, I just want to follow up on some questions to be clear. So issues related to the competitive retail natural gas market were first raised in these proceedings when the Stipulation was filed on August 31, 2021, correct?

A. I don't think I understand the question.

Q. Okay. Let me try again. The first time that competitive retail natural gas market issues

1 were raised publicly in these proceedings was on
2 August 31, 2021, when the Stipulation was filed,
3 correct?
4 A. I don't think that that's true. What do
5 you mean by when issues were raised?
6 Q. All right. The Stipulation contains
7 competitive retail natural gas market provisions,
8 correct?
9 A. If you're referring to the
10 price-to-compare shadow billing and the GCR
11 provisions, the Stipulation does contain those.
12 Q. All right. And if I was to look --
13 strike that.
14 And publicly in terms of the dockets for
15 these proceedings, that was the first time those
16 issues were -- were raised in the dockets through the
17 Stipulation, correct?
18 A. I'm thinking in the docket. I don't
19 believe there would have been any other documents
20 filed in the docket.
21 Q. Okay. And that would have been prior --
22 and you mentioned documents filed in the docket.
23 That would have been no documents filed prior to
24 August 31, 2021, and the proceedings would have
25 referenced the competitive retail natural gas market,

correct?

A. I don't believe so, correct.

Q. Okay. All right. And that would include any testimony that was filed in any of the cases prior to August 31, 2021, correct?

A. I believe that to be true.

Q. Okay. And that would also apply to any of the applications filed in the proceedings in these dockets, correct?

A. Yes.

Q. And that would also apply to any comments that were filed prior to August 31, 2021, in these proceedings, correct?

A. I believe so, yes.

Q. And, lastly, that would apply to any of the Staff Reports filed in these proceedings, correct?

A. Correct.

Q. Okay. You are not familiar with how NYMEX pricing is set, correct?

A. Correct.

Q. Okay. And you don't know whether a company can buy a monthly strip of natural gas on the NYMEX, correct?

A. I don't know what other companies can do.

1 Q. Okay. And you don't know whether the
2 price of the NYMEX changes every day, correct?
3 A. I don't know the specifics of how often
4 NYMEX changes.
5 Q. You believe that Duke Energy should
6 provide accurate information to OCC regarding shadow
7 billing, correct?
8 A. I believe that Duke Energy has an
9 obligation to always provide accurate information.
10 Q. And that includes any provision of shadow
11 billing information to OCC, correct?
12 A. Yes.
13 Q. Okay. And Duke Energy provided shadow
14 billing information that was called for under the
15 Stipulation to OCC on August 27, 2021, correct?
16 A. We provided a shadow billing report to
17 OCC on August 27, that's correct.
18 Q. All right. And OCC provided
19 authorization for it -- its signature to the
20 Stipulation on August 30, correct?
21 A. We had agreement in principle from them
22 earlier than that. And just one second. Let me
23 verify the Stipulation date, see when it was signed.
24 I don't recall the exact authorization date by OCC.
25 Their e-mail authorization date was August 30, yes,

1 but we did have agreement in principle before that.
2 MR. SETTINERI: And, your Honor, at this
3 time if I may mark as RESA Exhibit 31.
4 EXAMINER SANDOR: Please proceed.
5 MR. SETTINERI: And for the record, your
6 Honor, RESA Exhibit 31 is a response to a request for
7 a document. The document is labeled RESA
8 Exhibit 31_OCC-RPD-2-2 Attachment 1.
9 Q. (By Mr. Settineri) And, Ms. Lawler, when
10 you're ready, if you have that before. I can wait
11 and just let me know when you are ready.
12 EXAMINER SANDOR: The exhibit is so
13 marked.
14 (EXHIBIT MARKED FOR IDENTIFICATION.)
15 MR. SETTINERI: Thank you, your Honor.
16 May I proceed, your Honor?
17 EXAMINER SANDOR: Yes.
18 Q. (By Mr. Settineri) Ms. Lawler, are you
19 familiar with what's been marked as RESA Exhibit 31?
20 A. I haven't seen this document before
21 today. Okay. Okay. Maybe I have because my name is
22 on it. It looks to be an e-mail that Mr. Healey sent
23 to Mr. D'Ascenzo.
24 Q. Okay. And is this e-mail providing
25 authorization to Mr. D'Ascenzo and Duke for

1 Mr. D'Ascenzo to sign Mr. Healey's name on behalf of
2 OCC as a signatory party to the Stipulation?
3 A. Yes. "You have authority to sign my name
4 on behalf of OCC as a signatory party." That's what
5 it says.
6 Q. Okay. And so now that you see your name
7 on this e-mail, this is a document that you would
8 have received, correct?
9 A. Yes.
10 Q. Thank you. You can put that to the side,
11 please.
12 A. Okay.
13 MR. SETTINERI: Your Honor, at this time
14 I am going to -- I have a few more questions, but I
15 would like to mark some other exhibits as well.
16 These are requests for admissions.
17 EXAMINER SANDOR: Please proceed.
18 MR. SETTINERI: Okay. I would like to
19 mark as RESA Exhibit 1 a response to RESA request for
20 admission 01-001.
21 EXAMINER SANDOR: So marked.
22 (EXHIBIT MARKED FOR IDENTIFICATION.)
23 MR. SETTINERI: I would like to mark as
24 RESA Exhibit 4 a response for admission to
25 RESA-RFA-01-006 Supplemental.

1 EXAMINER SANDOR: So marked.
2 (EXHIBIT MARKED FOR IDENTIFICATION.)
3 MR. SETTINERI: I would like to mark as
4 RESA Exhibit 5 a response to a request for admission
5 designated as RESA-RFA-01-007.
6 EXAMINER SANDOR: So marked.
7 (EXHIBIT MARKED FOR IDENTIFICATION.)
8 MR. SETTINERI: I would like to mark as
9 RESA Exhibit 7 a response for admission -- or a
10 response to a request for admission designated as
11 RESA-RFA-01-009.
12 EXAMINER SANDOR: So marked.
13 (EXHIBIT MARKED FOR IDENTIFICATION.)
14 MR. SETTINERI: I would like to mark as
15 RESA Exhibit 8 a response to a request for admission
16 designated as RESA-RFA-01-010.
17 EXAMINER SANDOR: So marked.
18 (EXHIBIT MARKED FOR IDENTIFICATION.)
19 MR. SETTINERI: I would like to mark as
20 RESA Exhibit 9 a response to a request for admission
21 designated RESA-RFA-01-011.
22 EXAMINER SANDOR: So marked.
23 (EXHIBIT MARKED FOR IDENTIFICATION.)
24 MR. SETTINERI: And, lastly, your Honor,
25 I would like to mark as RESA's Exhibit 10, a response

1 to a request for admission designated
2 RESA-RFA-01-016.
3 EXAMINER SANDOR: So marked.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)
5 MR. SETTINERI: And, your Honor, given
6 that these are responses to requests for admission, I
7 would move for the admission of the exhibits that
8 have been marked RESA Exhibit 1, RESA Exhibit 4, RESA
9 Exhibit 5, RESA Exhibit 7, RESA Exhibit 8, RESA
10 Exhibit 9, and RESA Exhibit 10 into the record.
11 EXAMINER SANDOR: Any objections?
12 MR. D'ASCENZO: No, your Honor.
13 MR. HEALEY: Your Honor, if I might have
14 a moment, there are various objections from the
15 Company. I understand it's the Company RFAs, but if
16 we could have just a minute to go through them one by
17 one so I can verify whether I would make more
18 objection rather than racing through them.
19 EXAMINER SANDOR: Yes. Go ahead.
20 MR. SETTINERI: Your Honor, if I may, I
21 believe they are Dukes' admissions and Duke's
22 objections. Mr. D'Ascenzo has agreed to admit them.
23 I don't believe OCC can raise objections to someone
24 else's discovery responses. If he needs time to look
25 at them, that's fine but they are admissions and Duke

has agreed to put them in the record and any objections as to the discovery response itself is a Duke objection. These are not OCC's responses, your Honor.

EXAMINER SANDOR: Mr. D'Ascenzo, do you need time to look through these?

MR. D'ASCENZO: Sure, your Honor.

MR. HEALEY: Your Honor, I looked at them all, and I don't have any objections so thank you for the time to look at them.

EXAMINER SANDOR: Okay. Is it the same for you, Mr. D'Ascenzo, or you would still like to look?

MR. D'ASCENZO: No objection, your Honor. Well, let me rephrase that. Subject to the objections stated in the responses themselves, we don't object to them being admitted.

EXAMINER SANDOR: Okay. All right. So with that RESA Exhibit 1, Exhibit 4, 5, 7, 8, 9, and 10 are admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

MR. SETTINERI: And, your Honor, I think my papers got out of order. Could you go through that one more time for me, please?

EXAMINER SANDOR: Yes. So I have RESA

Exhibits 1, 4, 5, 7, 8, 9, and 10.

MR. SETTINERI: Thank you, your Honor.

EXAMINER SANDOR: Please proceed.

MR. SETTINERI: Thank you, your Honor.

Q. (By Mr. Settineri) Going back to the negotiations regarding the stipulation, Ms. Lawler, just to be clear, no competitive suppliers were included in the negotiations that resulted in the Stipulation, correct?

A. Correct.

Q. And RESA was not included in those negotiations, correct?

A. RESA was not a party at the time, correct.

Q. Okay. And neither RESA nor any competitive supplier was invited to attend those negotiations, correct?

A. That's my understanding.

Q. In your position as Vice President of Rate and Regulatory Strategy for Duke Energy Ohio, you would expect that Duke Energy would be involved in any Stipulation negotiations that may affect Duke Energy's terms and conditions for service with its customers, correct?

A. Yes.

Q. One thing just to clear up the record, you were asked previously some questions by Mr. Oliker about the interventions in these cases. I just want to be clear, you are aware -- let me just ask it this way -- strike that.

RESA and IGS have intervened in all the cases in these proceedings, correct?

A. That's my understanding.

MR. SETTINERI: Okay. One moment, your Honor. I think I am done, Ms. Lawler.

Yes, no further questions. Thank you, Ms. Lawler. Thank you, your Honor.

EXAMINER SANDOR: Thank you.

Now, to keep you waiting, Mr. Alexander -- actually let me see if Duke has any redirect and how long.

MR. D'ASCENZO: If I could just have a moment, your Honor.

EXAMINER SANDOR: Sure.

MR. D'ASCENZO: Your Honor, I think I just have a couple of quick questions.

EXAMINER SANDOR: Okay. Please proceed.

MR. D'ASCENZO: Okay.

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REDIRECT EXAMINATION

By Mr. D'Ascenzo:

Q. Ms. Lawler, do you remember just now the question from Mr. Settineri about RESA and IGS intervening in this proceeding?

A. Yes.

Q. Do you know when that occurred, approximately?

A. It occurred in the last month or two. It was after August 31. I can't remember if it was September or October specifically, but it was after August 31.

Q. Okay. Thank you. And do you remember questions by Mr. Oliker about the Company's filing of the -- let me strike that.

Do you remember questions from Mr. Oliker about the price-to-compare language that's included in the Stipulation?

A. Yes.

Q. And do you know whether the Company will be filing an application to include that language in the future?

A. Yes. As part of the -- the Stipulation, we will be required to file a future proceeding to have any bill formatting language approved by the

Commission in that proceeding at that time.

Q. And so the -- do you -- do you know whether the Commission will have to approve that bill format change in the future then?

A. Yes. The Commission would have to approve that -- anything that we propose in a future proceeding, and they have the ability to approve, deny, or modify in that future proceeding.

Q. And do you know whether there is a Commission regulation that addresses the filing of bill format cases before the Commission?

A. I believe that there is, yes.

MR. D'ASCENZO: No further questions.

EXAMINER SANDOR: Okay. Any recross on that limited redirect -- yeah, or redirect?

MR. SETTINERI: I have -- for the record is that question addressed only to RESA and IGS, or does it include the other parties?

EXAMINER SANDOR: To the other parties as well. So hearing none the other parties --

MR. SETTINERI: Your Honor, I'm sorry. I wasn't quick enough. I had one question for Ms. Lawler. I'm sorry, I wasn't quick enough. I do have a recross question for her.

EXAMINER SANDOR: Okay. Please proceed.

MR. OLIKER: I'll go first, if that's the case. Okay, Mike?

MR. SETTINERI: Yeah. Thank you.

MR. OLIKER: Thank you, your Honor.

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RECROSS-EXAMINATION

By Mr. Oliker:

Q. Ms. Lawler, in your familiarity with Commission practice --

A. I'm having trouble hearing you.

EXAMINER SANDOR: Mr. Oliker, I think Ms. Lawler and us are having a little bit of difficulty hearing your question. If you could maybe speak closer to the microphone or.

MR. OLIKER: Sure, your Honor.

Q. (By Mr. Oliker) Ms. Lawler, if -- to the extent that Duke Energy files a bill format case, you agree that in order to oppose that request, IGS would have to intervene in that case, correct?

A. If IGS wanted to oppose that request, would they have to intervene in that case? Yes, I believe that they would.

Q. And IGS would have to spend resources, correct?

A. I don't know what IGS would have to do.

1 Q. Well, we would need employees to
2 intervene in that case, correct?
3 MR. D'ASCENZO: Objection, your Honor.
4 This is beyond the scope of the redirect at this
5 point.
6 MR. OLIKER: Your Honor, he asked the
7 witness about what the future proceeding would look
8 like, and I'm further elaborating on what IGS would
9 have to do as suggested by counsel for Duke in his
10 questions.
11 EXAMINER SANDOR: You may proceed with
12 the understanding that scope of redirect was pretty
13 limited even with that question.
14 Q. (By Mr. Oliker) And I will reask the
15 question again given the time frame between.
16 Ms. Lawler, do you agree that IGS would need to have
17 employees to devote time to that future bill case?
18 A. I guess so. I don't know what IGS has to
19 do to intervene in cases.
20 Q. And do you know if IGS can get litigation
21 expense recovery from Duke for the extra time to
22 oppose that bill format case?
23 MR. D'ASCENZO: Objection, your Honor,
24 well beyond the scope of the redirect at this point.
25 EXAMINER SANDOR: If -- Mr. Oliker, if

you could move on. I think we have established that IGS will potentially need to intervene and expenses potentially perhaps be expended.

MR. OLIKER: Thank you, your Honor. I have no more questions.

EXAMINER SANDOR: Okay. Mr. Settineri.

MR. SETTINERI: Yeah. I have no questions, your Honor.

EXAMINER SANDOR: Okay. Any redirect on that? Okay.

MR. D'ASCENZO: No, your Honor.

EXAMINER SANDOR: All right. I believe from there we will move to admission of exhibits for this witness, with the understanding that several of Duke's exhibits are being deferred until the end of the presentation of their case.

So, Duke, if you would like to proceed first.

MR. D'ASCENZO: Thank you, your Honor. At this time I would like to move for the admission of Duke Energy Ohio Exhibit No. 6.

EXAMINER SANDOR: Okay. Any objections to the admission of that exhibit?

MR. OLIKER: Your Honor, I would simply renew my prior objection to limitation on IGS's

1 cross, but without repeating all of those arguments.
2 MR. SETTINERI: Your Honor, RESA would
3 join that objection.
4 EXAMINER SANDOR: That objection is
5 noted. However, we will be admitting Duke Exhibit 6.
6 (EXHIBIT ADMITTED INTO EVIDENCE.)
7 EXAMINER SANDOR: Is that all, Duke?
8 MR. D'ASCENZO: Yes, your Honor. That's
9 the only exhibit we had at this point. I think we
10 had already -- your Honor had said they were going to
11 defer ruling on Exhibits 1 through 5 as well as I
12 think the Joint Exhibit 1 at this point.
13 EXAMINER SANDOR: Correct, yes. I was
14 just double-checking. I only have Exhibit 6 as well.
15 And then move to IGS.
16 MR. OLIKER: Your Honor, I believe the
17 only exhibit I have left to move will be RESA
18 Exhibit 28.
19 EXAMINER SANDOR: Okay. Any objections
20 to admission of that exhibit?
21 MR. D'ASCENZO: No objection, your Honor.
22 But, Joe, would you -- just for my clarification
23 because we took some of your exhibits out of order,
24 which ones you have admitted at this point?
25 MR. OLIKER: As of now, the admitted

exhibits relate to the requests for admission. I believe that was 28, 29, 30, and 31 which tied to the documents in IGS Exhibit 5, 6, 7, and 10. The only additional actual exhibit I was intending to move was RESA Exhibit 28 which represented the presentation at the stakeholder session. Recognizing that IGS Exhibit 11 is a Finding and Order, it does not need to be admitted for purposes of citation.

MR. D'ASCENZO: Thank you. That's what I had.

MR. OLIKER: And IGS was not seeking to move Exhibit 17 at this time given the administrative notice taken of the dockets.

EXAMINER SANDOR: Okay. Thank you. Then RESA Exhibit 28 is admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SANDOR: And now for RESA.

MR. SETTINERI: Your Honor -- thank you, your Honor. At this time I would move for the admission of RESA Exhibit 31 into the record, please.

EXAMINER SANDOR: Any objections to the admission of Exhibit 31?

MR. D'ASCENZO: None here, your Honor.

EXAMINER SANDOR: Hearing none, then RESA Exhibit 31 is admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER SANDOR: Sorry to keep you up there, Ms. Lawler. You are excused.

THE WITNESS: Okay. Thank you.

MR. SETTINERI: And, your Honor, when you're ready, if we can just go off the record briefly.

EXAMINER SANDOR: Yes. Let's go off the record.

(Discussion off the record.)

EXAMINER ADDISON: Before proceeding on to our next witness, we will be taking a brief 15-minute break. I believe that will take us up around a little before 1:40, so we will see the parties then.

Thank you all.

(Recess taken.)

EXAMINER ADDISON: We'll go ahead and go back on the record at this time.

Mr. Alexander.

MR. ALEXANDER: Thank you, your Honor. The Company would call Amy Spiller, please.

MR. SCHMIDT: Ms. Spiller, you've been promoted. If you can enable your audio and video.

MS. SPILLER: Can you hear me?

EXAMINER ADDISON: We can. Good afternoon, Ms. Spiller.

MS. SPILLER: Good afternoon, your Honor.

EXAMINER ADDISON: Please raise your right hand.

(Witness sworn.)

EXAMINER ADDISON: Thank you.

Mr. Alexander.

MR. ALEXANDER: Thank you, your Honor. May the Company have Ms. Spiller's prefiled direct testimony marked for identification as Duke Exhibit 7, please.

EXAMINER ADDISON: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

AMY SPILLER

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

DIRECT EXAMINATION

By Mr. Alexander:

Q. Ms. Spiller, could you please state your name for the record.

A. Sure. It's Amy Spiller.

Q. Did you cause to be filed in these proceedings prefiled written direct testimony?

A. I did.

Q. And has that been marked for identification as Duke Energy Exhibit 7?

A. It has.

Q. Do you have any changes or corrections to that prefiled written direct testimony?

A. I do.

Q. And what are those changes?

A. There is one change, Mr. Alexander, on page 9, line 17. There is a sentence in this that begins "Relative to the activity." And the year that is referenced "2019" should actually be "2020."

Q. Thank you, Ms. Spiller. And with that correction, if I were to ask you the same questions today as appear in Duke Exhibit 7, would your answers be the same?

A. They would.

MR. ALEXANDER: Your Honor, Duke Energy Ohio moves for the admission of Exhibit 7, subject to cross-examination.

EXAMINER ADDISON: Thank you, Mr. Alexander.

And, Ms. Spiller, I am so sorry. I think I may have missed the correction. I think my computer may have stalled there for a moment. Would

you mind restating that correction to your testimony?

THE WITNESS: Not at all, your Honor. So page 9, line 17, the sentence that begins about midway "Relative to the activity undertaken," there is a year reference of "2019." That reference actually should be "2020."

EXAMINER ADDISON: Thank you very much. I appreciate that.

THE WITNESS: Sure.

EXAMINER ADDISON: Okay. We will defer ruling on the admission of the testimony following cross-examination.

OCC, any questions?

MR. HEALEY: No, your Honor.

EXAMINER ADDISON: Thank you.

OEG?

MS. COHN: No, your Honor. Thank you.

EXAMINER ADDISON: OPAE?

MR. DOVE: No, your Honor.

EXAMINER ADDISON: Kroger?

MS. WHITFIELD: No, your Honor.

EXAMINER ADDISON: OMAEG?

MS. BOJKO: No, your Honor. Thank you.

EXAMINER ADDISON: Staff?

MR. MARGARD: No, thank you, your Honor.

EXAMINER ADDISON: Thank you.

Mr. Oliker, is it your preference to go first with this witness as well?

MR. OLIKER: Yes, it is, your Honor. Thank you.

EXAMINER ADDISON: Please proceed.

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CROSS-EXAMINATION

By Mr. Oliker:

Q. Good afternoon, Ms. Spiller.

A. Good afternoon, Mr. Oliker.

Q. Just a few questions for you today. Your current role is the President of Duke Energy Ohio, correct?

A. And Kentucky, yes.

Q. Okay. That is for both the electric and gas business in Ohio?

A. That is correct.

Q. And prior to that, you were the Vice President of Government and Community Affairs for Duke Energy Ohio?

A. That is correct.

Q. And in that role, you were not responsible for regulatory filings before the Ohio Commission, correct?

A. Not responsible in what way, sir?

Q. Well, let's take the next step. Before you were the Vice President of Government and Community Affairs, you were the Deputy General Counsel for Duke Energy Ohio, correct?

A. That is correct.

Q. And in that role, you were responsible for the Duke legal team that made filings before the Commission, correct?

A. I lead that legal team, yes.

Q. Okay. And when you were the Vice President of Government and Community Affairs, you did not lead that legal team, correct?

A. I did not directly lead that legal team, correct.

Q. Okay. And you ceased to be counsel of record for Duke Energy Ohio after you left the Duke legal team, correct?

A. I'm sorry. Can you restate the question? Just reask it.

Q. From -- from this angle perhaps --

A. I just didn't hear it well enough.

Q. When --

A. I'm sorry. I didn't hear it well enough.

Q. I'm sorry, Ms. Spiller. When you were on

1 the Duke legal team as Deputy General Counsel, you
2 participated in many Commission cases, correct?
3 A. I did.
4 Q. But your participation in those cases
5 ceased once you transferred over to be the Vice
6 President of Government and Community Legal Affairs,
7 correct?
8 A. As an attorney of record, correct.
9 Q. Okay. And am I correct that you have
10 never worked for a competitive retail natural gas
11 supplier?
12 A. I would -- I will not agree with that.
13 Q. Okay. You provided -- at one point in
14 your career you provided legal advice to Duke Energy
15 Retail, correct?
16 A. That is correct.
17 Q. Although you provided legal advice to
18 Duke Energy Retail, you did not provide business
19 advice.
20 A. Without divulging the advice that was
21 provided in my capacity, I would say it was legal
22 advice of a business nature or pertaining to a
23 business.
24 Q. Would another way of saying that be it
25 was in a legal capacity as a business partner?

A. That would be fine.

Q. And when you were doing legal work for Duke Energy Retail, you were not making business decisions on which markets Duke Energy Retail should enter, correct?

A. I made recommendations to my client.

Q. You made legal recommendations, correct?

A. I made recommendations to my client.

Q. And without divulging one way or another, your recommendations are not with respect to which markets Duke Energy Retail should enter, correct?

MR. ALEXANDER: Objection, asked and answered.

MR. OLIKER: It was asked, but I don't think it was answered, your Honor.

EXAMINER ADDISON: I will allow the question.

A. Mr. Oliker, I don't recall all of the legal advice that I gave to Duke Energy Retail Services.

Q. But to put a bow on this, you would agree that your role with respect to Duke Energy Retail was always as counsel, correct?

A. Correct.

Q. And when you were Deputy General Counsel,

1 you participated in rate cases, rulemaking, and
2 anything else in between for Duke, correct?
3 A. On behalf of Duke Energy entities, that's
4 correct.
5 Q. For example, you were counsel for Duke in
6 some of the underlying cases that are the subject of
7 the Stipulation, correct?
8 A. That is correct.
9 Q. And those cases would be 14-375, 16-542,
10 and 17-596, correct? Potentially others.
11 A. Potentially others.
12 Q. And you're familiar with what has been
13 commonly referred to in this case as the three
14 market-related commitments, correct?
15 A. I'm familiar with the commitments as
16 you've defined them, Mr. Oliker.
17 Q. Okay. And as you sit here today, you do
18 not know if Duke will withdraw from the Stipulation
19 if the Commission modified the Stipulation to
20 eliminate all three market-related commitments.
21 A. Without seeing a final Commission order,
22 I can't make a decision on what Duke Energy Ohio
23 would do.
24 Q. And one of the market-related commitments
25 pertains to an application to transition to a

1 Standard Service Offer, correct?
2 A. That is correct.
3 Q. And you have not quantified the cost of
4 transitioning to a Standard Service Offer, correct?
5 A. Not at this time.
6 Q. But you do agree that Ohio law permits a
7 natural gas utility to exit the merchant function?
8 A. It permits a natural gas utility to ask
9 or petition the Commission to exit that function.
10 Q. Okay. And you would agree that Columbia,
11 Vectren, and Dominion Energy have each ceased
12 providing default service through a gas cost recovery
13 mechanism.
14 A. A point of clarification, Mr. Oliker. I
15 think it's CenterPoint now, not Vectren. But, yes,
16 they -- those three entities have exited the GCR.
17 Q. Thank you. I struggle with that one just
18 like the AES change. Slow learner. And would you
19 agree that to exit the merchant function and cease
20 providing the gas cost recovery mechanism, each of
21 those utilities had to file applications before the
22 Commission?
23 A. I would expect that to be the case.
24 Q. You are not familiar with any of the
25 filings or orders from those cases, correct?

A. That is correct.

Q. And the Stipulation proposes that transition costs will be proposed to be recovered from residential customers on a nonbypassable basis, correct?

A. Just a moment. I'm flipping to that page of the Stipulation. And I'm sorry, Mr. Oliker. I was getting the stipulation in front of me. Could you ask the question again?

Q. Okay. You agree that the Stipulation proposes to set parameters for how Duke's application to exit the merchant function will propose to recover transition costs?

A. That is correct.

Q. And the Stipulation proposes that transition costs will be bypassable for nonresidential customers and nonbypassable for residential customers, correct?

A. That's -- that's what we will propose in the transition application, correct.

Q. Okay. As you sit here today, you are not offering any reason in your testimony as to why these transition costs should be treated differently for residential and nonresidential customers.

A. It was a negotiated outcome of the

settlement.

Q. So the answer is you are not offering any reasoning yourself other than it was a negotiated outcome.

A. That is correct.

Q. Thank you. And you agree that the Stipulation would require Duke to provide -- or apply to provide a Standard Service Offer, correct?

A. Yes. If the Stipulation is approved as filed, the Company will file an application to transition to a Standard Service Offer, or SSO.

Q. Do you agree that the Standard Service Offer envisioned by the Stipulation would be a wholesale auction?

A. I believe that that is -- I believe that the application, yes, will reflect what is anticipated to be a wholesale auction.

Q. And in the Standard Service Offer auction bidders do not have to be certified to provide competitive retail natural gas service, you would agree there is no guarantee the auction bidders will also provide retail natural gas competition.

MR. ALEXANDER: Objection.

EXAMINER ADDISON: Grounds?

MR. ALEXANDER: Assumes facts that -- the

1 witness testified the application for the auction has
2 not yet been filed, will be filed in the future, and
3 the question assumes a format of the auction. The
4 application hasn't even been filed yet so there is no
5 way the witness could answer.
6 MR. OLIKER: Your Honor, it's a
7 hypothetical question.
8 EXAMINER ADDISON: Thank you.
9 With that understanding, I will provide
10 Ms. Spiller ample latitude to answer the question as
11 best as she can.
12 THE WITNESS: Thank you, your Honor.
13 A. So -- so, Mr. Oliker, the Commission has
14 yet to approve the bidder qualifications and
15 requirements in respect of the future auction
16 application, but as a general proposition, if an
17 entity is not certified as the competitive retail
18 provider in the State of Ohio, I don't see how they
19 could lawfully provide competitive retail service.
20 Q. Thank you, Ms. Spiller. You are familiar
21 with the concept of a Standard Choice Offer, correct?
22 A. I am.
23 Q. And am I correct that under the Standard
24 Choice Offer, you don't know if the name of an
25 individual supplier is listed on the customer's bill?

A. Under a Standard Choice Offer, a supplier would be listed on the customer's bill.

Q. Okay. Can you take a look at your deposition, Ms. Spiller.

A. What page, please?

Q. I'll get there in a second. First, Ms. Spiller, your deposition was taken in this case, correct?

A. It was.

Q. Do you have a copy of that deposition in front of you?

A. I do.

Q. And did you make any changes to that deposition?

A. I did.

MR. OLIKER: And I ask your counsel if he sent them to me.

A. I assume we would have sent them to the court reporter as is customary.

MR. ALEXANDER: That's correct. It was provided to the court reporter, yes.

Q. (By Mr. Oliker) Okay. Maybe we can take this in a different way in a second. Turn to page 65 on line 13. Let me know if I read this correctly. "With the Standard Choice Offer, when a customer

1 looks on their bill, they will see the name of the
2 supplier they have been assigned to under the
3 auction, correct? I don't know how the bill
4 detailing works under an SCO. I am not familiar with
5 that detail." Did I read that correct?
6 A. You did.
7 Q. Did you learn regarding the suppliers'
8 inclusion on a customer's bill in an SCO after your
9 deposition?
10 A. I heard it this morning or earlier today
11 from Ms. Lawler's cross-examination.
12 Q. Okay. Thank you. You're familiar that
13 there is a provision in the Stipulation regarding
14 aggregate shadow billing, correct?
15 A. Correct. There -- there are provisions
16 regarding shadow billing.
17 Q. And you did not compile the data that was
18 given to the OCC, correct?
19 A. I did not, correct.
20 Q. You are not familiar with how Duke
21 compiled the data, correct?
22 A. Correct.
23 Q. Okay. And turning to page 22 of your
24 testimony and let me know when you are there.
25 A. I'm here.

1 Q. On lines 20 and 21, you refer to
2 regulatory principles. Regarding regulatory
3 principles, do you agree that your definition is
4 starting with the Ohio Revised Code but it could also
5 include Commission regulations and long-standing
6 routine adopted by regulators?
7 A. I believe that those would -- would be
8 principles and practices.
9 Q. For example, the regulatory practice or
10 principle could include the Ohio Administrative Code?
11 A. It could.
12 Q. You are familiar with the Commission's
13 rulemaking process, correct?
14 A. I am.
15 Q. First, rules are proposed and parties
16 submit comments?
17 A. Correct.
18 Q. And after the Commission adopts the final
19 rule, it is submitted to the Joint Committee on
20 Agency Rule Review, correct?
21 A. Correct.
22 Q. Then after the rules clear the Joint
23 Committee on Agency Rule Review jurisdiction, the
24 rule is ultimately filed with the Secretary of State
25 and becomes effective at a later date, correct?

A. Correct.

Q. And because you were in the hearing room earlier today, you heard the discussion regarding Case No. 19-1429, correct?

A. I did hear your conversation with Ms. Lawler.

MR. OLIKER: And at this time I would like to mark IGS Exhibit 1. And this contains the Ohio Administrative Code Rule 4901:1-13.

EXAMINER ADDISON: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

A. Mr. Oliker, I'm sorry, but it's 4901:1-13-11 is what I have as your IGS 1.

MR. OLIKER: Thank you for that clarification, and I am happy to accept that in marking the document, your Honor.

EXAMINER ADDISON: Thank you both.

Q. (By Mr. Oliker) And, Ms. Spiller, you agree this rule reflects the price-to-compare statement adopted by the Commission?

MR. ALEXANDER: Can I have that question repeated? I just didn't hear it.

Q. (By Mr. Oliker) Ms. Spiller you agree that -- well, first, does this document marked as IGS Exhibit 1 appear to be a rule from the Ohio

1 Administrative Code?
2 A. Yes, it is a rule from the Ohio
3 Administrative Code.
4 Q. And it appears to be an accurate copy?
5 A. It appears to be.
6 Q. And do you agree that this rule that I
7 provided to you contains the price-to-compare
8 statement adopted by the Commission?
9 A. Adopted by the Commission in the case you
10 were speaking to Ms. Lawler about?
11 Q. My question is does this appear to be the
12 price-to-compare statement adopted by the Commission
13 on the effective date of this rule?
14 A. I'm not trying to be cute, but the
15 Commission would have ruled prior to the effective
16 date of the rule, Mr. Oliker. This is the
17 price-to-compare statement that was reflected in the
18 Commission's order in Case No. 19-1429.
19 Q. That wasn't my question but I am happy to
20 accept that clarification. Can you look down at the
21 bottom of that -- if you look down there, would you
22 agree that you can see the effective date is
23 August 5, 2021?
24 A. Correct. Well, what your exhibit says is
25 "Last updated August 5, 2021 at 8:40 a.m."

Q. Okay. Thank you. And am I correct that before you submitted your testimony before signing the Stipulation in this case, you did not review this version of the Commission's rule or Case 19-1429 at all?

A. That's correct.

MR. OLIKER: And, your Honor, before I complete my cross-examination, I do have some additional requests for admission I would like to address.

EXAMINER ADDISON: Certainly.

MR. OLIKER: Recognizing these relate to the OCC who doesn't have a witness, I wasn't sure the best time to talk about it, but I would like to mark IGS Exhibit 34 and 35.

EXAMINER ADDISON: Would you please provide a quick description of both, Mr. Oliker.

MR. OLIKER: Yes, your Honor. IGS Exhibit 34 is OCC's response to RESA-RFA-1-4.

EXAMINER ADDISON: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. OLIKER: And IGS Exhibit 35 is OCC's response to RESA-RFA-1-5.

EXAMINER ADDISON: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. ALEXANDER: Mr. Oliker, one point of
2 clarification. Is there any difference in the two
3 exhibits? It appears that OCC provided responses to
4 request for admission 1, to request for admission 5
5 on the same sheet of paper.
6 MR. OLIKER: I do not intend to move the
7 other request for admission. We can provide a
8 modified version.
9 MR. HEALEY: Joe, can you clarify? Which
10 ones are you seeking admission of?
11 MR. OLIKER: 1-4 and 1-5.
12 MR. ALEXANDER: And those would be
13 contained in Exhibit 34, correct?
14 MR. OLIKER: That's correct.
15 MR. ALEXANDER: Okay.
16 MR. HEALEY: I would ask that these
17 get -- when they get submitted to the court reporter,
18 it not include the extraneous ones so those don't end
19 up in the record.
20 MR. OLIKER: Okay.
21 EXAMINER ADDISON: Thank you for that
22 clarification.
23 Mr. Oliker.
24 MR. OLIKER: If I could have one minute,
25 your Honor.

EXAMINER ADDISON: You may.

Q. (By Mr. Oliker) Okay. Ms. Spiller, I think there was a -- some confusion about one of the questions I asked earlier about the effective date of the rule in the Ohio Administrative Code. If you look at the top of the document, would you agree that it says that the effective date of the rule is August 5, 2021?

A. It says that, yes.

Q. And that's about 26 days before the Stipulation was filed, correct?

A. That's correct.

Q. And my one last question is you would agree that my beard is better than Mr. Alexander's, correct?

MR. ALEXANDER: Can I have that question reread, please?

MR. OLIKER: That's the end of my questioning.

EXAMINER ADDISON: All right. Thank you, Mr. Oliker.

Mr. Settineri, any additional questions?

MR. SETTINERI: Yes, your Honor. And if you could give me just a brief second to get organized, I am just catching up to Mr. Oliker's

1 admission response -- the admission of those RFAs.
2 EXAMINER ADDISON: Absolutely. Take your
3 time.
4 MR. SETTINERI: Thank you, your Honor.
5 MR. OLIKER: In case I didn't say it, I
6 was going to move for the request for admissions as
7 well.
8 EXAMINER ADDISON: Let's hold off on
9 entertaining any arguments on those two marked
10 exhibits until after we finish up with Ms. Spiller.
11 MS. WHITFIELD: Your Honor, this is Angie
12 Whitfield for Kroger. I didn't hear what Mr. Oliker
13 said at the end. Could the court reporter read that
14 back? It sounded like there was a question there but
15 then --
16 MR. OLIKER: It was a bad joke.
17 MS. WHITFIELD: Oh, okay.
18 MR. HEALEY: I still want the court
19 reporter to read it.
20 EXAMINER ADDISON: That's okay. That's
21 unnecessary. We will -- we will move on. It will be
22 in the transcript, Joe, so.
23 MR. SETTINERI: I am going to be careful,
24 your Honor. Are we back on the record?
25 EXAMINER ADDISON: We are back on the

1 record.
2 MR. SETTINERI: All right. And I am
3 ready to proceed when you are.
4 EXAMINER ADDISON: Please proceed.
5 MR. SETTINERI: All right, your Honor. I
6 do have a request here to mark an exhibit starting
7 with RESA Exhibit 2. That is a response to a request
8 for admission identified as RESA-RFA-01-005.
9 EXAMINER ADDISON: It will be so marked.
10 (EXHIBIT MARKED FOR IDENTIFICATION.)
11 MR. SETTINERI: And I would like to ask
12 Ms. Spiller -- I guess at this time I will move for
13 the admission of that exhibit given that's a request
14 for admission, your Honor.
15 MR. ALEXANDER: Your Honor, could I have
16 a moment, please?
17 EXAMINER ADDISON: Absolutely. I was
18 just going to say we will provide everyone an
19 opportunity to review the exhibit.
20 MR. SETTINERI: I just wanted to make
21 sure that was on the record. All right. I am ready
22 for some questions, your Honor, if I may proceed.
23 EXAMINER ADDISON: Oh, one moment.
24 MR. SETTINERI: Oh, I'm sorry.
25 EXAMINER ADDISON: If we can take up the

1 admission of this exhibit now, that would be my
2 preference.
3 MR. SETTINERI: All right. Thank you,
4 your Honor.
5 MR. ALEXANDER: No objection for the
6 Company, your Honor.
7 EXAMINER ADDISON: Any other objections?
8 All right. Hearing none, RESA Exhibit 2
9 will be admitted.
10 (EXHIBIT ADMITTED INTO EVIDENCE.)
11 EXAMINER ADDISON: Please proceed,
12 Mr. Settineri.
13 MR. SETTINERI: Thank you, your Honor.
14 - - -
15 CROSS-EXAMINATION
16 By Mr. Settineri:
17 Q. Good afternoon, Ms. Spiller.
18 A. Good afternoon, Mr. Settineri.
19 Q. And if you are -- if you could just wait
20 one minute, I need to -- there you go. I need to get
21 you down where I can see you here.
22 Just a few questions for you,
23 Ms. Spiller. The SSO procurement process is a
24 competitive procurement process just as the GCR is a
25 competitive procurement process, correct?

A. Correct.

Q. Okay. It is possible that a natural gas supplier to Duke's GCR program could also be a supplier for the proposed SSO, correct?

A. That's possible. The Commission has yet to decide the bidding qualifications and requirements.

Q. Duke's transition to an SSO will not result in an increased financial benefit to Duke, correct?

A. Can you define financial benefit?

Q. I know we've had this discussion. Do you remember being deposed previously this week? So I'll do the same thing there. Whatever financial benefit means to you, Ms. Spiller.

MR. ALEXANDER: Objection.

A. And I'll give you the same answer.

THE WITNESS: Go ahead. Sorry.

MR. ALEXANDER: Mr. Settineri posed the question. It's up to Mr. Settineri to define the terms in his question. It's unfair to ask the witness to define something as broad as financial benefit.

MR. SETTINERI: Your Honor, she is the President of Duke Energy Ohio. I think she

1 understands financial benefit, so it's however she
2 interprets that term, she can give an answer. I
3 should not have to define it for her.
4 EXAMINER ADDISON: Ms. Spiller, you may
5 answer the question. But again, I will be providing
6 you ample latitude as Mr. Settineri has volunteered
7 that.
8 THE WITNESS: Thank you, your Honor.
9 A. Mr. Settineri, I will tell you the same
10 thing I told you on Friday, that there is no
11 significant financial windfall coming to Duke Energy
12 Ohio in transmission from GCR to an SSO.
13 Q. And essentially any financial benefit to
14 Duke for an SSO would essentially be a push compared
15 to the GCR financial benefit, correct?
16 MR. ALEXANDER: Objection.
17 EXAMINER ADDISON: Grounds?
18 MR. ALEXANDER: First, we have now reused
19 the phrase financial benefit which the witness did
20 not use in her response. She referenced financial
21 windfall. Second, we have introduced the concept of
22 a push to a financial benefit that the witness did
23 not identify in the prior answer.
24 EXAMINER ADDISON: Yeah. Mr. Settineri,
25 I tend to agree with Mr. Alexander on this one.

1 Would you mind rephrasing your question?
2 MR. SETTINERI: Sure.
3 Q. (By Mr. Settineri) Ms. Spiller, you
4 recall your deposition from Tuesday, I believe?
5 A. It was Friday.
6 Q. Friday. The days blur together. Do you
7 recall explaining to me what a push meant when you
8 used that term?
9 A. I do.
10 Q. And that --
11 A. I don't believe you are using my
12 deposition correctly, sir.
13 Q. I'm not -- I am just asking you informed
14 me -- you know -- you have a meaning to what push
15 means, correct?
16 MR. ALEXANDER: Objection.
17 EXAMINER ADDISON: Grounds?
18 MR. ALEXANDER: He can simply ask the
19 witness the definition of the word push. We don't
20 need to reference the witness's deposition.
21 EXAMINER ADDISON: I agree. Let's go
22 ahead and ask the witness what her definition of push
23 is before we proceed with this line of questioning.
24 Q. (By Mr. Settineri) What's your definition
25 of a push, Ms. Spiller?

A. Well, Mr. Settineri, it can be -- it depends on the context in which the word is used.

Q. All right. Well, let me just go back to where we ended in the deposition. Transition to an SSO will -- any financial benefit to Duke due to its transition to an SSO will be essentially equal to any financial benefit Duke receives today through the GCR, correct?

MR. ALEXANDER: Objection.

EXAMINER ADDISON: Grounds?

MR. ALEXANDER: We are again using the undefined phrase financial benefit which the witness has not used.

EXAMINER ADDISON: Thank you.

Mr. Settineri.

MR. SETTINERI: Your Honor, again, she can -- she can -- she's the President of Duke Energy Ohio. I am sure she understands what I am saying, and she can answer as she sees fit.

EXAMINER ADDISON: I will allow her to answer the question.

THE WITNESS: Thank you, your Honor.

A. Mr. Settineri, can you restate the question?

MR. SETTINERI: I'm sorry, your Honor.

1 Did you say she could answer the question?
2 EXAMINER ADDISON: Are you asking him to
3 just repeat the question, Ms. Spiller?
4 THE WITNESS: Yes, your Honor.
5 EXAMINER ADDISON: Please proceed.
6 MR. SETTINERI: Your Honor, if you don't
7 mind, could the court reporter just read the question
8 for me, I appreciate it.
9 EXAMINER ADDISON: Thank you.
10 Thank you, Karen.
11 (Record read.)
12 A. Mr. Settineri, I did indicate there would
13 be a financial benefit going to the SSO.
14 Q. Okay. Let me just -- I think this is the
15 easiest way, Ms. Spiller, so we can move forward, if
16 you could just turn to your deposition at page 108.
17 A. I don't believe you asked me the question
18 just now in my deposition.
19 Q. And so let me ask you this question, and
20 I have actually -- so if we can turn to starting at
21 page 107 to 108 of your deposition. Do you recall
22 being deposed on November 12?
23 A. I do.
24 Q. Okay. If you look at line 22 of your
25 deposition, "Question: Again, is there any in your

1 opinion as, I think, President of Duke Energy Ohio,
2 do you see any financial benefit to Duke Energy to
3 transition from a GCR to an SSO? Answer: Insofar as
4 our costs of procurement are recovered under both the
5 GCR structure and SSO structure, I would say that's
6 probably a push. Question: And a push means what?
7 Answer: I'm sorry? Question: You said a push, I
8 believe, in the last answer, if I heard you
9 correctly. I just want to clarify for the record
10 what that is. That is a word I am not -- Answer: I
11 would say that there -- the SSO structure does not
12 afford the Company some financial windfall.
13 Question: Let me back up. In your last answer you
14 said did not provide a push; is that correct?
15 Answer: I would say they were a push. Question:
16 What does that mean? A. Pretty much equal." Did I
17 read that correctly?
18 MR. ALEXANDER: Objection, your Honor.
19 EXAMINER ADDISON: Grounds?
20 MR. ALEXANDER: This is improper
21 impeachment. The witness's answers today are
22 completely consistent with what was given in the
23 deposition. The question differs from that used in
24 the deposition and this impeachment is, therefore,
25 improper. This was an effort to read the deposition

1 into the record instead of asking proper questions to
2 the witness.
3 MR. SETTINERI: Your Honor.
4 EXAMINER ADDISON: Mr. Settineri.
5 MR. SETTINERI: The first question I read
6 was exactly what I asked previously, and so I think
7 it clears up the record on this point. It also
8 involves the questions I asked about what a push is.
9 EXAMINER ADDISON: Thank you.
10 In order to proceed expeditiously and
11 perhaps move on from this line of questioning, I will
12 overrule the objection. The Commission will
13 certainly be able to evaluate whether or not
14 Ms. Spiller's testimony was consistent with her
15 deposition testimony as read by Mr. Settineri.
16 Q. (By Mr. Settineri) All right.
17 Ms. Spiller, negotiations on the Stipulation that was
18 filed August 31, 2021, commenced approximately in
19 November 2020, correct?
20 A. They commenced approximately a year ago,
21 correct.
22 Q. Okay. And Duke has already started
23 incurring costs to transition to an SSO, correct?
24 A. Correct.
25 Q. Okay.

1 MR. SETTINERI: Your Honor, at this time
2 I would like to mark two additional exhibits. And
3 what I would like to do, and I have different ways to
4 do it, but I think the most expedient way to do it I
5 would like to mark two responses to an exhibit -- and
6 I would like to mark a request for admission. These
7 were two RESA requests for admissions, but they have
8 been identified -- let's see here -- well, I am going
9 to have to mark them, yeah, okay. Sorry.
10 If we can mark the exhibit as RESA
11 Exhibit 30 and the document, your Honor, sent to the
12 parties was -- these are OCC discovery responses.
13 The document sent included a number of requests for
14 admissions. And I think consistent -- I think
15 Mr. Healey had asked for this but what I want to mark
16 is a specific -- are two specific admissions. And I
17 would be more than glad to mark those separately as
18 exhibits or I could put them both under RESA
19 Exhibit 30 and --
20 EXAMINER ADDISON: Which exhibits are you
21 referring to that were previously exchanged?
22 MR. SETTINERI: Yeah, I'm sorry, yeah.
23 Actually it's -- I'm sorry. It's RESA Exhibit 29.
24 Those are OCC responses and objections to RESA's
25 first set of discovery, okay? I am not going to

1 include the entire document in because the discovery
2 responses are multiple responses on one page similar
3 to how the IGS Exhibits 34 and 35 were marked. I
4 would just propose to mark as -- I can do -- I would
5 propose to mark as RESA Exhibit 29 on page 29 of the
6 exhibit I passed around, but it would be the response
7 to request for admission 1-1 and the response to the
8 admission for 1-3.
9 MR. OLIKER: Your Honor, I'm sorry. I
10 don't mean to interject here. I think what just
11 happened is I marked Exhibit -- I marked 4 and 5, and
12 then he might have done 1 and 3. Is the easier way
13 to do this maybe suggest mark IGS Exhibit 34 as 1, 2,
14 4, and -- or --
15 MR. SETTINERI: 3.
16 MR. OLIKER: 3, 4, and 5 so we don't have
17 so many exhibits in the record?
18 EXAMINER ADDISON: I think it's a little
19 late for that.
20 MR. OLIKER: Happy to do it the long way.
21 EXAMINER ADDISON: Why don't we just
22 leave it as is. If we -- we need to revisit this
23 issue, I feel like everyone should be able to
24 distinguish which responses are contained in which
25 exhibit without much difficulty, so I feel like we

can -- we can move forward with them as marked as is.

MR. ALEXANDER: Your Honor, one clarification, Mr. Settineri mentioned both 29 and 30, but can we then limit it to just 29?

MR. SETTINERI: Yeah. Your Honor, could we just go off the record briefly? Would that be helpful?

EXAMINER ADDISON: Yes, it would. Let's go off the record.

(Discussion off the record.)

EXAMINER ADDISON: Let's go ahead and go back on the record.

MR. SETTINERI: Yes. Your Honor, after a discussion off the record on handling this exhibit, I am going to back up and I would note for the record that we previously had distributed a document that included various OCC responses and objections. After discussion off the record, what I'd like to do at this time, your Honor, is specifically mark as RESA Exhibit 29 a page that has a page number of 29 with a title of "Request for Admissions" and that page includes responses relevant to my marking of exhibits. It includes a response to a RESA request for admission 1-1, a response to a RESA request for admission 1-3, a response to admission -- request for

1 admission RFA-1-4, and a response to a request for
2 admission designated RFA-1-5.
3 EXAMINER ADDISON: Thank you very much,
4 Mr. Settineri. It will be so marked.
5 (EXHIBIT MARKED FOR IDENTIFICATION.)
6 MR. SETTINERI: Thank you. And, your
7 Honor, at this time because these are requests for
8 admissions, I would move for the admission of RESA
9 Exhibit 25 -- 29 to the record, please. And I will
10 be providing a page if -- to the court reporter
11 showing this.
12 EXAMINER ADDISON: Thank you very much.
13 Any objections to the admission of RESA Exhibit No.
14 29?
15 MR. HEALEY: No objections. I just want
16 the record to be clear, RFA-1-2 will not be part of
17 the record and cannot be cited.
18 EXAMINER ADDISON: Of course. Thank you
19 for that clarification, Mr. Healey.
20 MR. SETTINERI: Yeah.
21 EXAMINER ADDISON: Hearing no other
22 objection, it will be admitted with that limitation,
23 of course, in place.
24 (EXHIBIT ADMITTED INTO EVIDENCE.)
25 MR. SETTINERI: All right.

EXAMINER ADDISON: Mr. Settineri, you may proceed.

MR. SETTINERI: Thank you, your Honor. And thank you, Ms. Spiller. I have no other questions.

EXAMINER ADDISON: Thank you very much.

Mr. Alexander, any redirect?

MR. ALEXANDER: May I have one moment, your Honor?

EXAMINER ADDISON: You may.

We can go ahead and go off the record.

(Discussion off the record.)

EXAMINER ADDISON: Let's go ahead and go back on the record.

Mr. Alexander.

MR. ALEXANDER: No redirect, your Honor.

EXAMINER ADDISON: Thank you very much.

Ms. Spiller, I don't believe I have any additional questions for you at this time, so you are excused. Thank you very much for your time.

THE WITNESS: Thank you, your Honor.

EXAMINER ADDISON: Mr. Alexander?

MR. ALEXANDER: Your Honor, Duke Energy moves for the admission of Duke Exhibit 7.

EXAMINER ADDISON: Any objection to the

1 admission of Duke Exhibit 7?
2 MR. OLIKER: Your Honor, IGS would renew
3 its prior objections given the limitations in this
4 case, recognizing it's not going to change its mind
5 at the moment. I will rest on the prior arguments.
6 MR. SETTINERI: RESA also joins that
7 objection, your Honor.
8 EXAMINER ADDISON: Thank you both. Your
9 objections are noted, but we will go ahead and admit
10 Duke Exhibit 7 into the record.
11 (EXHIBIT ADMITTED INTO EVIDENCE.)
12 MR. ALEXANDER: Your Honor, at this point
13 Duke would renew its request to admit Duke Exhibits 1
14 through 5 and Joint Exhibits 1 and 2.
15 EXAMINER ADDISON: Thank you very much.
16 I believe the parties provided arguments
17 earlier today regarding the admission of these
18 exhibits. Is there anything else parties would like
19 to add at this time?
20 MR. OLIKER: Your Honor, we just
21 reiterate our objections stated earlier today.
22 MR. HEALEY: Your Honor, if I might have
23 a moment, I would note Ms. Lawler was asked on cross
24 whether any of the other filings in any of the other
25 cases involved marketer issues, and she confirmed

they did not. Therefore, any cross-examination the parties may have on these testimonies would be outside the scope of IGS and RESA's intervention and, therefore, there would be no cross. So the fact the witnesses are not here is irrelevant and that's why this -- these documents should be admitted. Thank you.

MR. SETTINERI: And, your Honor, if I may. Yes, all of the arguments previously would apply and we object to the Stipulation. I think is it Duke Exhibits 1 through 5, I believe?

EXAMINER ADDISON: That's correct.

MR. SETTINERI: Yes, the same arguments.

EXAMINER ADDISON: As well as Joint Exhibits 1 and 2.

MR. SETTINERI: Right. Can we take Duke Exhibits 1 through 5 first, please?

EXAMINER ADDISON: We may, of course.

MR. SETTINERI: The arguments I made earlier about witnesses being present for their testimony to be subject to cross-examination is appropriate. And because we are not stipulating to the admission, they should be present to be able to ask questions, and I do recognize Ms. Lawler's testimony which I hope the Bench did too. And so

again, we just repeat those arguments for the record. Thank you.

EXAMINER ADDISON: Thank you very much.

Anyone else?

MR. OLIKER: Your Honor, to the extent I didn't already say it, as I mentioned earlier, we would like our objection noted for the record that our intervention has been limited, our ability to cross-examine the witnesses previously determined, and we continue to reserve on that determination today and just would like it noted for the record.

MR. SETTINERI: And RESA joins that concise statement.

EXAMINER ADDISON: Thank you very much.

MR. ALEXANDER: Your Honor, if I could have one final word?

EXAMINER ADDISON: You may.

MR. ALEXANDER: Thank you. First, as counsel I think anticipated, Duke Energy notes their intervention has been limited. This testimony has nothing to do with the competitive issues on which their limited intervention was granted. This testimony has been out there since 2020, July actually, more than a year since it was filed and the date they intervened. As such, it has nothing to do

with their issues in the case.

Second, Mr. Settineri raised an argument about the propriety of stipulating in evidence without a witness being present. I would note this is common in Ohio in cases with stipulations. There is testimony filed and then testimony in support of the Stipulation, and very commonly the witnesses who filed testimony prior to the Stipulation aren't needed when all of the parties to that Stipulation, which is what took place here, stipulated. We had an unopposed stip with signatory parties and nonopposing parties. As such, there was simply no need for these issues which relate -- again, nothing to do with competitive issues to be resolved.

As such, we believe it's appropriate to admit these exhibits.

EXAMINER ADDISON: Thank you.

Anyone else? Last chance.

MR. OLIKER: Your Honor, I take issue with the statements made about the Stipulation not being contested, but I think it's obvious it is being contested here, so I don't want to get into semantics with our continued objection.

MR. SETTINERI: I would make a statement for the record Duke Energy's opposition -- or

1 arguments here are just another example of a
2 procedural irregularity. When you have a party to a
3 proceeding in a Stipulation that opposes the
4 Stipulation, in my experience witnesses are always
5 present. And to say that only the signatory parties
6 can have the right to examine these witnesses is a
7 further procedure irregularity and I just want to
8 note that for the record.
9 Nothing further, your Honor.
10 EXAMINER ADDISON: Thank you,
11 Mr. Settineri.
12 Those objections are noted for the
13 record. However, I do find given the limited
14 intervention granted RESA and IGS, it is appropriate
15 to admit these exhibits into the record at this time.
16 That was referring to Duke Exhibits 1, 2, 3, 4, and
17 5.
18 (EXHIBITS ADMITTED INTO EVIDENCE.)
19 MR. ALEXANDER: And, your Honor, I would
20 also move for the admission of Joint Exhibit 1 which
21 is a copy of the Stipulation and Recommendation filed
22 on August 31 and a Joint Exhibit 2 which is the
23 revised tariff sheet.
24 EXAMINER ADDISON: Thank you.
25 Any objection?

1 MR. SETTINERI: I do, your Honor, and I
2 will go first. The -- I object to the admission of
3 both exhibits. No. 1 obviously, again, RESA was
4 granted limited intervention. We've been precluded
5 from our right to fully challenge the Stipulation.
6 I'll just note that for the record. I also object
7 for the Stipulation going into the record because it
8 contains provisions that have nothing to do with
9 underlying proceedings, the MGP and the TCJA as we
10 call it, and particularly because the enabling orders
11 for these proceedings, and I believe Case No. 18-47,
12 I think there is an order from October 24, 2018, Case
13 No. -- I want to say 12-1685, et at., November 13,
14 2013, but the enabling orders for both of these cases
15 did not direct the utilities to address any
16 competitive market provisions. They were limited to
17 the MGP and the TCJA.
18 So just like a cross-examination, this is
19 far afield, not even in the field, another country,
20 another world, and so for that reason this
21 Stipulation cannot be admitted into the record
22 because it is contrary to the enabling orders, so I
23 would just like to make that objection here today,
24 and I will stop there, your Honor. Thank you.
25 EXAMINER ADDISON: Thank you,

Mr. Settineri.

MR. OLIKER: Without repeating everything, IGS would join in the objection, your Honor.

EXAMINER ADDISON: Thank you.

Mr. Alexander?

MR. ALEXANDER: Your Honor, I believe this is an evidentiary question, and the question before the Bench right now is whether the Stipulation should be admitted into the record. The fact that we are here having a hearing regarding the stipulation, the fact that it's been authenticated and discussed extensively by the witnesses means that the Commission cannot give a proper decision in this case without the Stipulation being admitted into the record.

As such, I believe it's met the criteria of the rules of evidence for admission and should be admitted. To the extent the Commission disagrees with the provisions in the Stipulation, it is certainly free to reject or modify the Stipulation in accordance with the power it has.

MR. SETTINERI: Now I will just note, your Honor, if I may, it also goes just to relevancy. These are -- these provisions -- this Stipulation as

1 crafted again does not respond to the enabling orders
2 that contained irrelevant provisions that had no
3 bearing in these proceedings.
4 Thank you, your Honor. Appreciate it.
5 EXAMINER ADDISON: Thank you. Well, I
6 would say that it's highly relevant given the various
7 entries that have been issued since October 15 of
8 this year.
9 With that being said, Mr. Alexander is
10 completely correct. This is an evidentiary issue to
11 resolve right now. If the Commission so decides,
12 they will have the opportunity to evaluate the merits
13 of the Stipulation and whether or not the Stipulation
14 satisfies the three-prong test that it has evaluated
15 in numerous procedures before this one.
16 So I feel that your arguments are better
17 suited for brief. I would welcome those arguments.
18 MR. ALEXANDER: Your Honor, we went out
19 for a moment. After you said "I would welcome those
20 arguments," your video froze.
21 EXAMINER ADDISON: I apologize, everyone.
22 Just to reiterate, I agree with Mr. Alexander this is
23 an evidentiary issue to resolve today. We will be
24 admitting both exhibits. Parties will be able to
25 cite to the numerous and ample testimony we are

1 receiving regarding the Stipulation and whether it
2 complies with the three-prong test or not. So we
3 will go ahead and admit Joint Exhibits 1 and 2 into
4 the record.
5 (EXHIBITS ADMITTED INTO EVIDENCE.)
6 EXAMINER ADDISON: Mr. Margard, I suspect
7 you will be renewing your motion to admit Staff
8 Exhibit 1; is that correct?
9 MR. MARGARD: At this time and certainly
10 based on your previous rulings, your Honor, I think
11 that's appropriate.
12 MR. SETTINERI: Your Honor, we would --
13 as to the admission of the Staff Report, we would
14 make the same arguments that we made to the Duke
15 Exhibits 1 through 5 for the record.
16 MR. MARGARD: And I would note, your
17 Honor, Witness Lawler had indicated the Staff Report
18 did, in fact, deal only with those issues relating to
19 the MGP cost recovery.
20 EXAMINER ADDISON: Thank you very much.
21 Mr. Oliker, did you have anything to add?
22 MR. OLIKER: I just wanted my objection
23 under the same grounds noted for the record.
24 EXAMINER ADDISON: Those objections are
25 noted. Consistent with my prior rulings, however, we

will admit Staff Exhibit 1 into the record at this time.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. MARGARD: Thank you, your Honor.

MR. SETTINERI: And, your Honor, I just want to confirm, I'm always careful about the record, can you confirm we did -- that we marked and admitted RESA Exhibit 2 as well as RESA Exhibit 29 as will be corrected -- or presented?

EXAMINER ADDISON: I have both of those being admitted into the record, Mr. Settineri.

MR. SETTINERI: Thank you. I appreciate it.

EXAMINER ADDISON: Of course.

Mr. Oliker, you will not be moving any exhibits at this time, correct?

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

EXAMINER ADDISON: I'm sorry. I must have missed something.

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

EXAMINER ADDISON: Thank you very much. Okay.

MR. OLIKER: Just to be clear I don't believe the rule needs to be admitted. We can cite to it freely as we choose.

EXAMINER ADDISON: Absolutely. Consistent with Commission practice, parties are able to cite to any Commission rule that they would like in their briefs. So thank you for that clarification.

MR. SETTINERI: Your Honor, if we could just go off the record briefly?

EXAMINER ADDISON: I believe that would be a great call, Mr. Settineri.

Let's go off the record.

(Discussion off the record.)

EXAMINER ADDISON: Let's go ahead and go back on the record just briefly.

Mr. Alexander, does that conclude Duke's presentation of witnesses?

MR. ALEXANDER: It does, your Honor.

EXAMINER ADDISON: Thank you. Before we transition over to the witnesses for IGS and RESA today, we will take a brief break. Let's go ahead and take -- we'll take 13 minutes, or 12 minutes now, and come back at 3:00 p.m.

MR. SETTINERI: Thank you, your Honor.

EXAMINER ADDISON: Of course.

Thank you all.

(Recess taken.)

EXAMINER ADDISON: At this time we will go ahead and go back on the record.

Mr. Settineri.

MR. SETTINERI: And I am now on video. Thank you.

Your Honor, at this time RESA and IGS would call James Cawley to the stand.

MR. SCHMIDT: Mr. Cawley, you've been promoted. If you can enable your audio and video.

EXAMINER ADDISON: Good afternoon, Mr. Cawley.

THE WITNESS: Good afternoon, your Honor and counsel.

EXAMINER ADDISON: Please raise your right hand.

(Witness sworn.)

EXAMINER ADDISON: Thank you.

Mr. Settineri.

MR. SETTINERI: Yes, your Honor. Before we proceed, I would like to mark an exhibit.

EXAMINER ADDISON: Absolutely.

MR. SETTINERI: I would like to mark as RESA/IGS Exhibit 1 the direct testimony of James H. Cawley.

EXAMINER ADDISON: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. SETTINERI: Thank you, your Honor. All right. May I proceed, your Honor?

EXAMINER ADDISON: You may.

MR. SETTINERI: Thank you.

- - -

JAMES H. CAWLEY

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

DIRECT EXAMINATION

By Mr. Settineri:

Q. Good morning, Mr. Cawley. Good afternoon.

A. Good afternoon.

Q. If you could please state your name and address for the record, please.

A. My name is James middle initial H. Cawley, C-A-W-L-E-Y.

Q. And --

A. My address is 1020 Kent Drive, Mechanicsburg, Pennsylvania 17050.

Q. All right. And can you identify -- do you have before you what's been marked as RESA/IGS Exhibit 1, sir?

A. I do.

Q. Okay. Can you identify that for the record, please.

A. This is the direct testimony of James H. Cawley on behalf of the Retail Energy Supply Association and Interstate Gas Supply, Incorporated.

Q. Thank you. And was that testimony prepared by you or at your direction?

A. It was.

Q. And do you have any revisions to that testimony today?

A. Yes, I do.

Q. If you could carefully and slowly walk through those -- any revisions you have for the court reporter, please.

A. Beginning on page 8 of my testimony on line 8, with the sentence beginning with "To accept a settlement," delete the word "both" "the Commission" delete "and the PaPUC" "must determine that the proposed terms and conditions are" delete the words "in the public interest" and substitute the word "reasonable period." And then on line 9 delete the last word "the" and all lines to and including line 16 ending with the words "the recommendation decision."

So the sentence will read "To accept a

1 settlement, the Commission must determine that the
2 proposed terms and conditions are reasonable." And
3 then it continues with the next paragraph beginning
4 "The PaPUC," and it goes from there. That's the
5 first revision.
6 The second one is on page 8, line 23.
7 Delete the word "Commission's" and substitute
8 "PaPUC's," "the parties and the Administrative Law
9 Judge to the PaPUC's rules of."
10 Then next, page 9 at lines -- or line 18
11 delete the word "Commission" and substitute again the
12 acronym "PaPUC" and through the same on line 20 by,
13 you know, substituting for the word "Commission" the
14 same "PaPUC."
15 Page 13, line 14, last word is -- the
16 word "Stipulation" is capitalized. It should be a
17 small S instead. Small S, "stipulation."
18 EXAMINER ADDISON: I'm sorry, Mr. Cawley.
19 Would you mind providing that page and line reference
20 one more time for me?
21 THE WITNESS: On page 13, line 14, last
22 word is "Stipulation" with a capital S. It should be
23 with a small S.
24 EXAMINER ADDISON: Thank you.
25 A. Then on page 14, line 3, I would like to

1 correct the case name. The second name in the case
2 is "Axs" when it should be "AxS," the name of that
3 company. "AxS."
4 On page 15, lines 7 and 8, beginning on
5 line 7 after "(3)," delete the last word "in" and the
6 words on line 8 "the public interest" and substitute
7 the word "reasonable." So after (3), it should read
8 "the Stipulation is not reasonable."
9 On page 16, lines 17 and 18, delete at
10 the end of line 17 the words "in the public" and the
11 word "interest" on line 18 and insert the word
12 "reasonable."
13 And, finally, on page 17, line 9 and 10,
14 on line 9 delete the comma following the word
15 "discovery" and in insert the words "from the
16 October 15, 2021, scheduling entry with the hearing
17 occurring in four weeks on November 22 (later moved
18 to November 18)," then delete the words "and the
19 hearing will occur in four weeks." That's the last
20 word on line 9 and the words "the hearing will occur
21 in four weeks" on line 10. So the sentence will read
22 beginning on line 9 "Even then, RESA and IGS were
23 given only two weeks for discovery from the
24 October 15, 2021, scheduling entry with hearing
25 occurring in four weeks on November 22 (later moved

to November 18)" and then there is a dash and the words thereafter all remain unchanged.

Those are the end of my corrections. I thank you for your indulgence.

Q. All right. Thank you, Mr. Cawley, for that, taking us through that. If I asked you the questions in your testimony as written today, would your answers as you have revised today be the same?

A. They would.

MR. SETTINERI: Thank you.

Your Honor, at this time the witness is available for cross-examination.

EXAMINER ADDISON: Thank you very much, Mr. Settineri.

Mr. Alexander?

MR. HEALEY: Your Honor, actually before we start with cross, would it be all right if I do a brief voir dire and then make a motion to strike?

EXAMINER ADDISON: Absolutely.

MR. ALEXANDER: I have a motion to strike as well. Mr. Healey can go first.

Go ahead, Chris.

EXAMINER ADDISON: Thank you.

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1 VOIR DIRE
2 By Mr. Healey:
3 Q. Mr. Cawley, you are not licensed to
4 practice law in Ohio, correct?
5 A. Correct.
6 Q. And you are not testifying as a legal
7 expert today?
8 A. I am not testifying as a legal expert.
9 Q. And you have never represented any
10 clients as an attorney in Ohio, correct?
11 A. Correct.
12 Q. And you are not an expert on
13 Ohio-specific laws and regulations, correct?
14 A. Correct.
15 MR. HEALEY: Your Honor, at this time OCC
16 moves to strike the following portions of
17 Mr. Cawley's testimony: I first direct you to page
18 10 and I move to strike beginning on line 9 beginning
19 with the words "that in my opinion" and then
20 continuing through and including line 10 with the
21 letters "O.A.C."
22 And then I also move to strike page 11,
23 beginning at line 1, and continuing through the end
24 of line 11. The basis for my motion to strike is
25 that in these sessions of his testimony the witness

is rendering a legal opinion about whether something does or does not violate a section of the Ohio Administrative Code. Interpreting the Ohio Administrative Code and then rendering an opinion on whether something violates it is a legal opinion.

On page 4 of the witness's testimony he clarifies that he is not testifying in a legal capacity but mentions that he will "cite or refer to regulations." That is not what he is doing here. He is not just citing or referring to regulations. He is rendering a legal opinion on the application and interpretation of a PUCO regulation. He cannot get around the conclusion that this is a legal opinion by simply stating that it's regulatory or that he is a regulatory expert or that he has legal expertise in the state of Pennsylvania. That certainly is an issue whether there's a violation of this rule that RESA and IGS can address as a legal matter in their briefs, but it is not appropriate testimony for this witness. Thank you.

EXAMINER ADDISON: Thank you, Mr. Healey.

Mr. Settineri?

MR. SETTINERI: Yes, your Honor. First of all, if you look at Mr. Cawley's experience, as you know, he is a former chairman, commissioner of

1 the PaPUC. He also is an attorney. He's an adjunct
2 professor of federal, state, and administrative law.
3 And so he has extensive experience on administrative
4 and regulatory law.
5 The purpose of his testimony is
6 addressing the inclusion of page 3 of the competitive
7 retail market provisions here. And to build up to
8 that, his testimony is going to focus on the
9 unauthorized use of this stip -- as I call it the
10 stipulation rule. And certainly as part of his
11 testimony, he is allowed to provide an opinion as to
12 the retail market provisions and how they -- how the
13 Stipulation -- I should say more so in his opinions
14 as a former commissioner and as a regulatory attorney
15 violate law.
16 And here in these provisions here on page
17 10, the question is if you were a commissioner
18 applying the three-prong test, would you approve it,
19 and he answers the question. And he is able to look
20 at that stipulation rule and he's -- using that to
21 set up a foundation for his answers as well.
22 So I certainly think the witness is
23 authorized. I shouldn't say authorized. He is
24 certainly more than capable to look at a rule and
25 consider that if he was a commissioner, how would he

1 look at that rule, interpret it, and apply it and
2 leading to why he believes that the Stipulation fails
3 the two prongs. So he is providing that opinion.
4 I would also go, you know, as always,
5 given the nature of this testimony, the experience of
6 this witness, that the Commission can certainly weigh
7 the evidence and whether they think that reading a
8 very simple to read rule requires a legal opinion.
9 It is a commissioner with many years of
10 experience looking at a rule and applying it to how
11 he would rule in this case as to the two prongs, so
12 it certainly should be allowed.
13 EXAMINER ADDISON: Thank you.
14 Mr. Healey, did you want to respond?
15 MR. HEALEY: No. I stand on my
16 objection, your Honor. Thank you.
17 EXAMINER ADDISON: Thank you.
18 Does anyone else want to weigh in on
19 this? No one?
20 At this time we will go ahead and deny
21 the motion to strike. I do believe Mr. Cawley's
22 experience allows him to provide an opinion in his
23 regulatory capacity in which he is providing
24 testimony here today. Whether or not he believes
25 these provisions are, in fact, unauthorized by the

1 rule, the Commission can certainly take the testimony
2 of other witnesses as well as the arguments that are
3 put on brief and determine, you know, if they agree
4 with Mr. Cawley's interpretation.
5 MR. HEALEY: Thank you, your Honor. I do
6 have one more motion to strike if you will entertain
7 that one at this time.
8 EXAMINER ADDISON: Absolutely.
9 MR. HEALEY: Thank you. I move to strike
10 beginning on page 12 the entirety of lines 10 through
11 14. And the basis for this objection is that the
12 witness lacks personal knowledge under Rule 602 for
13 the statements made in this paragraph. He begins
14 with "It appears to me" which is a clear signal that
15 he is lacking personal knowledge in just stating what
16 might appear to him.
17 He then proceeds to say that the
18 signatory parties knew something about RESA and
19 suppliers. He cannot possibly know what signatory
20 parties knew.
21 He then accuses OCC of making an attempt
22 to end run the Commission's precedents. Nothing in
23 the Stipulation is attributable to any single party,
24 and so he cannot possibly testify that OCC is
25 attempting to do anything through the Stipulation

1 when, in fact, it is a Stipulation signed by multiple
2 parties. This entire paragraph is his speculation
3 and nothing more, and it's inadmissible. Thank you.
4 EXAMINER ADDISON: Thank you.
5 Mr. Settineri?
6 MR. SETTINERI: Yes, your Honor. I think
7 the key phrase, as it appears to me, there's --
8 obviously in terms of evidence in the record we have
9 a Stipulation. We have admissions in the record, et
10 cetera. And certainly he is allowed to look at the
11 Stipulation and -- and look at what's happened in
12 this proceeding, and you can just -- you can't just
13 focus on lines 10 to 15. You take his testimony in
14 its entirety.
15 He is certainly allowed, again, citing
16 his experience as a former commissioner and chairman,
17 to look and say -- and to be able to provide his
18 opinion on what he thinks may be happening here. And
19 again, it appears to me, so I think this is certainly
20 very much a valid -- important and valid piece of his
21 testimony, and again, the Commission can weigh it.
22 It can weigh the evidence, your Honor.
23 EXAMINER ADDISON: Thank you,
24 Mr. Settineri.
25 I will be granting this motion to strike.

1 This, forgive the pun, strikes me as very speculative
2 as to what the signatories were thinking at any given
3 time. Mr. Cawley is not in a position to provide
4 testimony on that, so I will be granting the motion
5 to strike as to lines -- on page 12, lines 10
6 starting with the word "it" and ending on line 14
7 ending with the word "failed."
8 MR. HEALEY: Thank you, your Honor.
9 That's all I have on motions to strike.
10 EXAMINER ADDISON: Thank you.
11 Mr. Alexander, did you have anything
12 else?
13 MR. ALEXANDER: I did, your Honor. Page
14 7 starting at line 22 through page 9, line 23. It's
15 the entirety of questions 11 and 12. The grounds for
16 the motion are that we are here today under Ohio law
17 applying the Ohio three-part stipulation test to
18 determine whether the Stipulation should be approved.
19 These two questions do not relate to Ohio law, do not
20 relate to the Ohio three-prong test at all, and
21 instead relate solely to the Pennsylvania test for
22 approving stipulations.
23 Under Rules of Evidence Rule 401, if I
24 remember my law school correctly, evidence must make
25 a -- mack that issue more likely in order to be

1 admitted or to be relevant. And here regardless of
2 what the Pennsylvania Commission does with regard to
3 stipulations, it has nothing to do with the Ohio
4 test. And if this information -- these claims are
5 permitted to stay into the record, then the Company
6 is going to be forced to cross-examine the witness as
7 to whether and how the Pennsylvania Commission
8 applies its settlement standard.
9 That's -- that's a waste of time and
10 resources in my opinion. I believe we should be
11 focused on the legal standard applicable to this
12 case, and I don't believe the legal standard which
13 would be applicable had the case been filed in
14 Pennsylvania makes any fact at issue more likely. As
15 such, I ask that be stricken.
16 EXAMINER ADDISON: Thank you.
17 Mr. Settineri.
18 MR. SETTINERI: Yes, your Honor. I will
19 just make a quick retort here in terms of this --
20 having to cross Mr. Cawley on PaPUC and the
21 foundational questions or answers that are being
22 provided here as being a waste of time and resources.
23 We can look at this proceeding by including what they
24 did in the competitive market provisions as a
25 significant waste of time and resources, and I will

1 emphasize that.
2 In regards to the specifically though,
3 these are foundational questions and answers. He is
4 setting up, he is comparing the two, but he is
5 showing that it's a foundational question that leads
6 up to question 13. And in those answer 11 and 12, or
7 answer 11 specifically, he is comparing the two. So
8 these are foundational questions and answers that
9 then lead up to question 13. So they certainly are
10 relevant. They are important foundational questions.
11 And to the extent Mr. Alexander -- I'm
12 sorry, Mr. Alexander, Duke Energy would like to cross
13 Mr. Cawley, they may do so. These are foundational
14 questions, your Honor.
15 MR. ALEXANDER: You Honor, if I could
16 just briefly. Question 13 does not address the
17 Pennsylvania legal standard in any way. And as such,
18 I don't believe it is foundational. It's two full
19 pages of discussion of Pennsylvania law.
20 MR. SETTINERI: Your Honor, it's
21 foundational, and it's taking a PaPUC former chairman
22 and being able to compare how the PaPUC proceedings
23 with Ohio and the similarities which then lead to the
24 found -- that creates the foundation for him to
25 provide the opinion he is providing, your Honor.

1 EXAMINER ADDISON: Thank you.
2 I believe with that I am ready to provide
3 my ruling. I will be granting the motion to strike
4 in part and denying in part. I believe the extent to
5 which the Commission standards of review are similar
6 to those between both commissions lends itself to
7 provide some insight into Mr. Cawley's expertise, his
8 experience with the Pennsylvania commissions, and to
9 the extent that they are similar provides him -- goes
10 to his credibility of being able to speak to Ohio's
11 three-prong test.
12 However, I do find it highly irrelevant
13 to go into the differences and highlight the
14 differences between the two commissions when that
15 difference far exceeds what is put forth in the Ohio
16 Commission's three-prong test.
17 So given that, I will be granting the
18 motion to strike starting on page 8, line 17, with
19 "the PaPUC" through page 9, line 23.
20 MR. SETTINERI: Your Honor, if I may ask
21 for reconsideration of that motion in part. It
22 doesn't mean I agree with the whole -- I should say
23 agree with the ruling in its entirety, but your
24 decision to strike the last part of answer 11, and
25 when he says the standards are similar, I believe and

1 ask you to reconsider 17, line -- through line -- or
2 line 17 through 23 carrying over to 1 and 2 on page 9
3 because, again, that is addressing and setting up the
4 foundation for how they are similar as well.
5 And so I would ask that that information
6 be provided because the context of what PaPUC has not
7 done as to what the Commission has done, I think
8 that's a very important paragraph, and I would ask to
9 put that in because, as he says, the PaPUC has not
10 explicitly adopted the three-prong reasonable test
11 that the Ohio Commission has.
12 Again, it's foundational as well, but I
13 would ask you to reconsider that ruling just to allow
14 17 carrying over to page -- line 2 of page 9, please.
15 EXAMINER ADDISON: Thank you.
16 Mr. Alexander.
17 MR. ALEXANDER: Your Honor, yes. First
18 of all, I believe the Bench ruled, and as such, the
19 issue has been resolved.
20 Secondly, once again, this -- to the
21 Bench's ruling, this does not go to the Ohio
22 standard. It does not go to the witness's
23 credibility. It goes to what another state does
24 applying its legal standard.
25 As such, I think the Bench was

appropriate and would ask it be maintained.

EXAMINER ADDISON: Thank you.

MR. HEALEY: Your Honor.

EXAMINER ADDISON: I'm sorry. Go ahead.

MR. HEALEY: I was going to say the motion for reconsideration is also procedurally improper as the proper challenges is an interlocutory appeal under Rule 4901:1-1-15 given that the ruling has already been made.

EXAMINER ADDISON: Thank you.

Well, we do entertain, not frequently, entertain motions to reconsider our rulings during hearings. With that being said, that will not be the case right now. My ruling will stand, and the motion to strike will be granted to the extent that I have instructed it to be stricken.

MR. SETTINERI: Okay. And, your Honor, just at this time we would just go ahead and proffer to the record the stricken portions of the testimony regarding page 8, line 17, through page 9, line 23.

EXAMINER ADDISON: Thank you. The proffer is noted.

MR. SETTINERI: Thank you.

EXAMINER ADDISON: Mr. Alexander, did you have any additional motions to strike at this time?

MR. ALEXANDER: No, your Honor. Thank you.

EXAMINER ADDISON: Thank you. You may proceed with your cross.

MS. COHN: Oh, your Honor. May I ask a question? Has -- I may have one small motion to strike on the same grounds as OCC. I just didn't know if he covered this. On page 13, lines 9 through 10, has -- has any of that language been stricken?

EXAMINER ADDISON: Page 13?

MS. COHN: Yes.

EXAMINER ADDISON: 9 through 10. No. I have nothing.

MS. COHN: Thank you, your Honor. I have a short motion to strike just the portion of those lines that says "thought" -- beginning with the word "thought" and ending with "audaciously." Again, that is a lack of personal knowledge what the signatory parties were thinking when they submitted the Stipulation.

EXAMINER ADDISON: Mr. Settineri?

MR. SETTINERI: Your Honor, I couldn't hear the exact provisions that are being -- that are being asked to be stricken.

EXAMINER ADDISON: I believe we are on

1 page 13, lines 9, beginning with the words "so
2 little" and the motion to strike ends on line 10 with
3 "audaciously"; is that correct?
4 MS. COHN: Actually beginning with the
5 word "thought" on line 9.
6 EXAMINER ADDISON: Thank you for that
7 clarification.
8 MS. COHN: Yes. Thank you, your Honor.
9 MR. SETTINERI: And where did that end?
10 I'm sorry.
11 MS. COHN: With the word "audaciously" on
12 line 10.
13 EXAMINER ADDISON: Thank you.
14 MR. SETTINERI: All right. May I
15 proceed?
16 EXAMINER ADDISON: You may.
17 MR. SETTINERI: Yes, your Honor. I
18 would -- this -- I would ask you to deny the motion
19 to strike. It is not that he is saying that -- he is
20 not providing testimony as to what the signatory
21 parties thought. He is providing testimony on how
22 were he voting on the reasonableness of the
23 Stipulation, he would be offended that they thought
24 so little of the Commission's commitment to fair
25 proceedings. And that simply can be based on his

1 read of the Stipulation and what has happened here,
2 so it doesn't require him to know the intent and what
3 the parties thought.
4 EXAMINER ADDISON: I am not convinced,
5 Mr. Settineri.
6 I will go ahead and grant the motion to
7 strike. And again, just for -- to ensure the record
8 is clear, the motion to strike will be granted
9 beginning with the word "thought" on line 9 of page
10 13 and ending with the word "audaciously" on line 10
11 on page 13.
12 MS. COHN: Thank you, your Honor.
13 EXAMINER ADDISON: Thank you.
14 Any additional motions to strike at this
15 time?
16 MR. SETTINERI: Your Honor, if I may?
17 EXAMINER ADDISON: You may.
18 MR. SETTINERI: I just want to confirm
19 then that sentence would read then at line 8 "Were I
20 voting on the reasonableness of the Stipulation, I
21 would be offended that the signatory parties
22 submitted the Stipulation with the extraneous
23 provisions for approval" and then so forth; is that
24 correct?
25 EXAMINER ADDISON: That is correct.

1 MR. SETTINERI: Thank you.
2 EXAMINER ADDISON: Mr. Alexander.
3 MR. ALEXANDER: Thank you, your Honor.
4 - - -
5 CROSS-EXAMINATION
6 By Mr. Alexander:
7 Q. Good afternoon, Mr. Cawley. You made
8 some changes to your testimony since -- since our
9 deposition, so if I mistakenly reference the old
10 version of your testimony, please just let me know,
11 okay?
12 A. Okay. The only new one that you
13 haven't -- you didn't see at the -- or hear at the
14 deposition was the last ones I made.
15 Q. Yeah. And that one was on my list so I'm
16 glad you were able to clarify that and I'll try and
17 avoid it in my questions.
18 A. Okay.
19 Q. So, Mr. Cawley, you are an attorney,
20 correct?
21 A. Correct.
22 Q. And you are not licensed in the State of
23 Ohio?
24 A. I am not licensed to practice law in the
25 State of Ohio.

1 Q. And you have never represented clients in
2 the state of Ohio?
3 A. Correct.
4 Q. With regard to your testimony, you have
5 not reviewed the dockets in any of the cases for
6 which you've submitted testimony here today.
7 A. I didn't see the need to do that because
8 of her Honor's October 15, 2021, entry paragraph 31
9 where she found that the market provisions that were
10 added were wholly unrelated and she found
11 dispositively on the question of whether IGS and RESA
12 should have been on notice that these three
13 provisions could be raised in these proceedings or
14 appear in the resulting Stipulation that they would
15 not have based on the proceedings up to the filing of
16 the Stipulation.
17 That led me to believe that I would be
18 wasting my time ferreting out what the Attorney
19 Examiner had already done for me, and I saw no need
20 because I -- I agreed with her.
21 MR. ALEXANDER: Your Honor, I move to
22 strike the entirety of the response. It was a simple
23 yes or no question. It did not call for the colloquy
24 why he did not read the various dockets.
25 EXAMINER ADDISON: Thank you.

1 MS. BOJKO: Your Honor, OMAEG also joins
2 in that motion to strike. I also think it
3 mischaracterizes your Honor's entry.
4 EXAMINER ADDISON: Thank you.
5 The entry speaks for itself. I will not
6 go down that path.
7 However, I will invoke a longstanding
8 rule, at least in proceedings before me, where we
9 allow each witness one bite at the apple, and
10 Mr. Cawley just used his. But going forward,
11 Mr. Cawley, I would instruct you to listen to
12 counsel's question and his question only and respond
13 to that question posed. In the event Mr. Settineri
14 would like to raise additional issues on redirect, he
15 will have the opportunity to do so.
16 THE WITNESS: Understood. Thank you,
17 your Honor.
18 Q. (By Mr. Alexander) So, Mr. Cawley, you
19 did not review the Stipulations which were filed in
20 any of the cases cited in your testimony, correct?
21 A. Correct.
22 Q. And you have not read any settlements in
23 Ohio which the Commission has approved which called
24 for a future act or plan, correct?
25 A. Correct.

1 Q. In fact, other than the Stipulation at
2 issue in this proceeding, you have never viewed any
3 other settlement filed in an Ohio case, correct?
4 A. Correct.
5 Q. Please turn -- please turn to page 11 of
6 your testimony. At line 15, you use the phrase
7 "alien provisions," and then later you use the phrase
8 "extraneous provisions." Do you see those
9 references?
10 A. I do.
11 Q. And you mean the same thing by the
12 phrases "alien provisions" and "extraneous
13 provisions," correct?
14 A. Correct.
15 Q. You aren't aware of the phrase
16 "extraneous provisions" ever being used in the Ohio
17 Administrative Code, correct?
18 A. I am not. Those are my words.
19 Q. You are not aware of the phrase "alien
20 provisions ever being used in the Ohio Administrative
21 Code?
22 A. Again, that's my word.
23 Q. And you don't know whether in Ohio it is
24 common for issues beyond those raised in the original
25 application to be included in a stipulation, correct?

A. Please rephrase your question, or repeat it at least.

Q. Certainly. You don't know whether in Ohio it is common for issues beyond those raised in the original application to be included in a Stipulation.

MR. SETTINERI: Object, vague and ambiguous as to the phrase "application."

EXAMINER ADDISON: Mr. Alexander, would you just rephrase and we can move along?

MR. ALEXANDER: Certainly.

Q. (By Mr. Alexander) You are not aware of whether or not in Ohio it is common for issues beyond those raised in the original application which begins the proceeding to be included in a stipulation, correct?

MR. SETTINERI: Objection, lack of foundation. If I heard the question right, I think counsel was saying you are not aware so there's been no foundation laid. Maybe I misheard the question but that's what I thought I heard.

EXAMINER ADDISON: Mr. Alexander?

MR. ALEXANDER: I don't think the question needs a foundation. I am asking if the witness is aware that happens in Ohio.

1 MR. SETTINERI: Lack of foundation.
2 EXAMINER ADDISON: I've provided
3 Mr. Cawley a little leeway. We will go ahead and
4 afford the same to Mr. Alexander. I will allow him
5 to answer the question.
6 A. In preparing my testimony and in
7 preparing for my deposition, I've done considerable
8 reading of Ohio law and I -- not law, of Ohio
9 decisions by the Ohio Supreme Court and decisions by
10 the Ohio Public Utility Commission -- or Public
11 Utilities Commission of Ohio. And I am -- I believe
12 I understand that in Ohio a stipulation can grow from
13 an original application, and provisions may end up in
14 a stipulation that have what I call naturally grown.
15 And it's my understanding that that is permissible if
16 interested parties have been given adequate notice to
17 participate; and, therefore, the resulting
18 stipulation is related to the application and has a
19 basis in the evidence of the application.
20 It's my understanding that that is
21 perfectly fine, and I have no problem with that. And
22 what I have striven to do in my testimony is make the
23 distinction between that and a wholly unrelated
24 provision appearing in a stipulation that has no
25 basis whatsoever in the application or the underlying

1 proceedings.
2 Q. Could you please turn to page 14, line 7
3 of your testimony.
4 A. I'm there.
5 Q. Here you reference a case titled "In the
6 Matter of Ohio Edison Company." Do you see that?
7 A. I see it.
8 Q. Can we refer to that as the Ohio Edison
9 case for this next series of questions?
10 A. Okay.
11 Q. You did not read the entire Ohio Edison
12 decision you cited prior to submitting your
13 testimony, correct?
14 A. I did not. I read only the provisions
15 relating to what is a broad range of diverse
16 interests and as that relates to whether there has or
17 has not been the kind of exclusionary settlement
18 processes in -- that the Ohio Supreme Court has --
19 has mentioned or dealt with in other cases I've
20 cited. So there's no -- no need to read the whole
21 case. It just -- I read just the parts about --
22 about what is a -- what is a necessary broad range of
23 diverse interests.
24 MR. ALEXANDER: Your Honor, my question
25 was a yes or no question which was whether he had

1 read the entire decision. I did not ask what he
2 read; and, therefore, I move to strike his response
3 and the witness be instructed to answer the question
4 with yes or no.
5 MR. SETTINERI: Your Honor, if I may, his
6 answer is very helpful. It saves time. Explains for
7 the Bench and the Commission what he reviewed
8 specifically. It's -- it's helpful testimony for the
9 Commission to have, and it could potentially save
10 time going forward, so I see no reason with allowing
11 that question to go forward, your Honor.
12 EXAMINER ADDISON: Thank you.
13 I will go ahead and deny the motion to
14 strike this time. However, Mr. Cawley, I believe
15 what will save us all a great deal of time is if
16 going forward you just listen to counsel's question
17 and attempt to answer that question only and reserve
18 any additional issues you would like to raise for
19 your counsel to raise those on redirect. So I think
20 if we try to provide a direct answer to counsel's
21 questions, we can all get out of here a lot quicker.
22 THE WITNESS: Thank you, your Honor. I
23 don't mean to be offensive. I was trying to merely
24 be helpful.
25 EXAMINER ADDISON: Oh, no offense taken

so. Just providing some instruction.

Mr. Alexander.

Q. (By Mr. Alexander) Mr. Cawley, you did not read the Commission docket in Ohio Edison prior to submitting your testimony, correct?

A. I didn't -- you mean -- when you say docket or case, what -- you said case before, I thought.

Q. My first question --

A. I didn't read the whole docket in any of these cases, no.

Q. And the first question was case; the second question was docket, so I think we're there. And you were not aware the Ohio Edison case was filed as a stipulation when you submitted your testimony, correct?

MR. SETTINERI: Objection, your Honor, lack of foundation. Again, you heard the question you weren't aware. He's testifying as to what has happened, so if they want to cite to what happened in a case on brief through the orders of the Commission, feel free, but you can't start a sentence with you are aware that blank has occurred.

EXAMINER ADDISON: Mr. Settineri, he cites the case here. I feel like it's a fair

1 question to ask so.
2 MR. SETTINERI: He --
3 EXAMINER ADDISON: Objection overruled.
4 Thank you.
5 MR. SETTINERI: Thank you, your Honor.
6 EXAMINER ADDISON: You may answer,
7 Mr. Cawley. I apologize for that.
8 A. I'm sorry. I didn't realize I was going
9 to have to respond. Would you ask me the question
10 again, please?
11 MR. ALEXANDER: Karen, could you please
12 repeat the question.
13 (Record read.)
14 A. And I would answer that I was not aware
15 that the case resulted from a stipulation.
16 Q. And you do not know if RESA intervened in
17 the Ohio Edison case after the Stipulation was filed?
18 A. I don't -- I don't recall that -- seeing
19 that in the case, no.
20 Q. And you did not read RESA's testimony in
21 the Ohio Edison proceeding?
22 MR. SETTINERI: Object, the question
23 assumes facts not in evidence, hasn't laid a
24 foundation.
25 MR. ALEXANDER: I'll ask a foundational

1 question, your Honor.
2 EXAMINER ADDISON: Thank you.
3 Q. (By Mr. Alexander) Mr. Cawley, you
4 don't -- do you know whether RESA filed testimony in
5 the Ohio Edison proceeding?
6 A. I do not.
7 Q. Changing topics, you are aware that the
8 signatory parties include Duke, the Ohio Consumers'
9 Counsel, Staff, and the Ohio Energy Group, correct?
10 A. I am aware of that, yes.
11 Q. You don't know who the Ohio Energy Group
12 is, correct?
13 A. I understand them to be a trade group
14 representing large industrial customers.
15 Q. Mr. Cawley, do you have your deposition
16 with you today?
17 A. I do.
18 Q. Do you recall swearing an oath to tell
19 the truth prior to that deposition?
20 A. I recall that, yes.
21 Q. And do you recall a court reporter being
22 present via video conference to write down your
23 answers?
24 A. Yes.
25 Q. And did you have an opportunity to review

1 that transcript for changes or corrections?
2 A. Yes.
3 Q. Okay. Could you please turn to page 75
4 of that deposition transcript, starting at line 11.
5 A. I see that, uh-huh.
6 Q. I am going to ask you "But you're not
7 familiar with the Ohio Energy Group before today?
8 Answer: No. I still don't know anything about
9 them." Did I read that correctly?
10 A. You did.
11 MR. SETTINERI: I'll object, your Honor,
12 as being improper impeachment. Line 4, "Question:
13 The Ohio Energy Group is a signatory party. Answer:
14 Yes, they are. I assume -- well, I am not going to
15 assume anything, but I don't know who they are. I
16 know they are a signatory. With that kind of name
17 they probably are industrial or large commercial
18 customers, but I really don't know." All right?
19 I would also note it's improper
20 impeachment as he is testifying today, and this
21 deposition was taken on November 15, I believe.
22 MR. ALEXANDER: And, your Honor, I am
23 going to object at this point. If counsel wants to
24 provide additional clarity on redirect, he certainly
25 has the ability to do that. It should not be

provided during cross-examination.

EXAMINER ADDISON: Thank you both.

We will allow the transcript to provide the Commission the information it needs to ascertain whether Mr. Cawley has been consistent in his deposition with his testimony and leave it at that. I do agree it's -- to the extent that Mr. Settineri is raising an improper impeachment objection, it's not necessarily out of play to read this additional information at this time, however. So we will just leave it at that and move on.

Q. (By Mr. Alexander) Mr. Cawley, you are aware the Ohio Manufacturers' Association Energy Group, The Kroger Company, and the Ohio Partners for Affordable Energy are all nonopposing parties to the Stipulation, correct?

A. Correct.

Q. None of the signatory or nonparty -- I believe I misspoke there, so I will start over.

None of the signatory or nonopposing parties told you that they had purposely excluded RESA and other suppliers from settlement negotiations, correct?

A. Correct.

Q. You don't have any personal knowledge to

1 indicate that RESA and the suppliers were
2 intentionally excluded from settlement discussions,
3 correct?
4 A. I do not have personal knowledge, no.
5 Q. Turning to page 12, line 13 of your
6 testimony.
7 MR. SETTINERI: What was that page
8 reference, Mr. Alexander?
9 MR. ALEXANDER: I believe this may have
10 been stricken. Let's try page 12, line 19 now. The
11 earlier reference was stricken, Mr. Settineri, so we
12 will move to a new one.
13 Q. (By Mr. Alexander) Are you there,
14 Mr. Cawley?
15 A. I'm there.
16 Q. Here you use the phrase "essential
17 parties." You don't know whether Ohio has ever
18 adopted a definition of essential parties to
19 Commission proceedings, correct?
20 A. Correct.
21 Q. Turning to your arguments on page 15
22 starting at line 5, let me know when you are there.
23 MR. SETTINERI: What was that reference,
24 Mr. Alexander?
25 MR. ALEXANDER: Page 15, line 5.

Q. (By Mr. Alexander) Mr. Cawley, are you there?

A. I'm there.

Q. You believe that each signatory party acted in bad faith, correct?

A. I'm debating whether to say yes or no or a larger phrase qualifying my answer because I -- her Honor has been kind to give me leeway. To be safe I will simply say yes.

Q. And you believe that each signatory party conspired to circumvent Commission precedent, correct?

A. Yes.

Q. And you believe that each signatory party corrupted the Stipulation procedure.

A. I believe that, yes.

Q. Turning to page 17, line 11, where you say "the other parties had to bargain and scheme." Do you see that reference?

A. Yes, I see it.

Q. You believe that all the signatory/nonopposing parties were conspiring and scheming against RESA and the other suppliers?

A. I meant by that if they were in the room and they signed it or agreed not to oppose, yes.

MR. ALEXANDER: Could I have just one moment, your Honor?

EXAMINER ADDISON: Absolutely.

MR. ALEXANDER: Your Honor, I have no further questions at this time. Thank you, Mr. Cawley.

EXAMINER ADDISON: Thank you, Mr. Alexander.

OCC.

MR. HEALEY: Yes, your Honor. I am ready to go.

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CROSS-EXAMINATION

By Mr. Healey:

Q. Mr. Cawley, have you ever participated in a settlement negotiation in a case before the Public Utilities Commission of Ohio?

A. No.

Q. And I believe Mr. Alexander and you discussed previously your use of the phrase "extraneous provisions." Do you recall that?

A. I do.

Q. Do you know whether the PUCO has ever approved a settlement that includes something that you would believe is an extraneous provision?

A. I'm -- no.

Q. Did you do any research into PUCO rulings to determine whether they have ever made such a ruling?

A. I think I answered -- essentially answered this earlier because I -- I did make considerable effort to determine what is -- what is proper in Ohio. And I won't repeat what I said earlier except I think there is a difference in my view between a related provision and an unrelated one which I call an extraneous or alien provision.

THE WITNESS: Now, if -- your Honor, if I have gone on too long, I apologize. I am trying to do my best to answer the questions.

Q. You are aware that the Public Utilities Commission of Ohio applies a three-part test when evaluating settlements, correct?

A. Correct.

Q. When was the first time you heard about Ohio's three-part test?

A. When I agreed to be retained in this case.

Q. And do you know whether the PUCO has ever rejected or modified -- let's take them one at a time. Do you know whether the PUCO has ever rejected

1 a stipulation under that three-prong test on the
2 grounds that it had an extraneous provision?
3 A. No.
4 Q. Do you know whether the PUCO has ever
5 modified a stipulation on the grounds that it
6 contains an extraneous provision?
7 A. No.
8 Q. Let's look at page 14 of your testimony,
9 please. And on lines 17 to 18 you referred to RESA
10 as "the designated representative of competitive
11 suppliers." Do you see that?
12 A. I see it.
13 Q. Who do you believe has designated RESA as
14 the representative of competitive -- competitive
15 suppliers?
16 A. The members of RESA.
17 Q. And it's your understanding that RESA
18 represents only its members, correct?
19 A. I think I would have to speculate to
20 answer that.
21 Q. So if I were to ask you do you know
22 whether RESA represents nonmembers, you don't know
23 the answer to that?
24 A. I don't know the answer to that.
25 Q. And do you know whether all suppliers in

Ohio agree with the positions that RESA and IGS are taking in this case?

MR. SETTINERI: Objection, calls for speculation.

EXAMINER ADDISON: Mr. Healey?

MR. HEALEY: I am asking him whether he knows, your Honor. If he doesn't know, then the answer is no.

EXAMINER ADDISON: I will allow the question.

A. I don't know.

Q. Have you spoken to any suppliers in Ohio other than IGS regarding the positions that IGS and RESA are taking in this case?

A. No.

Q. Please turn to page 15 of your testimony and staring on line 19 you state "The precedent created by approval of the Stipulation as filed would (i) encourage many more blatant attempts to end-run the Commission's established precedents." Do you see that?

A. I see it.

Q. You understand that the settlement in this case or Stipulation will be subject to PUCO approval, correct?

A. Correct.

Q. And so is it your testimony that if the PUCO approves the settlement, it will be doing an end run around itself?

MR. SETTINERI: Object, vague and ambiguous, mischaracterizes testimony.

MR. HEALEY: Your Honor, I am not mischaracterizing. I am asking him if that is the impact of his testimony he believes the Commission would be end running itself as a result of this statement.

EXAMINER ADDISON: I will allow the question.

MR. SETTINERI: I'm sorry, your Honor. I couldn't hear you.

EXAMINER ADDISON: Oh, I'm sorry. I will allow the question.

A. I don't think you are reading my testimony correctly. I'm -- I'm -- I was not concerned about the Commission. I was worried about the behavior of the signatories and what they were doing or interpret they were doing.

Q. I guess my question then is how -- how can the signatory parties end run Commission precedent if anything the signatory parties does is

1 subject to Commission approval?
2 A. Again, what I am saying here is the
3 parties in my view acted inappropriately and it's
4 their behavior which I find reprehensible. The fact
5 that the Commission would -- could go along with it
6 or not is beside the point. It's the behavior of the
7 parties who are end running in my view Commission
8 precedence, your employer being the leading one.
9 MR. HEALEY: Your Honor, I am going to
10 move to strike the last comment about where he said
11 "your employer being the leading one." He has no
12 basis for that, and it's inflammatory and
13 unnecessary.
14 MR. SETTINERI: Your Honor, I would just,
15 if I may, your Honor.
16 EXAMINER ADDISON: You may quickly.
17 MR. SETTINERI: Okay. I would just say
18 that's part of his answer and that's his opinion
19 based on what he is seeing here.
20 EXAMINER ADDISON: Thank you. Motion to
21 strike will be granted.
22 Q. (By Mr. Healey) Mr. Cawley, staying on
23 page 15 on line 23, you believe that the precedent
24 created by approval of the stipulation would most
25 heavily burden the Commission and its Staff, correct?

A. Correct.

Q. You understand that Staff signed the settlement, correct?

A. Correct.

Q. And so is it your testimony that you know better than the Staff what will or will not burden it?

MR. SETTINERI: Just object, mischaracterizes his testimony in this proceeding.

EXAMINER ADDISON: Mr. Healey, care to rephrase?

MR. HEALEY: I can't -- I don't understand those objections, your Honor. I am asking him is this your testimony. So I am seeking the clarification, so I can't possibly be misstating it.

EXAMINER ADDISON: I am asking you to rephrase because it's just a tad bit argumentative. Maybe tone it down a little bit.

MR. HEALEY: Sure. I will certainly do that.

Q. (By Mr. Healey) Do you believe that the Staff can properly evaluate whether a settlement is overly burdensome to itself?

A. I believe there when you say -- when I say "Staff," I mean other Staff besides those who

1 participated in this case. There are Staff who
2 participated and signed the Stipulation and it's my
3 testimony that other Staff including Attorney
4 Examiners and the Commissioners themselves will be
5 burdened.
6 Q. Let's turn to page 16 of your testimony.
7 And on line 12 you refer to there being "shenanigans
8 perpetrated here." Do you see that?
9 A. I see it.
10 Q. And is it your testimony that each of the
11 signatory parties engaged in shenanigans?
12 A. To varying degrees, yes.
13 Q. Let's turn to page 11 of your testimony,
14 please. On line 14 near the end you say "It would be
15 unwise to allow inclusion of alien provisions in
16 settlement stipulations because there has been no
17 opportunity for robust debate and careful development
18 of the concepts." Do you see that?
19 A. I do.
20 Q. And you are aware that settlement was
21 filed at the end of August this year, correct?
22 A. Correct.
23 Q. That would have been more than two months
24 ago?
25 A. Yes.

Q. And so over that past two months, RESA and IGS and anyone else who might have liked to intervene had an opportunity to serve discovery?

A. You are -- you are not characterizing my testimony correctly. And I will happily explain now, or we can do it on redirect.

Q. My question was isn't it true that for the past two months, parties have had an opportunity to serve discovery regarding the Stipulation.

A. And my reaction is -- my answer to that would be no.

Q. Is it your testimony that IGS, RESA, or anyone else was denied opportunity to serve discovery at least with respect to the market-related provisions?

MR. SETTINERI: Just object, form of question, mischaracterizes his written testimony. If there is a question there, then it can be asked but to say what his testimony is without even having a question seems odd to me.

MR. HEALEY: Could I have my question reread, please.

EXAMINER ADDISON: You may.

(Record read.)

MR. SETTINERI: Yeah. I will repeat my

1 objection, your Honor, if I may.
2 MR. HEALEY: I'll rephrase.
3 MR. SETTINERI: Thank you.
4 EXAMINER ADDISON: Thank you.
5 Q. (By Mr. Healey) Mr. Cawley, do you know
6 if there were any orders or entries by the PUCO
7 denying any party the opportunity to serve discovery
8 in this case?
9 A. No, I am not aware of any.
10 Q. And you are aware that RESA and IGS have,
11 in fact, served discovery on at least Duke and OCC,
12 correct?
13 A. Correct.
14 Q. And RESA and IGS filed the testimony of
15 three witnesses, you and two others, correct?
16 A. Correct.
17 Q. And we are sitting here today having what
18 at least I would consider to be a robust debate about
19 the merits of the Settlement; do you agree with that?
20 MR. SETTINERI: Just object as to the
21 question about robust debate. Characterizing his
22 cross-examination is inappropriate, your Honor, for
23 the record.
24 EXAMINER ADDISON: You can answer. I
25 will allow him to provide a little latitude if he

needs to clarify.

THE WITNESS: Thank you, your Honor.

A. What I am referring to I -- robust debate and careful development of the concepts was in reference to the underlying proceedings. That's where -- that's where the exclusive record has to be formed in my view as a basis for any stipulation. And if you allow alien -- alien or extraneous or totally unrelated provisions in a stipulation that have no basis whatsoever in the underlying exclusive records, then the Commission and the Attorney Examiners are deprived of the kind of robust debate and -- and careful development of the issues. They appear out of nowhere in the Stipulation with no -- without the benefit of that kind of debate and development. That was the intent of my words.

MR. HEALEY: Your Honor, I understand you gave him some latitude. I am still going to move to strike. My question was whether we are having a robust debate here today at the hearing, not what he meant in his testimony, not what happened earlier in the case, and so even with the latitude you have given him, I think he went well beyond that.

MR. SETTINERI: Your Honor, if I may, obviously it was an open question and didn't have to

1 be asked and the witness, Mr. Cawley, has provided a
2 response as to the robust debate and obviously it
3 answers the question.
4 EXAMINER ADDISON: Thank you.
5 I will allow the answer to stand, but I
6 will direct Mr. Cawley to answer Mr. Healey's
7 question directly.
8 THE WITNESS: Your Honor -- well.
9 MR. SETTINERI: Your Honor, if I may,
10 just I would -- I would simply ask that as to
11 directions to answer questions, I completely respect
12 that, your Honor. I would just ask at the same time
13 the objections to the questions not be heard but just
14 that we'll be having objections to the question as
15 part of the package. That's all I ask.
16 EXAMINER ADDISON: Noted.
17 MR. SETTINERI: Thank you.
18 Q. (By Mr. Healey) Mr. Cawley, you believe
19 providers should have been invited to settlement
20 negotiations in these cases, correct?
21 A. Yes, when the market provisions came up,
22 not the other cases, not the other matters.
23 Q. Which suppliers should have been invited?
24 A. It's not whether which. It's whether any
25 or some. There were none and that's what I object

1 to.
2 Q. So you don't believe there was an
3 obligation to invite every supplier to the settlement
4 negotiations, correct?
5 A. Correct.
6 MR. SETTINERI: Just object. Go ahead.
7 Go ahead.
8 MR. HEALEY: I'm sorry. I can't tell if
9 he answered or not.
10 EXAMINER ADDISON: I believe he did. He
11 answered "Correct."
12 Q. (By Mr. Healey) Now, you understand one
13 of your fellow witnesses testified that there are 60
14 suppliers certified to provide retail natural gas
15 service to Duke customers?
16 MR. SETTINERI: Object. Mr. Cawley is
17 the first witness to testify here today.
18 MR. HEALEY: That's fair. That's fair.
19 I will move on to the next question.
20 EXAMINER ADDISON: Thank you.
21 Q. (By Mr. Healey) So is it your testimony
22 that if the signatory parties had chosen a supplier
23 at random and invited that one supplier, that would
24 meet your goal of having suppliers invited?
25 A. It would again depend on -- I mean, at

1 least one would have been a start anyway. Better
2 than none but it depends.
3 Q. How do you propose signatory parties go
4 about determining which of the suppliers they should
5 invite and which ones they shouldn't?
6 A. Now, that's an open question and I will
7 answer it more completely than a yes or no. My
8 response to that is I would -- I would issue an
9 invitation to RESA because they would at least inform
10 their members and others who may be interested would
11 then be alerted.
12 Q. Do you know whether RESA informed each of
13 its members about the settlement and invited them to
14 participate -- let me break it into two questions.
15 Do you know whether RESA contacted each of its
16 members to tell them about the settlement in this
17 case?
18 MR. SETTINERI: Just object. Just object
19 to the form of the question as to the settlement and
20 should be as to the Stipulation.
21 MR. HEALEY: I'm using the word
22 settlement and Stipulation interchangeably. I think
23 that's understood.
24 MR. SETTINERI: I would repeat my
25 objection because the phrase "settlement" could be

where parties have agreed to something, but the Stipulation is formal. So, your Honor, for the record I would like precision in terms of RESA is supposed to notify. It should be precise as to the Stipulation that was filed.

EXAMINER ADDISON: Thank you. Thank you.

MR. HEALEY: That's fine. I will ask a new question, your Honor.

EXAMINER ADDISON: Thank you.

Q. (By Mr. Healey) Do you know whether RESA contacted each of its members to let them know that a Stipulation was filed in this case?

A. I don't know.

Q. Do you know whether RESA or IGS invited any other suppliers to participate in this case?

A. I don't know.

Q. Do you know whether RESA or IGS reached out to the signatory parties and suggested that they hold a settlement meeting to see if the signatory parties would be willing to modify the settlement?

A. I don't know.

MR. HEALEY: Thank you. That's all I have, your Honor.

EXAMINER ADDISON: Thank you, Mr. Healey.

OEG?

MS. COHN: No questions, your Honor.

EXAMINER ADDISON: OPAE?

MR. DOVE: No questions, your Honor. I was having a mute problem.

EXAMINER ADDISON: Thank you, Mr. Dove.

Kroger?

MS. WHITFIELD: No questions, your Honor.

EXAMINER ADDISON: OMAEG?

MS. BOJKO: Thank you, your Honor, just a couple briefly.

- - -

CROSS-EXAMINATION

By Ms. Bojko:

Q. Good afternoon, sir. My name is Kim Bojko, and I represent the Ohio Manufacturers' Association Energy Group.

A. How do you do?

Q. Good, thanks. You mentioned scheming against RESA and competitive suppliers. Do you recall that?

A. Yes.

Q. When this alleged scheming occurred, you were not present in the room; is that correct?

A. I was not.

Q. And you did not ask either of the

1 signatory parties or the nonopposing parties whether
2 they schemed during the meeting, did you?
3 A. No.
4 Q. And just to be clear, you didn't
5 participate in any of the settlement meetings in this
6 case, you personally, correct?
7 A. Correct.
8 MS. BOJKO: No further questions, your
9 Honor.
10 EXAMINER ADDISON: Thank you, Ms. Bojko.
11 Commission Staff?
12 MR. MARGARD: No, thank you, your Honor.
13 EXAMINER ADDISON: Thank you.
14 Redirect, Mr. Settineri?
15 MR. SETTINERI: Yes, your Honor. But if
16 I could just take a few minutes to collect thoughts,
17 that would be appreciated. Maybe 5 minutes at the
18 most.
19 EXAMINER ADDISON: Certainly. Let's go
20 off the record.
21 (Recess taken.)
22 EXAMINER ADDISON: Let's go ahead and go
23 back on the record.
24 Mr. Settineri, any redirect?
25 MR. SETTINERI: Yes, your Honor, just a

few questions.

EXAMINER ADDISON: Please proceed.

MR. SETTINERI: Thank you, your Honor.

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REDIRECT EXAMINATION

By Mr. Settineri:

Q. Mr. Cawley, you were asked a few questions about reviewing the case docket, and I'll say cases dockets which is these proceedings. Have you reviewed any of the filings that occurred on August 31 and coming -- going forward to the present?

A. Yes, I have. I have read the documents in the dockets in this case. I've read from the Stipulation going forward, and I've tried to determine how it came about, tried to determine what the underlying cases were. So, yes, I may have misspoken earlier about Mr. Alexander's -- in a response to one of his questions. He may have asked me about this, and I said no and about case -- I thought he was asking if I looked at the dockets in cases I have cited, and I have not. But in this case, yes, of course, in preparation for this, I have looked at all the documents.

Q. Okay. When you say all the documents, you know, would that be the documents filed on

1 August 31 and going forward?
2 A. Yes, yes.
3 Q. Okay. You had some questions about your
4 knowledge of Ohio Energy Group, and today you
5 testified as to that knowledge. As of today, how did
6 you familiarize yourself with Ohio Energy Group?
7 A. Well, after Mr. Alexander asked me the
8 question in a deposition and I -- I -- I opined that
9 it sounded like an energy -- a large energy group, I
10 was curious so I -- I looked them up on -- in the
11 internet, so I didn't mean to give a conflicting
12 answer. I did not know for sure during the
13 deposition, but I have since found out who they are.
14 Q. Okay. Let me ask you this question, you
15 were asked a number of questions about your testimony
16 as to your statements about --
17 MR. SETTINERI: Bear with me, your Honor,
18 if I may.
19 Q. On page 15, your testimony about the word
20 conspiring, corrupting, that's lines 6 and 7 and line
21 5, bad faith. So let me ask you this question,
22 Mr. Cawley, why do you believe the signatory parties
23 corrupted the stipulation procedure?
24 A. I would first say I have been a
25 commissioner for over 16 years, and I practiced for

1 20 years before the Pennsylvania Public Utilities
2 Commission. I think it's a fair statement that my
3 sensitivity to settlement behavior might be -- or, in
4 fact, is more attuned than most people. And I base
5 that on speculation in this case. I base it on -- on
6 what I view as -- as fact. And those factors are
7 that RESA and suppliers have been what I call open
8 and notorious about opposing at least shadow billing
9 which had to be known to counsel of the parties in
10 those settlement negotiations.
11 It's a matter of fact that the Office of
12 Consumers' Counsel has attempted to get the
13 Commission to adopt shadow billing in proceedings and
14 has been repeatedly rejected. It's a fact that Duke
15 has in the past resisted efforts to adopt shadow
16 billing which RESA witness and IGS witness Mr. Lacey
17 on pages 20 and 21 of his testimony describes.
18 And that leads me to conclude that when
19 the discussion came around to adding shadow billing
20 and the other -- other market provisions, that the
21 counsel or the people around the table knew of that
22 background and yet they went forward with an effort
23 to overturn the Commission precedence and that's what
24 I meant by an end run and that they -- they did so
25 deliberately.

1 And I hasten to say that in all my years
2 as a practitioner and practicing before the
3 Pennsylvania Public Utilities Commission, and
4 particularly as a commissioner, I do not use such
5 strong words casually. I can think of only one
6 instance in my career where I have used words like
7 that. And that event it was much worse. But I think
8 I see behavior which in my view is inappropriate and
9 reprehensible, something that is not good for
10 decision making in Ohio, something that will not be
11 good for either consumers or the Commission.
12 So this is not speculation and it was not
13 mean spirited. It was just coming to an educated
14 conclusion based on given facts and frankly
15 commonsense. It simply didn't -- I cannot come to
16 any other conclusion than these parties knew very
17 well what they were doing, and they fashioned a
18 settlement that would be attractive for the
19 Commission to adopt with all the good things
20 including refunds and what have you, and they put in
21 provisions that the Commission may have found
22 difficult to adopt.
23 I was placed in that position dozens of
24 times, and I would very often file a descent saying I
25 don't agree with certain provisions of the

1 settlement, but I am going to vote for it. However,
2 I would never vote for -- for a settlement if I had
3 an inkling or more that I -- if I were convinced that
4 the settlement had been arrived at using unfair
5 tactics because such behavior undermines the whole
6 goal of the Public Utilities Commission which is
7 dedicated to fulfilling due process of law. And at
8 the heart of that is the opportunity -- notice and an
9 opportunity to be heard by interested parties. That
10 did not happen here.
11 And in my view it was deliberate. And it
12 should not be encouraged. In fact, it should be --
13 it should be sternly prohibited.
14 MR. HEALEY: Your Honor.
15 MR. SETTINERI: No further -- oh, I'm
16 sorry. Go ahead, Mr. Healey.
17 MR. HEALEY: I am going to move to strike
18 that answer, just full of language that is highly
19 speculative. The parties knew this, it was
20 deliberate, those are speculations. He cannot know
21 those things.
22 I understand that he's allowed to render
23 an opinion. Those are not opinions. Those are
24 facts. He cannot know those facts. The entirety of
25 that diatribe was devoted to what he thinks parties

1 were intending to do, what they knew, what was
2 deliberate or not deliberate, and none of that is
3 admissible. It's not expert testimony. It's not
4 fact testimony. It's irrelevant and it's uninformed
5 and it should all be stricken.
6 MS. BOJKO: Your Honor, OMAEG would join
7 that motion.
8 MS. COHN: Yeah. OEG would also join in
9 that motion.
10 MS. WHITFIELD: As would Kroger.
11 MR. ALEXANDER: As would Duke Energy.
12 MR. SETTINERI: Your Honor, if I may?
13 EXAMINER ADDISON: You may.
14 MR. SETTINERI: I think the objections
15 themselves and the fact that every signatory party
16 objected states -- shows why that answer should
17 stand. He was asked why do you believe the
18 settlement process was corrupt, and he walked through
19 it as to his belief. And he feels that the parties
20 knew what they were doing. He provided a number --
21 remember, he went through the facts, here's a fact,
22 things that happened.
23 And so it's not speculative testimony,
24 your Honor. It's a very thorough answer as to why
25 that settlement process was corrupted. The

1 Commission should be able to weigh the evidence,
2 especially from a former chairman and commissioner.
3 And so, your Honor, again, the fact that every
4 signatory party objected I think re-enforces why that
5 answer should stand, and it was not full of
6 speculation.
7 So I will stop there and if there is --
8 if we need to repeat that answer again, your Honor, I
9 think that would be helpful because to just simply
10 wipe out an entire answer based on a quick little
11 speculative argument, no. So that's a very long
12 answer. It was very thorough. It covered a lot of
13 ground, but it also answered the question why do you
14 believe the settlement process was corrupted, and he
15 gave his opinion. If that -- if they didn't want
16 that, they shouldn't have asked the questions on
17 cross-examination, your Honor.
18 MS. COHN: Your Honor, the legal standard
19 on stipulations is the three-prong test. If he's
20 speaking serious bargaining, that's one problem but
21 this inflammatory language, the name calling is not
22 proper for -- for expert testimony. It doesn't go to
23 the substance of these market provisions. It doesn't
24 go to the three-prong test. It is just unnecessary
25 name calling.

1 MS. BOJKO: Your Honor, I would agree
2 with all of that, and I would also add that even
3 counsel's incorrect and speculating. Not all the
4 parties on this -- in this hearing were signatory
5 parties so even those statements are wrong,
6 incorrect, inaccurate, and speculative as to why a
7 person either put their name on a document or didn't
8 put their name on the document, so it goes even
9 beyond initial speculation.
10 MS. WHITFIELD: Your Honor, just on
11 behalf of Kroger, if I could just add a couple
12 things.
13 EXAMINER ADDISON: Absolutely.
14 MS. WHITFIELD: When counsel referenced
15 that it was evidence, his testimony was evidence, but
16 in cross he admitted that he didn't speak to any of
17 the parties, the nonopposing parties or the signatory
18 parties. He wasn't present at any of the
19 discussions. He has no information, factual
20 information underlying what he thinks the parties'
21 intent was. So I fully support what Jody said and
22 OEG said about this has nothing to do with the issues
23 before this Commission on this hearing and think that
24 that entire answer should be stricken as well. Thank
25 you.

1 MR. SETTINERI: Your Honors, if I just
2 may briefly.
3 EXAMINER ADDISON: Very briefly.
4 MR. SETTINERI: Your Honor, the question
5 is why do you believe the settlement process was
6 corrupted, right? That was -- and there were
7 questions asked in his testimony as to his statement
8 by conspiring to circumvent precedent on an
9 individual case basis by corrupting the stipulation
10 procedure. That language is in his testimony. It
11 remains. They asked questions about it and I asked
12 him why do you believe the settlement process was
13 corrupted and he gave an answer on why he believes it
14 was, your Honor. Very thorough answer.
15 EXAMINER ADDISON: Well, to get to that
16 precision you were requesting earlier, I believe your
17 question should be why did you believe the
18 stipulation procedure was corrupted, but I will let
19 that pass for now.
20 Normally we do allow quite a bit of
21 latitude during redirect, and I even directed
22 Mr. Cawley to raise any additional issues he would
23 like to raise on redirect as that would be the
24 appropriate place to bring out those arguments.
25 However, that being said --

1 MR. SETTINERI: You're frozen, your
2 Honor.
3 EXAMINER ADDISON: Much of those --
4 MR. SETTINERI: Your Honor, you froze.
5 We lost you.
6 EXAMINER ADDISON: Oh, I'm sorry.
7 MS. WHITFIELD: We lost you, "however"
8 and then we lost everything after however.
9 EXAMINER ADDISON: Perfect. I apologize
10 for that. However, I did grant several motions to
11 strike portions of Mr. Cawley's testimony, and I
12 believe they fall in the same grounds that came up
13 during his response to Mr. Settineri's question on
14 redirect.
15 For that reason, I do not want to be
16 inconsistent and allow such inflammatory statements
17 to remain in the redirect response as -- as I struck
18 out during his direct testimony, so I will go ahead
19 and grant the motion to strike.
20 However, I will allow Mr. Settineri an
21 opportunity to reask his question and Mr. Cawley to
22 respond.
23 MR. SETTINERI: Thank you, your Honor. I
24 appreciate your ruling.
25 EXAMINER ADDISON: Yes, absolutely.

1 MR. SETTINERI: May I proceed?
2 EXAMINER ADDISON: You may.
3 Q. (By Mr. Settineri) Mr. Cawley, why do you
4 believe -- I guess I will just ask the question. Why
5 do you believe the stipulation procedure was
6 corrupted?
7 MS. BOJKO: Objection, your Honor.
8 Counsel is leading the witness. Talk about proper
9 questions, he cannot lead the witness and tell him
10 the result of where he wants him to go in the answer.
11 MR. SETTINERI: Sure. I'll rephrase.
12 EXAMINER ADDISON: Thank you.
13 Q. (By Mr. Settineri) Mr. Cawley, do you
14 believe the Stipulation procedure in this case was
15 corrupted?
16 MS. BOJKO: Objection, same -- same
17 leading question with the use of the adjective.
18 MR. SETTINERI: That was not --
19 EXAMINER ADDISON: Mr. Settineri.
20 MR. SETTINERI: Your Honor, I don't view
21 that as a leading question, do you believe the
22 stipulation procedure was corrupted. I can -- so.
23 EXAMINER ADDISON: In an effort to move
24 along, I am going to allow this question.
25 MR. SETTINERI: All right.

1 EXAMINER ADDISON: You may answer but
2 please -- please take heed of my earlier ruling
3 regarding some of your responses to Mr. Settineri's
4 earlier question.
5 A. Let me clarify this. Within the
6 framework of the Commission's standard of review when
7 they are determining reasonableness of a stipulation.
8 I have in my testimony tried to explain
9 why two of the criteria have not been met. First
10 is -- one is the settlement, is the settlement a
11 product of serious bargaining among capable,
12 knowledgeable parties. I believe to meet that
13 criterion, there must be a broad range of diverse
14 interests. I don't believe that it was met because
15 if I heard Witness Lawler correctly, she said that
16 the parties so know, or at least Duke so knows or --
17 felt it had no legal obligation or it simply didn't
18 invite nonparties to the settlement. I think that
19 may have been correct initially when they discussed
20 matters that were related to environmental
21 remediation costs and refunds of federal tax dollars.
22 But when the subject came around to
23 market provisions which were completely unrelated to
24 anything in the -- in the underlying cases, then I
25 think the legal obligation changed. And it's because

1 it strikes at the heart of what commissions are --
2 Public Utilities Commission are all about. The
3 Commission and the presiding officers like your Honor
4 have an obligation to see that proceedings are
5 conducted fairly.
6 When you exclude entities, 1, 2, 3, 60,
7 when you -- you exclude them all, you have -- you
8 can't have a diverse group of interested parties. I
9 mean, it's not possible. And particularly it's wrong
10 here because these just aren't any parties. These
11 are entities created by the Ohio General Assembly as
12 essential players in natural gas Choice, and to
13 exclude every one of them and their trade association
14 is to me wrong. And, therefore, I don't think the
15 first criterion can be met.
16 Secondly, I don't think -- and this is
17 very similar, I don't think that settlement package
18 violated any important regulatory principle or
19 practice. When you deny what I call an essential
20 party which I think for -- because they are entities
21 in the legislative scheme administered by the
22 Commission, when you exclude them, you have not
23 provided notice and opportunity to people who really
24 must be there.
25 And once they are denied that, they can

1 try to play catch up in a proceeding on
2 reasonableness of the Stipulation, but they really
3 don't have any burden of proof. That's on the
4 settling parties. Their job is to assist the
5 Commission to show how the parties have not carried
6 their burden of proof.
7 And their catch up can't be in me view
8 successful in any subsequent proceedings because if
9 the Commission approves the Stipulation as filed, it
10 will effectively be creating a fait accompli in
11 subsequent proceedings. The subsequent proceeding
12 will not be whether there should be a transition from
13 GCR to an SSO. It will not be whether there will be
14 a transition but how do we implement it.
15 And why do I think it's a fait accompli?
16 Because the Commission -- I can say this from my own
17 experience, you don't -- a Commission is not going to
18 adopt a settlement and then not allow the parties to
19 have the benefit of their -- their bargainings by
20 denying an auction application. No. I mean, the
21 inertia, the official approval creates an inertia.
22 It gives -- gives every indication in my experience
23 that the Commission will approve it.
24 The only way it can be cured is for the
25 Commission to deny approval unless the three market

1 provisions are excluded and the parties are given an
2 opportunity in their discretion to file separate
3 proceedings before the Commission where the defect
4 can be cured and that is adequate notice and
5 opportunity to be heard by interested parties.
6 I think that's what needs to be done
7 here, and for the parties in my view to use the
8 stipulation process to gain approval of only
9 end-related, extraneous, alien, foreign whatever word
10 you want to use is improper.
11 I'll leave it at that.
12 EXAMINER ADDISON: Thank you.
13 MR. SETTINERI: Your Honor, we have no
14 further questions.
15 EXAMINER ADDISON: Thank you,
16 Mr. Settineri.
17 Mr. Alexander?
18 MR. ALEXANDER: Yes, your Honor. Thank
19 you.
20 - - -
21 RECROSS-EXAMINATION
22 By Mr. Alexander:
23 Q. Mr. Cawley, I would like to follow up on
24 your last answers specifically with regard to the
25 propriety of including substantive provisions in

1 stipulations. Do you believe inclusion of shadow
2 billing is a major provision which would be
3 inappropriate to include in a stipulation?
4 MR. SETTINERI: Just object as to the
5 vague and ambiguous as to what proceeding and the
6 nature.
7 EXAMINER ADDISON: I'll allow the
8 question.
9 A. It would be improper to include a
10 provision like that if the original applications in
11 the proceedings and the underlying proceedings made
12 no mention whatsoever and no evidence was introduced,
13 parties who may be interested in that provision had
14 no reason to enter their appearance in the underlying
15 proceedings in those instances, which obviously
16 happened here, in my view, it would be improper.
17 Q. Do you know whether or not Columbia Gas
18 of Ohio provides shadow billing information to the
19 Ohio Consumers' Counsel?
20 A. I don't know.
21 MR. SETTINERI: Objection.
22 EXAMINER ADDISON: He's already answered.
23 Let's move on.
24 Q. (By Mr. Alexander) Are you aware the
25 Commission issued an order literally yesterday in the

AEP Ohio distribution rate case?

A. I am.

MR. SETTINERI: Object. Go ahead, Mr. Cawley. Go ahead.

THE WITNESS: May I explain, your Honor?

EXAMINER ADDISON: No. I believe that was a yes or no question.

Q. (By Mr. Alexander) The AEP Ohio distribution rate case included a Stipulation, correct?

A. I don't know. I simply know that there was some provision regarding shadow billing. I don't know anything beyond that.

Q. If the Commission approved shadow billing being included in a Stipulation where it was not included in the original application, that indicates to you they rejected your interpretation of Ohio law?

MR. SETTINERI: I would just object. Are you talking about this proceeding? I'm confused. Is this a general?

MR. ALEXANDER: Sure. I'm following up on the witness's detailed narrative attacking the stipulation as being inappropriate for including what he has termed extraneous and alien provisions in his last answer, and I want to understand exactly why he

1 believes the inclusion of a provision like shadow
2 billing requires the Stipulation to be rejected.
3 THE WITNESS: May I answer, your Honor?
4 MR. ALEXANDER: We are waiting on a
5 ruling from the Court.
6 EXAMINER ADDISON: You may proceed.
7 A. Two reasons, inadequate notice and
8 opportunity to be heard by interested parties in the
9 underlying proceedings and market suppliers,
10 marketers had no reason to get involved in cases
11 involving environmental remediation and recovery
12 costs and federal income tax refunds. So you have
13 got a lack to be heard problem, and you have got a
14 further problem that there's no underlying evidence
15 in the underlying proceedings about that subject. It
16 is, therefore, by definition unrelated.
17 Q. And you are taking that position because
18 the Stipulation is the first time the shadow
19 provision appeared?
20 A. Yes.
21 Q. When you say IGS Energy is a statutorily
22 created entity, you mean they are a competitive
23 retail natural gas supplier, correct?
24 MR. SETTINERI: Object, mischaracterizes
25 his testimony. I don't believe he's testified that

1 IGS was a statutorily created entity.
2 EXAMINER ADDISON: I'll allow the
3 question. I'll allow the question.
4 A. IGS is a -- what's your term in Ohio?
5 It's a competitive retail energy supplier which is a
6 creation of the General Assembly to further retail
7 natural gas Choice in Ohio.
8 Q. Every corporation in the State of Ohio is
9 a statutorily created entity, correct?
10 A. But not every one of those corporations
11 is designed for the proper functioning of retail
12 natural gas Choice in Ohio.
13 MR. ALEXANDER: Could I have that answer
14 reread, please?
15 EXAMINER ADDISON: You may.
16 (Record read.)
17 Q. So you believe IGS Energy was designed
18 for the proper operation of retail natural gas Choice
19 in Ohio?
20 A. IGS is one of a type of entity that is
21 designed to make natural -- retail natural gas Choice
22 in Ohio function.
23 Q. And when you make these claims regarding
24 what stipulations in Ohio must or must not do, you
25 are making those despite the fact you've never read a

settlement in another Ohio case, correct?

A. I don't have to read settlements to know what I -- what I have described, yeah.

MR. ALEXANDER: No further questions, your Honor.

EXAMINER ADDISON: Thank you.

Mr. Healey?

MR. HEALEY: Yes, your Honor, I do have a few questions.

- - -

RECROSS-EXAMINATION

By Mr. Healey:

Q. Mr. Cawley, in your redirect examination you claimed to know how the Commission will rule on Duke's eventual application to transition to an SSO, correct?

A. I don't know, but from my experience I -- I can conclude what -- what I think they are going to do.

Q. So you're guessing, correct?

A. It's -- if I'm guessing. It's an educated guess.

Q. And that guess would be based on your appearance in Pennsylvania and not Ohio, correct?

A. I think public utility regulators around

1 the country have a mind-set and a way of doing
2 business, and they have -- I think they have a pretty
3 common concept of -- of how to go about fair decision
4 making. And that's why I describe the -- that's why
5 I said I think the Commission is going to act in good
6 faith. If they approve the settlement as is, they
7 are going to -- they are going to approve the
8 implementation.
9 Q. So now your testimony is that you have
10 insight into the mind-set of the five Ohio
11 Commissioners?
12 MR. SETTINERI: Object, mischaracterizes
13 his testimony. It's argumentative, your Honor.
14 EXAMINER ADDISON: Thank you.
15 MR. HEALEY: I will withdraw, your Honor.
16 I'm done.
17 EXAMINER ADDISON: Thank you, Mr. Healey.
18 OEG?
19 MS. COHN: No questions, your Honor.
20 EXAMINER ADDISON: OPAE?
21 MR. DOVE: No questions, your Honor.
22 EXAMINER ADDISON: Kroger?
23 MS. WHITFIELD: No questions, your Honor.
24 EXAMINER ADDISON: OMAEG?
25 MS. BOJKO: No questions, your Honor.

Thank you.

EXAMINER ADDISON: Staff?

MR. MARGARD: No questions, thank you, your Honor.

EXAMINER ADDISON: Thank you. I have no additional questions for you at this time, Mr. Cawley, so you are excused. Thank you very much for your testimony this evening.

THE WITNESS: Thank you, your Honor.

EXAMINER ADDISON: Mr. Settineri?

MR. SETTINERI: Your Honor, at this time RESA moves for the admission of RESA/IGS Exhibit 1, the direct testimony of James H. Cawley, and I will, procedurally I think I'm right, if Mr. Oliker would join in that motion as well on behalf of IGS.

MR. OLIKER: Yes, I would, your Honor.

EXAMINER ADDISON: Thank you both.

Any objections to the admission of RESA/IGS Exhibit 1, subject to the motions to strike noted before?

MR. HEALEY: No objection, your Honor.

MR. ALEXANDER: No objection.

MR. OLIKER: Your Honor, just so the record is clear, I recognize Mr. Settineri was tendering this witness, that IGS was also proffering

stricken provisions as well. I believe that's what was recorded by the court reporter.

EXAMINER ADDISON: I think you trailed off there but that is my -- my recollection as well so that, yes, your proffer is noted. Thank you very much.

MR. OLIKER: Thank you, your Honor.

EXAMINER ADDISON: Seeing no objections, that exhibit will be admitted, subject to the motions to strike which were granted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER ADDISON: Let's go off the record for just a minute.

(Discussion off the record.)

EXAMINER SANDOR: Okay. Let's go back on the record.

All right. Mr. Oliker.

MR. OLIKER: Thank you, Examiner Sandor. At this time Interstate Gas Supply, Inc., and Retail Energy Supply Association would call Frank Lacey to the stand.

EXAMINER SANDOR: Micah, if you could please promote Mr. Lacey to a panelist role.

MR. SCHMIDT: Mr. Lacey, you've been promoted. If you can enable your audio and video.

MR. LACEY: Can you guys see and hear me?

EXAMINER SANDOR: Yes. Good evening, Mr. Lacey. Please raise your right hand.

(Witness sworn.)

EXAMINER SANDOR: All right. Thank you. You may proceed.

MR. OLIKER: Your Honor, at this time I would like to mark Mr. Lacey's direct testimony as RESA/IGS Exhibit 2, I believe.

EXAMINER SANDOR: And the description?

MR. OLIKER: The direct testimony of Frank Lacey on behalf of the Retail Energy Supply Association and Interstate Gas Supply, Inc.

EXAMINER SANDOR: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

FRANK LACEY

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

DIRECT EXAMINATION

By Mr. Oliker:

Q. Mr. Lacey, do you see the document that has been marked as RESA/IGS Exhibit 2?

A. I do.

Q. And is this your direct testimony in this

1 proceeding?
2 A. Yes, it is.
3 Q. And was it prepared by you or under your
4 direction?
5 A. Yes, it was.
6 Q. Do you have any changes that you have to
7 make to this testimony?
8 A. I have one very minor change.
9 Q. Can you please identify -- identify that.
10 A. Yeah. Thank you. On page 7, line 17,
11 about four words in the "the" should be put in after
12 "that" and also "stipulation" should be capitalized,
13 so it should read "Duke witness Lawler testifies that
14 the Stipulation."
15 Q. Thank you. Do you have any other change
16 to your testimony?
17 A. I do not.
18 Q. Okay. If asked the same questions today
19 under oath, would your answers be the same, subject
20 to the revision you just made?
21 A. Yes, they would be.
22 MR. OLIKER: Okay. And with that, your
23 Honor, I would tender the witness for
24 cross-examination.
25 EXAMINER SANDOR: Thank you. Duke,

1 Mr. Alexander. I think you're on mute,
2 Mr. Alexander.
3 MR. ALEXANDER: Thank you.
4 - - -
5 CROSS-EXAMINATION
6 By Mr. Alexander:
7 Q. Good afternoon, Mr. Lacey.
8 MR. HEALEY: Trevor, before you start do
9 you have any motions to strike?
10 MR. ALEXANDER: I do not.
11 MR. HEALEY: If I could cut in line
12 briefly to make mine, your Honor.
13 EXAMINER SANDOR: Yes, you may.
14 MR. HEALEY: Thank you. Just two quick
15 ones. The first one is on page 9 and it's at line 9
16 and I move to strike starting with the word "that
17 clearly" and ending with the word "OCC." And this
18 statement, it should be stricken because the witness
19 lacks personal knowledge. He is speculating as to
20 who may or may not have wanted a provision to be
21 included in the Stipulation. He was not involved in
22 those communications. He was not a party to those
23 discussions. He cannot possibly know who negotiated
24 for what.
25 All provisions of the Stipulation were

1 signed subject to a couple footnotes from Staff but
2 there are no provisions in the Stipulation that were
3 clearly included by OCC, and he can't possibly know
4 that, so it should be stricken.
5 EXAMINER SANDOR: Thank you.
6 Mr. Oliker?
7 MR. OLIKER: If I may respond briefly.
8 EXAMINER SANDOR: Yes.
9 MR. OLIKER: The witness is an expert on
10 the competitive market and is familiar with some of
11 the advocacy that has occurred in Ohio. He's also
12 familiar with the significant amount of pleadings and
13 arguments that OCC has made over time, you know,
14 going back nearly a decade regarding matters
15 contained in the Stipulation. And through his
16 understanding of the arguments that OCC has
17 historically made and what appears in the
18 Stipulation, he has deduced based on that evidence
19 that OCC clearly pushed for these provisions such as
20 the shadow billing provision which is to provide data
21 to OCC.
22 I think that this conclusion is something
23 that is within his expertise to make and, of course,
24 if Mr. Healey has any questions regarding how he
25 reached that conclusion, he's free to ask him in

1 cross-examination today which I think is what we are
2 all here about. And again, this would go to the
3 weight of the evidence, not necessarily whether the
4 evidence should be in the record at all.
5 EXAMINER SANDOR: Mr. Healey?
6 MR. HEALEY: Nothing to add, your Honor.
7 There is -- just reiterate there is no way he can
8 know this. He might think he can deduce it or guess
9 it. That's all it is. It's a guess.
10 EXAMINER SANDOR: Thank you. All right.
11 So -- so despite Mr. Lacey's awareness of past cases,
12 I agree with Mr. Healey, and I will be granting the
13 motion to strike -- to strike on page 9, line 9, the
14 phrase "that clearly were included by OCC."
15 MR. HEALEY: Thank you, your Honor.
16 Actually that will be my only motion to strike, so
17 Mr. Alexander can proceed.
18 EXAMINER SANDOR: Okay. Please proceed,
19 Mr. Alexander.
20 MR. OLIKER: Your Honor, before I forget
21 IGS will proffer the statement based upon my prior
22 reasoning in case I forget.
23 EXAMINER SANDOR: The proffer is noted.
24 Thank you.
25

Q. (By Mr. Alexander) Hi, Mr. Lacey. I would like to get started by defining some terms. When I say "the Stipulation," do you understand that I am referring to the Stipulation and Recommendation filed in this proceeding on August 31, 2021?

A. Sure.

Q. And in the Stipulation in paragraph 21, there's a reference to an auction application seeking to transition from a GCR to an SSO. If I reference "auction application," will you understand that's what I am referring to?

A. Yes.

Q. Okay. And then similarly in paragraph 24 of the Stipulation, there is a proposed billing format change to include a price to compare on shopping customer bills, correct?

A. Yes, there is.

Q. And can you -- can we agree that when I reference the price to compare, I am referring to that proposal to include that number on shopping customer bills?

A. Yes.

Q. Okay. The auction application has not yet been filed with the Commission, correct?

A. That is my understanding.

Q. And the Commission would have to approve any change to Duke's's natural gas billing which to include the proposed new price-to-compare language, correct?

A. That is my understanding also.

Q. If the Commission disagrees with the language proposed in the auction application, the Commission has the power to change that bill language?

A. It does, yes.

Q. Retail providers will have the ability to participate in the later auction application Commission cases to modify the bill language, correct?

A. I think in the -- if there was an open application proceeding, I would think retail suppliers would be welcome to participate in that -- in those proceedings.

Q. There is nothing in the Stipulation that states that the proposed PTC language is the only language which will appear on Duke Energy bills, correct?

A. It's the only price-to-compare language, but it doesn't -- certainly doesn't limit inclusion of a bill address or due date or things of that

nature, correct.

Q. And the Stipulation doesn't prohibit Duke from proposing additional price-to-compare language, correct?

A. It does not, but the agreement that would go into effect, I think, would be given a lot of the weight by the Commission were it an actual agreement that was approved in Phase I.

Q. And when Duke files the auction application, the Commission can prescribe any bill language it deems fit, correct?

A. I would assume so, yes.

Q. You are aware that Duke serves both gas and electric customers?

A. I am.

Q. And Duke customers often receive one bill including both their gas and electric service?

A. Yes, they do.

Q. Now, you believe that any price-to-compare message can be confusing to customers, correct?

A. I think I've said that some language can be. It wouldn't necessarily have to be, but language that includes a price that is a backward-looking price that's not obtainable by customers in the

1 future would be very misleading to customers.
2 Q. You are aware that Duke's GCR rate is
3 currently listed on the Commission's Apples to Apples
4 website, correct?
5 A. I am, yes.
6 Q. And you would consider the GCR rate to be
7 a backward-looking rate as well?
8 A. Yes.
9 Q. Turning in your testimony page 13, line
10 3, please. Let me know when you're there.
11 A. Okay.
12 Q. I would like to strictly focus your
13 attention on your claim that wholesale auctions are
14 essentially no-value wholesale cost pass-through
15 products. Do you see that reference?
16 A. I do, yes.
17 Q. Now, moving -- moving through line 4, you
18 start to discuss retail products. And, first, I
19 would like to explore carbon offsets that you're
20 comparing to the wholesale product. Carbon offsets
21 are an action that the supplier would take to
22 minimize or eliminate carbon in the atmosphere,
23 correct?
24 A. Correct.
25 Q. You are not aware of the portion of the

natural gas resale market which is currently shopping under a product which uses a carbon offset, correct?

A. In total, no. I'm aware that IGS offers it to all of its residential customers. It's its only product that it offers. But in aggregate I am not aware of the total number of customers who have procured that product.

Q. You next reference efficiency products or services. Do you see that?

A. I do, yes.

EXAMINER SANDOR: Where do you see that, Mr. Alexander, so I can follow?

MR. ALEXANDER: The very next words on line 5, still page 1, line 5.

EXAMINER SANDOR: Oh, great. Thank you.

Q. (By Mr. Alexander) Mr. Lacey, efficiency products or services are those that could be used to minimize or lower total costs or energy consumption in exchange for a service or product, correct?

A. I would agree with that, yes.

Q. And you are not aware of the portion of the natural gas retail market that is currently shopping under product which includes an energy efficiency product, correct?

A. I've not done that survey, correct.

Q. You believe a learning thermostat is a type of energy efficiency product, correct?

A. I do, yes.

Q. And you believe suppliers could charge a premium rate for an efficiency product that includes a learning thermostat, correct?

A. I would say suppliers can charge a price as opposed to a rate for a -- a retail energy product. So the pricing is more appropriate than ratemaking when you talk about retail products. So I think there is a price that can be developed and offered to customers that would include energy efficiency products and services.

Q. What is your distinction between price and rate?

A. Rate -- in my context rate is like a utility term that kind of implies cost plus buildup, if you will. And a price is more of a competitive value statement.

Q. By price are you still talking about a volumetric amount charged for the amount of the commodity the customer uses?

A. It could be. It wouldn't have to be. It could be a flat monthly fee, for example, similar to like a utility budget bill, but it may not have a

1 true-up at the end of it. So I could say for $82 a
2 month, I'll give you all the gas that you use, so it
3 wouldn't have to be a volumetric rate.
4 Q. Ask the question this way, you believe
5 suppliers could charge a premium volumetric rate for
6 an efficiency product that includes a learning
7 thermostat, correct?
8 A. I believe they could charge a price that
9 is competitive to the market that may or may not
10 include efficiency services like a learning
11 thermostat.
12 Q. Moving on to page 13, line 5, you
13 reference retail products potentially could be long
14 term, correct?
15 A. Correct.
16 Q. And you are not aware of the portion of
17 the natural gas retail market that is currently being
18 served under a variable rate, correct?
19 A. That is correct, I am not.
20 Q. You are aware that there are competitive
21 products that start with a short-term introductory
22 offer and then are followed by a period of favorable
23 rates?
24 A. They could exist, yes.
25 Q. And you are aware they -- strike that.

1 I think we discussed earlier that the
2 transition from a GCR to an SSO will not take place
3 until the auction application is approved by the
4 Commission, correct?
5 A. That's my understanding, yes.
6 Q. Okay. And so the frequency of the rate
7 changes in that anticipated future SSO will be
8 determined by the Commission in the future?
9 A. What's been proposed is monthly. I
10 suppose if people oppose that and ask for something
11 longer, the Commission would weigh the -- the effect
12 of each one and make a decision.
13 Q. Well, yeah. Let's be very specific.
14 When you say it has been proposed, you are referring
15 to one slide in a PowerPoint which was shared with a
16 stakeholder group, correct?
17 A. Yes.
18 Q. The auction application itself which is
19 where this will be officially proposed has not been
20 filed, correct?
21 A. That has not been filed but certainly
22 Duke has, I think, made its intentions public with
23 respect to what will be in the application.
24 Q. Where do you believe Duke did that?
25 A. In that presentation.

Q. Would you please turn to page 18 of your testimony, line 23.

A. Okay.

Q. Here in this sentence, it begins at line 23 continues to line 25, you state that providing the price to compare on a customer bill could lead a customer to terminate their long-term contract and potentially incur an early termination fee, correct?

A. Yes, that's what it says.

Q. You are not aware of any studies which have found a relationship between the imposition of a price-to-compare bill message and an increase in customers being exposed to early termination fees, correct?

A. No, I'm not.

Q. You have reviewed more than three dozen offers currently available in Duke's service territory on the Apples to Apples website, correct?

A. No. I have reviewed the Apples to Apples website and found that there are more than three dozen offers that include terms greater than -- or 12 months or greater, but I have not reviewed the individual offers that are presented there.

Q. You actually anticipated my next question which was on the individual offers so thank you for

1 that. Now turning to page 19, line 6, I guess back
2 to the Apples to Apples website, there are -- and on
3 the Apples to Apples website they have more than
4 three dozen offers available in the Duke Energy
5 service territory?
6 A. More than three dozen offers for terms
7 longer than one year -- or I should say for --
8 durations of 12 months or longer.
9 Q. And so your point is there are -- there
10 are even more offers available in the service
11 territory for periods less than one year.
12 A. There are, yes.
13 Q. Turning to page 19, line 6 in your
14 testimony, you argue that the price-to-compare
15 message is discriminatory as it is only applied on
16 shopping customers' bills. Do you see that?
17 A. I do.
18 Q. According to the Stipulation the price to
19 compare would only go on bills after the auction
20 application has been approved, correct?
21 A. Yeah, that's what the Stipulation says,
22 yes.
23 Q. There is no prohibition in the
24 Stipulation on the Commission requiring the same bill
25 message to go on nonshopping customers' bills,

1 correct?
2 A. Could you repeat that? I just want to
3 make sure I heard it correctly.
4 Q. Sure. There is no prohibition in the
5 Stipulation on the Commission requiring the same bill
6 message to go on nonshopping customers' bills,
7 correct?
8 A. No, it doesn't limit the Commission's
9 ability to put a message on nonshopping customers'
10 bills, correct.
11 Q. The Stipulation itself does not
12 necessarily in and of itself harm the competitive
13 market, correct?
14 A. So the piece of paper that -- the pieces
15 of paper don't harm the market. The terms as written
16 don't harm the market. But the term as written, if
17 implemented, would be very detrimental to the market.
18 Q. When you say --
19 A. When you say the Stipulation, I don't
20 really know what you mean by that. Like as it sits
21 on my desk right now, doesn't necessarily harm the
22 market. If it's implemented, I think it causes
23 significant harm to the competitive market.
24 Q. When you say the terms of the Stipulation
25 if implemented will harm the competitive market, you

are referring to the price to compare and the transition from a GCR to an SSO, correct?

A. My testimony is mostly limited to the price to compare and the shadow billing components.

Q. All right. Thank you for that clarification.

A. Yeah.

Q. Those are the two terms you were referring to in your prior answer?

A. Correct. I am not talking about the MGP and tax clauses at all.

Q. Thank you. Switching topics, you're familiar with the Ohio utility Columbia Gas of Ohio, correct?

A. I am.

Q. And you are familiar with the fact that Columbia Gas of Ohio transitioned from a GCR to an SSO?

A. I am aware of that.

Q. And you believe that Columbia Gas of Ohio has an SSO today?

A. I believe they do.

Q. And you don't know whether Columbia Gas of Ohio's application to transition from a GCR to an SSO harmed the competitive market because you didn't

1 review that application.
2 A. I did not review that application, that
3 is correct.
4 Q. You're familiar with the Ohio utility
5 Dominion East Ohio Gas?
6 A. Yes.
7 Q. You don't know whether Dominion East
8 Ohio's application to transition from GCR to SSO
9 harmed the competitive market because you did not
10 review that application.
11 MR. OLIKER: Objection.
12 A. I did not review that application, that's
13 correct.
14 Q. You are familiar with the utility
15 formerly known as Vectren and currently known as
16 CenterPoint, correct?
17 A. I am, yes.
18 Q. You don't know whether CenterPoint's
19 application to transfer from a GCR to an SSO harmed
20 the competitive market because you did not review
21 that application, correct?
22 A. Correct.
23 MR. OLIKER: Objection.
24 A. I did not review that application.
25 EXAMINER SANDOR: He already answered.

Please, proceed, Mr. Alexander. And, Mr. Lacey, when -- if Mr. Oliker has an objection on your behalf, please wait to answer.

THE WITNESS: I didn't hear that, Mr. Oliker. Sorry.

EXAMINER SANDOR: I think you actually started speaking before he did but just for going forward.

THE WITNESS: Okay.

Q. (By Mr. Alexander) So turning to page 20 of your testimony, you include a discussion regarding your belief the price to compare on customer bills would harm the retail natural gas market, correct?

A. Yes, I do.

Q. You are aware that Ohio has been requiring electric distribution utilities to include a price-to-compare notice?

MR. OLIKER: Objection.

A. I am aware.

EXAMINER SANDOR: He answered. Just remind, Mr. Lacey.

Go ahead, Mr. Alexander.

Q. (By Mr. Alexander) It's also page 22, line 17 of his testimony, so we can -- maybe we will take it that way just to make this record clear.

1 Mr. Lacey, would you please turn to page 22, line 17
2 of your testimony.
3 A. Okay.
4 Q. And so is that the provision that you are
5 aware of which requires electric distribution
6 utilities to include a price to compare on customer
7 bills?
8 MR. OLIKER: I'm objecting because we've
9 established what price to compare means as a defined
10 term, and if we are going to use the word price to
11 compare, we need to be very careful now that
12 Mr. Alexander has already defined it once because the
13 record is going to be muddied.
14 EXAMINER SANDOR: Mr. Alexander.
15 Q. (By Mr. Alexander) So, Mr. Lacey, when we
16 discussed the definition of price to compare earlier,
17 we referenced paragraph 24 of the Stipulation,
18 correct?
19 A. Yes.
20 Q. Paragraph 24 of the Stipulation
21 anticipates a numeric value to be imposed on natural
22 gas shopping customers' bills, correct?
23 A. 24A, yes.
24 Q. Thank you. And turning back to your
25 testimony, Commission rule regarding electric

1 utilities for inclusion of a price-to-compare notice,
2 that is also a numeric value to be included on
3 customer bills, correct?
4 A. The -- yes.
5 Q. You don't know how the rate of shopping
6 for electricity customers in Ohio compares to the
7 rate of shopping for natural gas customers, correct?
8 MR. OLIKER: Objection.
9 EXAMINER SANDOR: Grounds?
10 MR. OLIKER: What is the relevance of
11 electricity shopping and natural gas shopping? They
12 are completely different markets with completely
13 different fundamentals and there has been established
14 to be no relevance whatsoever here. It is just
15 misleading and confusing.
16 EXAMINER SANDOR: Mr. Alexander?
17 MR. ALEXANDER: Two points. First, they
18 included it in their testimony. We're responding
19 to -- to the comparison made directly in this
20 witness's testimony specifically at page 22.
21 Second, the position asserted by IGS and
22 RESA is that inclusion of a price to compare is a
23 negative for the retail market. And Duke and I
24 believe the other Intervenors are entitled to explore
25 whether that's factually correct. And so that was

1 the purpose of the question.
2 MR. OLIKER: And, your Honor, he is only
3 offering that in his testimony to show how different
4 the electric markets and the gas markets are and how
5 default service is procured in a fundamentally
6 different way. That's why it's completely irrelevant
7 to talk about how the shopping is and how a numeric
8 price to compare in the electric market might play on
9 the gas side.
10 EXAMINER SANDOR: I will allow him to
11 answer the question. It is in his testimony, and I
12 understand what you are saying about it just making a
13 comparison. So let's not go too far down this road
14 with this line of questioning.
15 MR. ALEXANDER: Sure. I will repeat the
16 question. I don't think we are going to go very far
17 down the road because we had a deposition with
18 Mr. Lacey.
19 Q. (By Mr. Alexander) So, Mr. Lacey, you
20 don't know how the rate of shopping for electricity
21 customers in Ohio compares to the rate of shopping
22 for natural gas service, correct?
23 A. I do not know.
24 Q. Duke bills today that include both
25 electric and natural gas service include price to

compare today, correct?

MR. OLIKER: Objection.

EXAMINER SANDOR: Grounds?

MR. OLIKER: Which price to compare is he talking about? Is he talking about the price to compare as recommended by the Stipulation or the price to compare as determined by electric rules? Combination gas bill? Which one is he referring to?

MR. ALEXANDER: I'll rephrase, your Honor.

EXAMINER SANDOR: Please do. Thank you.

Q. (By Mr. Alexander) Duke bills that include both electric and natural gas service today include a price to compare for the electric portion of the bill, correct?

A. There is a numeric statement on the bills, yes.

Q. Now I would like to change topics and discuss shadow billing a bit. You are aware Columbia Gas of Ohio has provided shadow billing information in the past, correct?

A. I am aware.

MR. OLIKER: Can I have that question read again, please?

EXAMINER SANDOR: He already answered it,

1 I'm sorry.
2 Q. (By Mr. Alexander) You are not aware of
3 any negative market action which accompanied Columbia
4 Gas of Ohio's use of shadow billing information,
5 correct?
6 MR. OLIKER: Objection.
7 EXAMINER SANDOR: Grounds?
8 MR. OLIKER: Continue to object in
9 questions regarding Columbia Gas given that data was
10 provided pursuant to a Stipulation that on its face
11 said any provision of that data could not be cited to
12 in any future proceeding by any party or provided as
13 precedent. And doing that here today is a violation
14 of that case and further chills parties' willingness
15 to enter into settlements, that should not be used in
16 the future, so I will leave it at that.
17 EXAMINER SANDOR: Mr. Alexander?
18 MR. ALEXANDER: Duke Energy was not a
19 party to that case, and the question did not relate
20 to the settlement. The question related to whether
21 there was any negative market action which
22 accompanied Columbia's use of the shadow billing
23 information. That's not a violation of the terms of
24 the settlement.
25 EXAMINER SANDOR: I agree with

1 Mr. Alexander. Mr. Lacey, you can answer.
2 A. I hate to ask this, but could you repeat
3 the question?
4 Q. Certainly. You are not aware of any
5 negative market action which accompanied Columbia Gas
6 of Ohio's use of shadow billing information, correct?
7 A. I didn't research that issue.
8 Q. You are not aware of how natural gas
9 shopping rates varied between the Columbia and Duke
10 service territories, correct?
11 A. I did not research that issue.
12 Q. And you don't know if the state of
13 Massachusetts made a collection of shadow billing
14 data, correct?
15 MR. OLIKER: Objection.
16 EXAMINER SANDOR: Grounds?
17 MR. OLIKER: What does Massachusetts have
18 to do with this case?
19 EXAMINER SANDOR: Mr. Alexander?
20 MR. ALEXANDER: Once again, your Honor,
21 IGS makes the factual claim that provision of shadow
22 billing data will have a chilling effect on the
23 retail market. That's a factual claim and we are
24 entitled to explore whether it's, in fact, true. And
25 it's our position that the provision of shadow

1 billing data not to customers but to OCC would not
2 have chilling effect or improper effect in the retail
3 market.
4 EXAMINER SANDOR: I will sustain the
5 objection on this one. Massachusetts seems a little
6 far afield even if you are speaking about the
7 competitive market. If we could stick to Ohio.
8 MR. OLIKER: Thank you, your Honor.
9 EXAMINER SANDOR: Please move on.
10 Q. (By Mr. Alexander) According to your
11 testimony, and this is at page 5, line 25, a
12 Stipulation was not a result of serious bargaining
13 between knowledgeable parties, correct?
14 A. That is correct.
15 Q. You were not present at any of the
16 discussions between the signatory and nonopposing
17 parties regarding the Stipulation, correct?
18 A. It's my understanding that no retail
19 suppliers were present, and no representatives of
20 retail suppliers were present. That includes me.
21 Q. You believe the Staff of the Public
22 Utilities Commission of Ohio is knowledgeable and
23 capable, correct?
24 A. On some issues, yes, very much so.
25 Q. You believe the Ohio's Consumers' Counsel

is knowledgeable and capable?

A. On some issues, I believe they are.

Q. You believe that Duke Energy Ohio is knowledgeable and capable?

A. On some issues, yes.

Q. You believe that the Ohio Energy Group is knowledgeable and capable?

A. Some issues, yes.

Q. You believe that the Ohio Manufacturers' Association Energy Group is knowledgeable and capable?

A. On some issues, yes.

Q. You believe that The Kroger Company is knowledgeable and capable?

A. On some issues, yes.

Q. You believe that the Ohio Partners for Affordable Energy is knowledgeable and capable?

A. On some issues, yes.

Q. Although the -- you believe that Duke is knowledgeable, you believe Duke has no incentive to represent supplier interests, correct?

A. My understanding is Duke's obligations are to its shareholders and not to competitors in the market, so I do not believe Duke represents the interests nor do I believe any of those other

1 entities represent the interests of competitive
2 suppliers.
3 Q. You have not reviewed any prior Duke
4 electric security plans case, correct?
5 MR. OLIKER: Objection.
6 EXAMINER SANDOR: Grounds?
7 MR. OLIKER: What is the relevance of
8 electric security plan cases for gas regulation?
9 EXAMINER SANDOR: Mr. Alexander?
10 MR. ALEXANDER: The witness stated he did
11 not believe Duke had any incentive to represent
12 competitive interests and that Duke's history of
13 advocacy for the competitive market can only be shown
14 through those electric security plans Duke has really
15 taken leadership role, so my question was did the
16 witness review those.
17 MR. OLIKER: And again, it wasn't on the
18 gas side. It's not relevant to the gas market.
19 MR. ALEXANDER: The question is the
20 entity -- the question was not based on commodity.
21 EXAMINER SANDOR: You can answer the
22 question.
23 A. Okay. So my testimony was Duke's
24 management obligations are to their shareholders.
25 Competitive markets are something that is part of the

1 policy of the State of Ohio that Duke is forced to
2 implement by law. I don't think Duke -- in fact, I
3 know Duke does not have the fiduciary obligation to
4 on behalf of competitive gas suppliers. And so,
5 therefore, I don't think it can represent competitive
6 gas supplier interests in a proceeding that is taking
7 gas supplier issues straight -- head on.
8 MR. ALEXANDER: Your Honor, I move to
9 strike that response. The question that was asked,
10 you have not reviewed any prior Duke Energy security
11 plan cases, and I don't believe the witness answered
12 that at all in that response.
13 MR. OLIKER: Your Honor, I think the
14 witness was trying to be helpful to answer a question
15 that was very open ended about the electricity
16 markets and whether Duke was advocating for gas
17 suppliers, and the question was vague and got a vague
18 answer.
19 MR. ALEXANDER: Your Honor, the question
20 was not vague. The question was have you ever
21 reviewed any prior Duke electric security plan cases.
22 It was very specific related to one specific type of
23 case.
24 EXAMINER SANDOR: I'm going to allow the
25 answer to stand and then also direct him to answer

1 Mr. Alexander's question that he just stated as well.
2 Q. (By Mr. Alexander) Mr. Lacey, I will
3 repeat just so the record is clear, you have not
4 reviewed any prior Duke electric security plan case,
5 correct?
6 A. I'm not trying to be cagey here. I've
7 been involved in the Ohio electric and gas markets
8 for a long time. I have reviewed some ESP plans but
9 a long, long time ago. I don't remember if Duke was
10 one of them. And I don't remember the -- I mean, I
11 did not review any of them for this proceeding, so I
12 would have no ability to answer any questions, but I
13 don't want to say, no, I haven't or, yes, I have
14 because I really -- I might have.
15 Q. You don't recall reviewing any prior Duke
16 electric security plan cases; is that fair to say?
17 A. I certainly don't remember any of the
18 details, correct.
19 Q. Do you agree nothing in the Stipulation
20 prevents a competitive retail natural gas supplier
21 from communicating directly with its customers,
22 correct?
23 MR. OLIKER: Objection. The question is
24 vague. If the witness understands, I'll let him
25 answer.

EXAMINER SANDOR: Please proceed, Mr. Lacey.

A. I was going to say there is nothing in the Stipulation that impacts what a supplier can communicate to its customers.

Q. And, in fact, there is nothing in the Stipulation that impacts what a competitive retail natural gas supplier can communicate to perspective customers, correct?

A. I believe that's the case, yes.

Q. You are here today representing RESA, correct?

A. Both RESA and IGS, yes.

Q. Sure. RESA is one of the two. I am going to try to do this question all at once. If we need to break it up because your answers are going to differ, please just let me know that. I am happy to do that. In the interest of speed, I am going to try to do this all together. You believe that RESA members currently have business in Ohio, Illinois, Pennsylvania, Maryland, Massachusetts, Michigan, Kentucky, Virginia, Connecticut, New Jersey, Maine, New York, the District of Columbia, and Delaware?

A. I believe that some RESA members operate in some markets in those states, but I couldn't --

you mentioned Kentucky. I can't say yes to that one. It's -- but it wouldn't surprise me, okay? RESA members serve electricity and gas in deregulated markets or restructured markets across the country.

Q. So just so I understand your answer, it was a yes to every state except Kentucky which was you're not sure about Kentucky?

A. And I think that's correct, and I know Kentucky has a competitive gas market. I just can't be certain that a RESA member is serving in Kentucky, so I'm not -- I'm not sure what you are trying to get at, and I am not trying to be evasive in my answer. I just don't have 100 percent certainty that a RESA member is serving customers because I have never done work for RESA in that state, for example.

Q. I think you've answered the question.

A. Okay.

Q. You believe that IGS Energy provides service in at least Ohio, Pennsylvania, and Maryland, correct?

MR. OLIKER: Objection.

A. That's correct.

EXAMINER SANDOR: Grounds?

MR. OLIKER: I've let it go a little while because it's getting late, and I am trying to

1 get through this, but we keep on going through every
2 other state that's not Ohio, I think we are going to
3 be here a long time. We are not going to have the
4 evidence that helps us to develop this record.
5 EXAMINER SANDOR: Mr. Alexander?
6 MR. ALEXANDER: The witness has answered.
7 We've established what we are looking to establish.
8 EXAMINER SANDOR: Okay. Proceed.
9 Q. (By Mr. Alexander) You are not aware of
10 any states which required a numeric price-to-compare
11 value being included on customer bills via statute,
12 correct?
13 MR. OLIKER: Objection.
14 EXAMINER SANDOR: Grounds?
15 MR. OLIKER: What's the relevance? It
16 assumes -- I mean, the form of the question is
17 objectionable.
18 EXAMINER SANDOR: Mr. Alexander?
19 MR. ALEXANDER: I guess I'll take the
20 relevance issue first. Once again, RESA and IGS have
21 taken the position that including the price to
22 compare on customer bills is inappropriate, harmful
23 to the competitive market. The competitive market
24 exists in more states than Ohio. Therefore, we
25 should be entitled to develop a record as to whether

1 inclusion of the price to compare and numeric price
2 to compare value has happened in other states, and if
3 so, what has it done to the competitive market there?
4 MR. OLIKER: Your Honor, given that --
5 MR. ALEXANDER: Hold on.
6 MR. OLIKER: Keep going.
7 MR. ALEXANDER: Sure. With regard to the
8 objection as to form, I was asking whether the
9 witness was aware of any state which had required a
10 numeric price to compare on customer bills. That's
11 very clear and so I don't believe the question was
12 inappropriate as to form.
13 MR. OLIKER: I would also add, your
14 Honor, it's also vague because it's not limited to
15 natural gas. It may include electric as well in the
16 way it's been phrased. I would also add it's further
17 irrelevant because it -- the question doesn't build
18 out any of the additional specifics regarding how
19 those states may be deferring default service,
20 whether electric or natural gas, whether it's a
21 monthly auction, if it's a GCR. There are so many
22 variables that make all of those questions -- even if
23 the witness was able to produce any sort of response,
24 that would make it impossible for that evidence to be
25 relevant and helpful for purposes of developing the

record here.

EXAMINER SANDOR: Mr. Alexander, anything else? No?

MR. ALEXANDER: No, your Honor. Thank you.

EXAMINER SANDOR: I am going to sustain the objection and kind of in line with what I said earlier about keeping it to this area, to Ohio.

MR. ALEXANDER: May I have one moment, your Honor?

EXAMINER SANDOR: Yes.

MR. ALEXANDER: Thank you, your Honor. I don't have anything further.

EXAMINER SANDOR: Thank you.

OCC?

MR. HEALEY: Yes, your Honor. Thank you.

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CROSS-EXAMINATION

By Mr. Healey:

Q. Mr. Lacey, do you have a copy of the Stipulation in front of you?

A. I do.

Q. Can you turn to page 19, please.

A. Okay.

Q. And in paragraph 25, the Stipulation

1 requires Duke to provide shadow billing data to OCC,
2 correct?
3 A. Yes, it does.
4 Q. And that includes 24 months of historical
5 data?
6 A. Yes.
7 Q. And you oppose this provision of the
8 settlement, correct?
9 A. I do, yes.
10 Q. You are aware that Duke has already given
11 the 24 months of historical data to OCC, correct?
12 A. I am, yes.
13 Q. So in opposing this provision, are you
14 saying that OCC should be required to destroy it?
15 A. I think OCC should not be allowed to use
16 it in any way, shape, or form because it's
17 meaningless data. Destroy, I mean, shred it would be
18 fine, but I think it should not be allowed to be used
19 in any type of proceeding, any type of legislative
20 process, any type of regulatory process.
21 Q. And is it your -- is it your position
22 then that you think the PUCO can tell OCC what to
23 include in its filings?
24 A. No.
25 Q. Is it your position that PUCO has

1 authority to tell OCC what it can and cannot tell the
2 General Assembly?
3 MR. OLIKER: Objection.
4 EXAMINER SANDOR: Grounds?
5 MR. OLIKER: Calls for a legal
6 conclusion.
7 EXAMINER SANDOR: Mr. Healey?
8 MR. HEALEY: Your Honor, he just
9 testified that he thinks that OCC should not be
10 allowed to use it including in the legislative
11 process. I am asking whether he even knows if that
12 would be allowed.
13 EXAMINER SANDOR: You can answer the
14 question.
15 A. I think the Commission could disprove
16 this -- disapprove this part of the settlement and
17 issue a strongly written order that would suggest
18 that you not be allowed, you being OCC not be allowed
19 to use it. I don't believe the Commission is going
20 to police your activities at the legislature, but
21 they could certainly understand and police your
22 activities at the Commission.
23 Q. Let's look at page 1 of your testimony,
24 please. And on line 12 to 13 you state "RESA has
25 members that also provide CRNGS to customers served

by Duke." Do you see that?

A. Yes.

Q. Do you know how many members RESA has?

A. I do not.

Q. Approximately 16 sound correct?

A. I didn't do the count.

Q. Okay.

A. Yeah.

Q. That's fine.

A. I didn't do the count.

Q. That's fine. You say RESA has members -- I'll say CRNGS, if that's all right, for your acronym C-R-N-G-S to customers served by Duke. Which RESA members provide CRNGS service to customers served by Duke?

A. I didn't do that survey. I know IGS is a RESA member and IGS serves competitive gas services in Ohio in the Duke service territory behind the Duke network. I don't know which other ones specifically do or do not.

Q. You can't name any other ones other than IGS?

A. I have not done that research. I am not suggesting there aren't others or there are. I just I have not done that research to give you a

1 definitive answer.
2 Q. In preparing your testimony in this case,
3 did you consult with any RESA members other than IGS?
4 A. I consulted with the trade association
5 counsel, not with the individual members of RESA.
6 Q. And did you consult with any suppliers in
7 Ohio that are not RESA members?
8 A. Not in preparation for this case, no.
9 Q. Let's look at page 1 of your testimony
10 continuing down to line 14 where you say "Suppliers
11 often provide advanced energy management services
12 including innovative retail energy products, demand
13 management, energy efficiency, renewable energy,
14 distributed energy resources, home warranty services,
15 and other products and services." Do you see that?
16 A. I do, yes.
17 Q. Which RESA members are currently offering
18 demand management to Duke gas customers?
19 A. I didn't ask any of the customers -- any
20 of the RESA members if they are providing that
21 service.
22 Q. And what percentage of Duke's gas
23 shopping customers are receiving demand management
24 from their marketer?
25 A. I didn't get that survey.

Q. Which RESA members are currently offering energy efficiency to Duke customers?

A. I did -- again, my testimony is not focused on what the individual companies are offering. It's focused on the impact of this -- on the markets. I didn't do that survey.

Q. Can you name a single marketer in the state of Ohio that's offering energy efficiency to Duke gas customers?

A. I didn't do that research.

Q. And, therefore, you can't?

A. I could speculate, but I don't want to do that so. I'm confident some are, but I can't speculate, so I can't give you that answer.

Q. Can you name a single supplier in the State of Ohio that is offering distributed energy resources to Duke gas customers?

A. I have the same answer. I could speculate, but I can't with certainty give you that answer.

Q. Let's look a little further down on the same page on line 19. You say that "suppliers also provide other benefits to customers including rewards for signing up with the supplier such as gift cards as well as smart thermostats." Do you see that?

A. I do, yes.

Q. Can you name any suppliers in the state of Ohio that are currently offering gift cards to Duke gas customers?

A. I did not review the offers on the Apples to Apples website, just reviewed the website, so I don't know the exact offers on the table today.

Q. Do you know what percentage of Duke's gas shopping customers are receiving smart thermostats from their supplier?

A. I did not do that research.

Q. You mentioned during your cross-examination with Mr. Alexander that IGS offers carbon offsets. Do you recall that?

A. I do, yes.

Q. I think you said they offer it to all their customers; is that what you said?

A. Yeah. It's my understanding that that is their only residential gas offer right now so carbon offset gas product.

Q. Now, when you say all customers, does that mean all new customers or all customers?

A. It's a current offer. It's the only offer -- the only product they are offering now for residential customers is a carbon offset product.

1 Q. But you understand that IGS has current
2 customers that signed a contract before IGS decided
3 to offer only carbon offset products, correct?
4 A. Yes.
5 Q. And do you know what percentage of IGS's
6 current residential customers in Duke's territory are
7 on a carbon offset product?
8 A. I did not do that research.
9 Q. Let's look at page 3 of your testimony,
10 please. And at the very last line, line 24, you say
11 "Neither the Signatory Parties nor the nonopposing
12 parties are adequate representatives of CRNGS
13 suppliers." Do you see that?
14 A. I do, yes.
15 Q. And RESA does not represent the interests
16 of suppliers that are nonmembers, correct?
17 A. RESA doesn't directly represent them but
18 with all trade associations there is a big free rider
19 problem. So a lot of the interests are aligned, so
20 they do represent the interests of nonmembers. They
21 don't do it directly, and they can't say that they
22 are representing XYZ company who is not a member, but
23 suppliers are aligned in many of their interests, and
24 RESA carries those interests to the market.
25 MR. HEALEY: Your Honor, I am going to

1 move to strike any part of that answer that was not a
2 no. He previously testified he has not spoken to a
3 single marketer in the state of Ohio; and, therefore,
4 he is speculating as to whether they would or would
5 not agree with RESA's positions.
6 EXAMINER SANDOR: Mr. Oliker.
7 MR. OLIKER: Your Honor, this witness has
8 many, many years of experience with the competitive
9 retail natural gas and electric market, worked for a
10 competitive supplier, and he has worked with trade
11 associations. He understands how they work, provided
12 an accurate response showing that trade associations
13 generally do, in fact, represent the interests of
14 other suppliers even if they are not members. I
15 think that answer was accurate and fully supported
16 everything you said.
17 EXAMINER SANDOR: Okay. I am going to
18 allow the answer, so you may proceed, and the
19 Commission can weigh the comparison of his answer to
20 the question about RESA members and the trade
21 association. Please continue.
22 MR. HEALEY: Thank you, your Honor.
23 Apologies.
24 Q. (By Mr. Healey) Mr. Lacey, did you survey
25 non-RESA members to determine whether they do or do

1 not agree with RESA's positions in this case?
2 A. I did not survey any members or
3 nonmembers, sorry.
4 Q. Let's turn to page 6 of your testimony,
5 please and direct you to line 10. Again, you say
6 "notably absent from the table were the parties with
7 absolute expertise in retail markets and retail
8 market design." Do you see that?
9 A. I do, yes.
10 Q. Is there a difference between expertise
11 and absolute expertise?
12 A. It's probably just an adjective to
13 describe the suppliers' expertise. Others might
14 claim to have a level of expertise on some of these
15 issues, but these issues impact their businesses
16 directly, so they are the ones with the absolute
17 expertise.
18 Q. Now, using that distinction you just
19 made, do you believe that at least some of the
20 signatory parties to the settlement have expertise
21 even if they might not have the absolute expertise
22 when it comes to competitive markets?
23 A. On what issue in particular?
24 Q. My question refers to your testimony
25 which says "absolute expertise in retail markets and

retail market design." So my question is using that same phrase "retail markets and retail market design," do you believe that any of the signatory parties have expertise in those areas even if they don't have absolute expertise?

A. I think they have experience but not expertise. I think if they had expertise and brought that to the table, we wouldn't be having these discussions today.

Q. Do you know how many people work for the PUCO?

A. No.

Q. And have you examined all of the PUCO's employees' resumes to determine whether there are any employees that have expertise in retail markets?

MR. OLIKER: Objection.

EXAMINER SANDOR: Grounds?

MR. OLIKER: Counsel for the OCC hasn't established that any of those employees were involved in these conversations.

EXAMINER SANDOR: Mr. Healey?

MR. HEALEY: I don't have to establish that. The witness testified that the PUCO Staff lacks expertise. I am asking him the basis for that knowledge.

MR. OLIKER: Your Honor, he is assuming facts not in evidence without establishing who from the PUCO was there. What you would need to do is direct us to go down this line of questioning.

EXAMINER SANDOR: I will allow the answer, allow the question.

A. Could you repeat the question?

MR. HEALEY: Can I have it read back, please?

(Record read.)

THE WITNESS: Can I answer?

EXAMINER SANDOR: Yes.

A. Yeah. I have not reviewed the resumes. I don't know who was there from Staff or other departments of the Commission in the negotiations. Suppliers weren't allowed to be at the table in the negotiations, so I don't -- I've not reviewed the resumes of the people that were at the table.

Q. Do you know how many people work for the Office of the Ohio Consumers' Counsel?

A. I do not.

Q. And have you examined the resume of every OCC employee to determine whether any of them have expertise in retail markets?

A. I don't -- I have not. I don't know who

was there. I don't know what expertise they brought to the table, if any.

Q. And are you aware that at one point Duke Energy had a supplier business Duke Energy Resources, I believe it was called?

MR. OLIKER: Objection.

MR. HEALEY: Sorry. I probably that wrong. We will leave the name out.

Q. (By Mr. Healey) Are you aware at least at one point Duke Energy had a retail supply business?

A. I am aware of that, yes.

Q. And did you -- did you examine the resumes of any Duke employees to determine whether any current Duke employees had done work for the retail business in the past?

MR. OLIKER: Objection.

EXAMINER SANDOR: Grounds?

MR. OLIKER: Once again, it assumes facts not in evidence. We don't know who from Duke was there for this question to have any foundation.

EXAMINER SANDOR: Can you reread the question? I missed the second part of that after "Duke."

(Record read.)

EXAMINER SANDOR: I'll allow the answer.

1 It's in line with the other questions.
2 A. I assume to the extent that the Duke
3 Retail people are there in the utility, they are --
4 their expertise is somewhat dated because the
5 business has been going for a while, but I did not
6 review their resume. I don't know who was in the
7 room. I don't know what -- I mean, I would assume
8 MGP people were in the room, and I would assume their
9 MGP personnel are not especially well suited for --
10 well versed in competitive retail markets.
11 MR. HEALEY: Your Honor, I am going to
12 move to strike the beginning of his answer where he
13 speculated as to the datedness of anyone's experience
14 and then also to the end of his answer where he said
15 I am going to assume and then continued to speculate
16 as to who may or may not have been in the room. He
17 did answer in between that that he did not examine
18 the resumes and that was all my question asked.
19 MR. OLIKER: Your Honor, the initial
20 question was with respect to Duke Energy employees
21 that may have worked for the retail business.
22 Mr. Lacey commented that that retail business was in
23 operation many years ago. So his answer was
24 perfectly responsive to the question and clarified
25 that any experience they had may not be helpful.

EXAMINER SANDOR: I am going to deny the motion to strike.

Q. (By Mr. Healey) Let's turn to page 15 of your testimony, please, and on line -- line 11, line 11 to 12, you state "For many customers, price certainty is more important than getting the lowest price." Do you see that?

A. I do, yes.

Q. Did you survey Duke's current customers to determine whether they believe that price certainty is more important than getting the lowest price?

A. That's not what I base that sentence on, no.

Q. Do you know what -- for what percentage of Duke's customers is price certainty more important than getting the lowest price?

MR. OLIKER: Objection.

EXAMINER SANDOR: Grounds?

MR. OLIKER: Sorry. Maybe Mr. Healey could rephrase if he is talking about Duke's natural gas customers.

MR. HEALEY: Sure.

MR. OLIKER: A little vague right now.

MR. HEALEY: Fair.

1 Q. (By Mr. Healey) For what percentage of
2 Duke's current natural gas customers is price
3 certainty more important than getting the lowest
4 price?
5 A. I haven't surveyed the Duke customers.
6 I've been involved in retail markets for 20 years and
7 have surveyed many customers over many years, and the
8 results are always that price certainty is very
9 important in signing a contract. And that holds true
10 for residential customers and C&I customers. And
11 customers typically that go into a variable price
12 product usually do so knowing full well the risks.
13 MR. HEALEY: Your Honor, I am going to
14 move to strike again. The question was have you ever
15 surveyed Duke's current customers. If he wants to
16 address on redirect what he may have done in the past
17 in other states for other customers, his counsel can
18 certainly do that.
19 Further, his reference to alleged surveys
20 would violate the best evidence rule, 1002, as he has
21 not produced any such surveys and is not reliable for
22 him to simply state what the results of them were.
23 EXAMINER SANDOR: I agree. Motion to
24 strike granted.
25 Mr. Lacey, if could you just answer the

1 question directly.
2 Q. (By Mr. Healey) Mr. Lacey, on page 15 of
3 your testimony at lines 14, you state "In 2021, less
4 than 5 percent of mortgages signed in the US included
5 adjustable-rate provisions." Do you see that?
6 A. I do, yes.
7 Q. And you believe that this lends support
8 to your conclusion that customers like fixed-price
9 longer-term products, correct?
10 A. That's a very strong indication because
11 consumers could save thousands of dollars a year on
12 adjustable rate mortgages.
13 Q. Now, you understand that fewer than
14 50 percent of Duke's current natural gas customers
15 shop for their natural gas supply, correct?
16 A. I have not done that research.
17 Q. So you don't know what percentage of
18 Duke's natural gas customers are currently shopping
19 customers?
20 A. I do not.
21 Q. And given that you don't know what
22 percentage are current shopping customers -- strike
23 that.
24 Let's turn to page 29 of your testimony,
25 please. On line 14 you state "The retail

1 (non-commodity) costs of operating the gas supply
2 business, the so-called "cost to serve," are
3 subsidized by the distribution business, and not
4 reflected in the GCR or SSO price." Do you see that?
5 A. I do, yes.
6 Q. Did you perform any studies to determine
7 that there is any such alleged subsidy?
8 A. I reviewed the presen -- so talking about
9 the SSO, the perspective SSO, Duke's presentation to
10 stakeholders in September indicated that it would be
11 a passthrough basically which would include
12 transportation costs and the NYMEX gas price. They
13 did not mention any billing costs, customer care
14 costs, corporate overhead, regulatory costs, or
15 anything like that. So I did not conduct an
16 independent study, but based on documents that Duke
17 has presented, I made that conclusion.
18 Q. You recently testified in a base rate
19 case involving AEP Ohio, correct?
20 A. I did.
21 Q. And in that case you made a similar
22 argument about the competitive market subsidizing the
23 distribution business, did you not?
24 A. I did, yes.
25 Q. And are you aware that the Commission

1 rejected that argument yesterday in its ruling in the
2 AEP Ohio case?
3 MR. OLIKER: Objection.
4 EXAMINER SANDOR: Grounds?
5 MR. OLIKER: I don't understand the
6 relevance of the argument -- or of the question,
7 particularly given the order that the Commission
8 rendered in that case which was more of a
9 technicality than what I think Mr. Healey is
10 attempting to get at here.
11 EXAMINER SANDOR: Mr. Healey?
12 MR. HEALEY: I asked the witness if he
13 was aware of the ruling rejecting his testimony.
14 It's relevant because he mentions this topic here in
15 his testimony as it pertains to Duke.
16 EXAMINER SANDOR: I'll let the witness
17 answer and qualify that question or his answer as
18 need be with regard to the order.
19 MR. OLIKER: Thank you, your Honor.
20 A. I have not read the order yet.
21 Q. Thank you. Let's look at page 16 of your
22 testimony, please. And starting on line 7, you
23 discuss a hypothetical about a customer who signed a
24 long-term fixed-price contract. Do you see that?
25 A. I do, yes.

Q. And you believe that given the increase in natural gas commodity prices recently, a customer that signs such a long-term fixed-price contract would be extremely satisfied with that decision, correct?

A. I would be extremely satisfied if I had signed that contract, yes.

Q. And if the reverse were true, if you signed a long-term fixed-price contract and then prices fell significantly, you would be extremely dissatisfied, correct?

A. Not necessarily. If I signed this contract a year ago, there are a lot of reasons I would have signed it, or I could have signed it, right? A year later if I found out that I hit a home run, great. The same scenario holds in reverse. I could have signed a contract a year ago because I needed to levelize my rate. I needed to do something to lower my winter costs, and purchasing a year-long contract would do that. And if market -- if market prices went down, I would say, oh, well. I will have another opportunity to sign another contract.

Q. So is it your -- is it your testimony that no matter what happens with market price, you would be satisfied with a long-term fixed-price

contract?

A. Me personally, I would be content with the decision I made. I might -- I might be frustrated by the decision. It's like buying a stock. If I bought a stock and it went up, I would be thrilled. If I bought a stock and it went down, I am a -- you know, made a choice that didn't pan out so. I -- I am comfortable with decisions I make. Sometimes I don't like them in hindsight. Oftentimes I do appreciate what I did in hindsight.

Q. Let's turn to page 18 of your testimony, please. On line 22 you state that including the price-to-compare message on the bills may persuade customers to terminate their relationship with the supplier which can lead to an early termination fee. Do you see that?

A. Yes.

Q. Now, a customer in deciding whether to terminate their relationship would take that early termination fee into account, correct?

A. If they remembered it, yes, one would think.

Q. And you believe that -- let's talk about residential customers. Do you believe that residential customers are all able to make

1 intelligent decisions about whether to shop with a
2 supplier?
3 A. I am confident the customers have the
4 ability to make financial decisions on their own
5 behalf, yes.
6 Q. And that being the case, they shouldn't
7 be duped by what you consider to be a misleading
8 price-to-compare statement, right, because they will
9 take all those other factors into account when they
10 make a decision, right?
11 MR. OLIKER: Objection, mischaracterizes
12 the testimony.
13 EXAMINER SANDOR: Mr. Healey.
14 MR. HEALEY: I am not attempting to
15 characterize his testimony. I am asking him his
16 belief in response to the question I am asking.
17 EXAMINER SANDOR: Mr. --
18 MR. OLIKER: Go ahead. I'm sorry.
19 EXAMINER SANDOR: Mr. Lacey, you can
20 answer and qualify the answer as you see fit.
21 THE WITNESS: Okay. I am going to have
22 the question again, if that's okay.
23 EXAMINER SANDOR: Yes, yes.
24 (Record read.)
25 A. My response to that would be they are

1 starting a decision process based on that
2 information, right? So I don't know. Duped is your
3 word. If they take an action in response to data
4 that's inaccurate, then they got duped. There is
5 other data available in the market available to them,
6 but you would be providing them -- the bill would be
7 providing them with bad data, bad information, not
8 actionable information.
9 Q. Do you know whether in Ohio suppliers are
10 allowed to tell customers what the current GCR rate
11 is?
12 A. It's on the Apples to Apples website, so
13 I'm -- I would be surprised if there was a rule
14 prohibiting that.
15 Q. So in your opinion then if a marketer --
16 let me start that again. In your opinion if a
17 supplier was marketing to a customer and said here is
18 our rate, here is the current GCR rate, that would be
19 misleading?
20 A. No. That's a fact-based statement. It
21 would depend on what other information they said with
22 it. If they said this is a GCR rate, it's now
23 January 2022, let's add a seven-year high, it's going
24 to stay that way for the next five years, that would
25 be inaccurate. If they said here is a GCR rate, it

1 changes monthly, we've got 12 months or three-year or
2 five-year carbon offset products, and it costs this,
3 that's not misleading at all.
4 Q. I would like to look at your Exhibit
5 FPL-4 to your testimony, please. Now this exhibit is
6 a 24 months of historical shadow billing data that
7 Duke provided to OCC, correct?
8 A. That's what it purports to be. I can't
9 validate that.
10 Q. Understood. I am not asking you to -- to
11 back any of the data. I just want to identify what
12 it purports to be. Now according to this, Duke by
13 Duke's calculation customers have paid an extra
14 $70.7 million as a result of shopping --
15 MR. OLIKER: Objection.
16 Q. -- compared to the GCR rates, correct?
17 MR. OLIKER: Apologies. Objection.
18 EXAMINER SANDOR: Grounds?
19 MR. OLIKER: That customers and, you
20 know, noting that the witness can't validate the data
21 but assuming customers means all customers and
22 whether this data is in a complete population sample.
23 EXAMINER SANDOR: Mr. Healey?
24 MR. HEALEY: I'll ask it again.
25 EXAMINER SANDOR: Thank you.

Q. (By Mr. Healey) The shadow billing that Duke performed shows that for the customers included within its shadow billing data, they paid about $70.7 million more over this period than they would have if they were on the GCR, correct?

A. I cannot validate any of these numbers. I have challenged every one of these numbers. The document says what it says. I disagree with it. So I can't say that -- it represents that. There is no calculations in here. There is no supporting documentation. I have not considered what this document is other than what someone said it's supposed to be.

Q. Have you seen any of the Columbia Gas shadow billing data that's been provided to OCC over the years?

MR. OLIKER: Objection.

EXAMINER SANDOR: Grounds?

MR. OLIKER: I believe there is no foundation, and this question was already asked and answered by Mr. Alexander. That's the objection I inserted earlier about it not being a valid question.

EXAMINER SANDOR: Mr. Healey?

MR. HEALEY: I'll lay some more foundation.

Q. (By Mr. Healey) Are you aware that Columbia Gas of Ohio has provided shadow billing data to OCC?

A. It's my understanding they have, yes.

Q. And have you seen any of that?

A. I have not.

Q. Have you read any of the news stories about that shadow billing data?

MR. OLIKER: Objection.

MR. HEALEY: I'll ask it again.

Q. (By Mr. Healey) Do you know whether there have been any reports in the news about that shadow billing data?

MR. OLIKER: Objection regarding the news and hearsay, hearsay within hearsay potentially.

MR. HEALEY: I am not asking for the substance. I am just asking whether he knows whether there has been reporting on it.

EXAMINER SANDOR: I will allow that answer with that clarification.

A. It wouldn't surprise me if there is reporting because it's a very inflammatory type of calculation. And so maybe it's a headline grabber. I have not seen any media news, whatever. But if the math is premised on the same type of math, it's

1 fundamentally flawed data.
2 Q. Do you think that suppliers would be so
3 concerned with shadow billing data if the shadow
4 billing data showed that customers were saving money
5 by shopping?
6 A. I -- yes, I would be. It's -- it's a bad
7 comparison. It's -- it's comparing different
8 products. It's -- in this case it is a whole --
9 wholesale passthrough product versus a retail
10 delivered product fully priced out versus subsidized.
11 I mean, they're completely different products. It's
12 like comparing the price of a gallon of milk to a
13 price of a gallon of gas. They are not related.
14 MR. HEALEY: Thank you. That's all I
15 have, your Honor.
16 EXAMINER SANDOR: Thank you. Okay.
17 Let's go through the list here. Any cross from OEG?
18 MS. COHN: No, your Honor. Thank you.
19 EXAMINER SANDOR: Any cross from OMAEG?
20 MS. BOJKO: No, your Honor. Thank you.
21 EXAMINER SANDOR: Any cross from Kroger?
22 MS. WHITFIELD: No, your Honor. Thank
23 you.
24 EXAMINER SANDOR: I will note for the
25 record OPAE counsel has informed the Bench and I

1 believe as well the other counsel that he does not
2 have any cross as well even though he stepped out.
3 And any cross from Commission Staff?
4 MR. MARGARD: No. Thank you, your Honor.
5 EXAMINER SANDOR: Okay. Then I believe
6 that's it so let's redirect, Mr. Oliker, if you have
7 any.
8 MR. OLIKER: Just briefly.
9 - - -
10 REDIRECT EXAMINATION
11 By Mr. Oliker:
12 Q. Mr. Lacey, do you remember questions
13 about the placing the price for default service on
14 shopping customers' bills?
15 A. Yes.
16 Q. And there were questions about whether
17 placing the default service price on the bills of
18 nonshopping customers would be discriminatory. Do
19 you remember that?
20 A. I do.
21 Q. Do you know, is the default service price
22 already on the bills of nonshopping customers?
23 A. Is -- could you repeat that? I'm sorry.
24 Q. Do you know if the default service price
25 is already on the bills of nonshopping customers?

A. On nonshopping customers, it would have to be to generate a bill.

Q. Okay. Thank you. So to the extent that the price-to-compare statement proposed in the Stipulation is also placed on the bills of nonshopping customers, in your view, would it still be discriminatory?

A. Yes.

Q. Okay. Can you explain why that is?

A. Well, your -- you're comparing -- in one case you're comparing a product that you're buying to the product that you're buying. In another case you are comparing the product that you are buying to something you're not buying. A completely different product, right? It's -- you know, you are sending a message to one set of customers and a different message to another set of customers.

Q. Okay. And do you remember questions about whether the Stipulation prevents a supplier from communicating with their customers?

A. I do.

Q. And in your view does the Stipulation, if approved, make it harder or easier for suppliers to communicate with their customers about retail electric and gas service?

A. The Stipulation would make it much more difficult to have an honest conversation with a customer or potential customers because the utility would be putting bad information on the bill, so you would have to explain away the bad information as part one of your conversation.

And then so then the customer has to say, oh, yeah, I trust this guy more than I trust the utility since it's very harmful.

MR. OLIKER: Okay. Thank you, Mr. Lacey. Those are all the questions I have.

EXAMINER SANDOR: Okay. On that limited redirect, any recross from any of the parties?

MR. ALEXANDER: Not from the company.

EXAMINER SANDOR: OCC?

MR. HEALEY: No, your Honor.

EXAMINER SANDOR: None from anyone else?

Mr. Lacey, thank you for attending this evening. You are excused.

THE WITNESS: Thank you, your Honor.

EXAMINER SANDOR: Now, Mr. Oliker?

MR. OLIKER: With that I would move for the admission of RESA/IGS Exhibit 2.

EXAMINER SANDOR: Any objections to its admission?

1 MR. HEALEY: Subject's to the granted
2 motion to strike, no, your Honor.
3 MR. OLIKER: Of course, we were moving
4 for the proffered portion as well. Thank you, your
5 Honor.
6 EXAMINER SANDOR: Proffer is noted. And
7 considering there are no objections, the RESA/IGS
8 Exhibit 2 is admitted in conformance with granting
9 the motion to strike.
10 (EXHIBIT ADMITTED INTO EVIDENCE.)
11 MS. PETRUCCI: Your Honor, I would like
12 to note we would join in the proffer.
13 EXAMINER SANDOR: Thank you. That's
14 noted.
15 And now I believe Mr. Settineri, and then
16 also I will shift it over to Judge Addison.
17 EXAMINER ADDISON: Would everyone like a
18 5-minute break before we start this next witness?
19 Let's go ahead and take a 5-minute break.
20 Let's go off the record.
21 (Recess taken.)
22 EXAMINER ADDISON: All right. Let's go
23 ahead and go back on the record.
24 Mr. Settineri.
25 MR. SETTINERI: Yes, your Honor. Thank

you. At this time RESA and IGS call Mr. James Crist to the stand.

EXAMINER ADDISON: Welcome, Mr. Crist. If you would please raise your right hand.

(Witness sworn.)

EXAMINER ADDISON: Thank you.

Mr. Settineri, please proceed.

MR. SETTINERI: Thank you, your Honor. At this time I would like to mark an exhibit. I would like to mark as RESA/IGS Exhibit -- let me strike that. Yes, I would like to mark as RESA/IGS Exhibit 3 the direct testimony of James L. Crist.

EXAMINER ADDISON: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. SETTINERI: Thank you, your Honor.

- - -

JAMES L. CRIST, P.E.

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

DIRECT EXAMINATION

By Mr. Settineri:

Q. Good evening, Mr. Crist.

A. Good evening, Mr. Settineri.

Q. Could you please state your name and business address for the record, please.

A. I'm James L. Crist. I'm President of Lumen Group, Incorporated, corporate offices at Suite 101, 4226 Yarmouth Drive, Allison Park, Pennsylvania 15101.

Q. And do you have with you what's been marked as RESA/IGS Exhibit 3?

A. I do.

Q. And could you identify that for the record, please.

A. It's my prefiled direct testimony in these proceedings.

Q. And was that testimony prepared by you or at your direction?

A. Yes, it was.

Q. And do you have any revisions to your testimony at this time?

A. I do.

Q. If you could carefully and slowly walk through those revisions for the court reporter, please.

A. Yes. Okay. We are going to start on page 10, line 1. We are going to change some numbers. Change, delete "3.3," replace that with "1.6." Continuing down that same line, delete "3.4," replace that with "1.9."

1 Moving to line 2, delete the word
2 "first," replace that with "second."
3 Moving to line 3 between the words
4 "although" and "serving" insert the word "previously"
5 so that it reads "although previously serving."
6 That's it for page 10.
7 Next up is page 12. Towards the bottom,
8 line 22, we are going to strike the word "about" and
9 the No. "250." We're going to insert the No. "183."
10 MR. HEALEY: I apologize. Can you give
11 us that one again, the page and line?
12 THE WITNESS: Yep. That's page 12 and
13 then line 22. See it there where we are talking
14 about the number of employees? Okay. So we are
15 getting rid of "about 250," strike that, insert an
16 exact number of "183."
17 And then moving down the line where it
18 says "Whereas, today IGS," we are going to add
19 something to that so that it reads "IGS Ventures
20 (IGS's holding company)," and then we are going to
21 say "has" strike the word "over," replace that with
22 the word "about." So it will read "Whereas, today
23 IGS Ventures (IGS's holding company) has about 750
24 employees in Ohio." That takes care of page 12.
25 Let's move next to page 15, line 3, my

1 answer first sentence is "No." Delete in entirety of
2 the second sentence after that which also means we
3 are deleting my Exhibit JC-7. Resume that with
4 "Based on my experience, this is not going to
5 happen," and it stays. That's it for page 15.
6 Next, page 17, line 14. After the comma,
7 delete the word "changing" and replace that with
8 "removing" and then add "the topic of," add the words
9 "topic of," so "Removing the topic of" and then
10 continue on "default service transition," then delete
11 "from an SSO to an SCO." Delete those words and then
12 resume with "should have no effect."
13 Continuing on that same page, line 18 --
14 oh, excuse me. Line -- hang on. Line 17. I have
15 just got to make sure I am correct here. Yes.
16 Delete the sentence that begins with "The addition"
17 so delete that entire sentence. Then the next
18 sentence delete the word "by," replace that with the
19 word "because the parties to the Stipulation" and
20 then change including to "included." And then it
21 says "Default service transition as a topic," then
22 add "in the Stipulation indicates that the timing is
23 ripe." So that concludes page 17 and that includes
24 all of my changes.
25 Q. Thank you, Mr. Crist. If I was to ask

you the questions in your testimony as written today, would your answers be the same as you have revised?

A. Yes, they would.

MR. SETTINERI: Thank you.

Your Honor, the witness is available for cross-examination, and we would move for the admission of RESA/IGS Exhibit 3, subject to the cross-examination.

MR. ALEXANDER: Your Honor, would now be the appropriate time for motions to strike?

EXAMINER ADDISON: You beat me to the punch, Mr. Alexander. Please proceed.

MR. ALEXANDER: Thank you, your Honor. The Company moves to strike page 12, line 18, through page 13, line 20.

MR. SETTINERI: Mr. Alexander, what was that reference again, please?

MR. ALEXANDER: Page 12, line 18, through page 13, line 20, one full question and answer.

MR. SETTINERI: Okay. Thank you.

MR. ALEXANDER: And, your Honor, may I briefly voir dire the witness in support of this motion to strike?

EXAMINER ADDISON: You may.

- - -

1 VOIR DIRE

2 By Mr. Alexander:

3 Q. Good evening, Mr. Crist. How are you

4 today?

5 A. I'm fine, Mr. Alexander.

6 Q. Good to see you again. Mr. Crist, you

7 are not an employee of IGS Energy, correct?

8 A. That's correct.

9 Q. And you are not an employee of IGS

10 Ventures?

11 A. I am not.

12 Q. And the information cited in your

13 testimony at pages 12 and 13 regarding the employees

14 of now states IGS Ventures was provided to you by

15 counsel for IGS Energy?

16 A. Yes, it was so that I could illustrate

17 the growth of IGS in Ohio.

18 Q. And at the time of your deposition, you

19 did not know the relationship between IGS Ventures

20 and IGS Energy, correct?

21 A. I did not, and you've asked me about

22 that, of course. I was curious, so I hit the website

23 of IGS Ventures, and now I understand that IGS

24 Ventures not only owns IGS Energy but also a

25 compressed natural gas company and a solar company.

Q. And, Mr. Crist, you have never seen IGS Ventures or IGS Energy payrolls, correct?

A. I have not seen their payrolls, that's correct.

Q. And IGS Ventures and IGS Energy are not publicly-traded companies, correct?

A. They are not.

Q. And as such, you have never seen their financial statements, correct?

A. No. I've seen their offices and buildings. I've been there 20 years ago when they were just little IGS with a couple dozen employees in a small building. I have been there more recently. They were IGS Ventures and beautiful brand new environmentally green building in Dublin.

Q. And I think I asked you whether you -- you are currently an employee of IGS Energy and Ventures but now let's go back.

A. I never have been.

Q. Thank you. You anticipated my question. And you have no personal knowledge regarding the payroll associated with Duke Energy employees in Ohio, correct?

A. Well, that's correct. The knowledge I have on that came from the filed rate case documents

of Duke in rate cases in Ohio.

MR. ALEXANDER: Thank you, Mr. Crist.

Your Honor, the grounds for the motion to strike are twofold. One, as you can tell from the questions, this witnesses does not have any personal knowledge regarding these facts. They were provided to him by counsel for one of the parties. That makes it impossible for us to effectively cross-examine the witness as to information which is not in his possession; and, in fact, it is not even in his employer's possession. It's in the possession of the entity he is providing expert testimony on behalf of. IGS could have provided this information to its own employee and did not. As such, we believe that it has not been validly put into evidence here.

The second ground and I -- that also apply to the Duke evidence, although he does cite the -- the areas where he obtained that information, he has no personal knowledge regarding Duke's payroll and particularly whether there are additional employees located in the state of Ohio which are not included in these numbers. He is going solely off of a rate case filing which is incomplete.

The second ground is that this information is quite frankly irrelevant. We are here

1 today to discuss the Stipulation. The number of
2 employees that IGS or Duke has does not make any fact
3 at issue likely, and as such, it does not contribute
4 anything to the evidentiary record, and so we believe
5 that this question and answer should be stricken.
6 EXAMINER ADDISON: Thank you,
7 Mr. Alexander.
8 Mr. Settineri.
9 MR. SETTINERI: Thank you, your Honor. I
10 would note, first of all, obviously we object to the
11 motion to strike. Certainly relevant, you know,
12 Mr. Crist is looking at harm -- one of the key
13 questions here harm to the market, so he is noting
14 here that the -- impact of the Choice Program in Ohio
15 and the development of -- the development of the
16 Choice Program, so it's certainly entirely relevant.
17 The Duke rate case is a publicly-available document.
18 I would assume it would not be incomplete as Duke
19 Energy said.
20 And as to the received information from
21 IGS, Mr. Crist is not an employee of IGS as he
22 testified or IGS Ventures. He received the
23 information. Counsel did not ask him what type of
24 information he received, what form it was in. And so
25 he said he received information from IGS and so that

is certainly, I think, permissible to have that information.

He also, if you noted, has personal knowledge of the growth of IGS. He mentioned that in his voir dire. I would also note this witness has an MBA as well, so he has a financial education as an MBA as well. So certainly receiving information from IGS using his MBA having personal knowledge of IGS looking at the Duke rate cases certainly allow him to testify as to the development of the industry in Ohio.

And the last if you look at line 18, moreover he -- his proffered testimony, or I should say the testimony moreover is also clear that the Commission should proceed cautiously when it modifies the playing field for natural gas services as the changes may be detrimental to the competitive market resulting in job loss in Ohio. So this question goes to that point, and so it's certainly permissible, your Honor, and relevant. He received information from IGS. Counsel did not say what it was, what form, and it should stand.

EXAMINER ADDISON: Thank you. Does anyone else want to weigh in on this motion to strike?

1 Mr. Alexander, anything further?
2 MR. ALEXANDER: No, your Honor. The
3 information was provided by counsel, and the witness
4 stated that. I don't know that the form in which it
5 was provided makes any difference. It's an
6 assertion of fact under which I cannot question this
7 witness; so, therefore, I believe it should be
8 stricken.
9 EXAMINER ADDISON: Thank you.
10 At this time I will go ahead and leave
11 the testimony in and deny the motion to strike. This
12 will certainly be an area that you can ask questions
13 during cross as to his ability to make such
14 statements and I think it's more appropriate for the
15 Commission to afford any weight they deem appropriate
16 to this particular piece of testimony. So the motion
17 to strike will be denied.
18 Are there any additional motions to
19 strike, Mr. Alexander?
20 MR. ALEXANDER: Not from me, your Honor.
21 EXAMINER ADDISON: Any others from other
22 parties?
23 Okay. Mr. Alexander, you may begin your
24 cross.
25 MR. ALEXANDER: Thank you.

CROSS-EXAMINATION

By Mr. Alexander:

Q. Mr. Crist, can we agree when I say "the Stipulation," I'm referring to the Stipulation filed in this proceeding on August 31 of this year?

A. Yes, I agree to that.

Q. And as defined in paragraph 21 of the Stipulation, Duke Energy Ohio anticipates filing a "auction application" seeking transition from GCR to SSO. If I refer to the "auction application," we understand that's what I am referring to?

A. That is correct. I understand that.

Q. Okay. You believe that Duke's proposal to file the auction application would harm the competitive market because it would delay the movement to a fully competitive market, correct?

A. Yes.

Q. And you believe that the more appropriate transition would be to an SCO?

A. Yes. That would be a more appropriate step today.

Q. You know that Dominion East Ohio Gas, CenterPoint, and Columbia Gas have all moved to an SCO already, correct?

A. Yes.

Q. And you believe that the transition to an SCO by Dominion, CenterPoint, and Columbia was appropriate at the time those transactions occurred?

A. It was appropriate. That was years ago. Now there's no necessity to go to an SSO. We can jump right to an SCO with Duke.

Q. You don't know the date that Dominion East Ohio Gas transitioned away from its GCR, correct?

A. Well, you had asked me that a couple days ago so I was curious so, of course, I researched that. And all three of those companies transitioned prior to 2012.

Q. Well, Mr. Crist, let's be a little more specific so the record is clear. What year do you believe that Dominion East Ohio Gas transitioned away from its GCR?

A. Well, I think that went to an SCO in 2009. I believe they went from a GCR a few years in advance of that.

Q. And, I'm sorry, there was --

MR. ALEXANDER: May we go off the record for a moment, your Honor?

EXAMINER ADDISON: We can.

(Discussion off the record.)

EXAMINER ADDISON: All right. Let's go ahead and go back on the record.

Q. (By Mr. Alexander) So, Mr. Crist, I believe you said that the transition to an SCO happened in 2009. How many years prior to that do you believe that Dominion East Ohio transitioned away from its GCR?

A. I think it was three years prior to that.

Q. So that would have been 2006?

A. 2006.

Q. And do you know the date that Vectren, currently known as CenterPoint, transitioned away from its GCR?

A. 2008.

Q. And do you know the date that Vectren, now known as CenterPoint, transitioned to an SCO?

A. Oh, excuse me, 2008 I believe I meant to say that was the SCO. I'm -- I don't know the date they went to an SSO.

Q. And do you know the date that Columbia Gas of Ohio transitioned away from its GCR?

A. 2012. Well, to an SCO, 2012. Again, I don't know the SSO transition date for Columbia. So by 2012, all three of those major gas utilities were at an SCO, Duke, of course, still under the GCR.

1 Q. Duke Energy Ohio has served customers
2 under GCR for at least the last 20 years, correct?
3 A. Correct.
4 Q. Turning your attention to page 9, line 8.
5 Here you discuss the alleged benefits of a direct
6 link between the competitive supplier and the
7 customer. Do you see that?
8 A. Page 9, line 8?
9 MR. SETTINERI: I'll just object to the
10 characterization of the testimony. I think the word
11 "alleged" was used. Thank you.
12 A. Yes. I say if the Company has an SSO
13 model, they buy gas from a wholesale supplier, so
14 they don't have any link not identified on the bill
15 as a competitive retail supplier which is why I say
16 you have to move to SCO so the retail suppliers can
17 start to establish that customer relation and brand
18 awareness.
19 Q. And you believe that a transition to an
20 SCO would result in a greater percentage of customers
21 shopping, correct?
22 A. That would be the end result, it's closer
23 to the end game of a fully competitive market which
24 is, of course, what the policy states.
25 Q. And you believe the transition to an SCO

would result in a greater percentage of the total load served by the utility to shop, correct?

A. Eventually both customers and load will increasingly shop if we get away from a GCR, go to an SCO.

Q. Now, in your testimony starting at page 6, you included a discussion of Ohio natural gas shopping statistics. Do you see that?

MR. SETTINERI: Mr. Alexander, could you give a line cite as well, please?

MR. ALEXANDER: Certainly. It starts at line 1 and then continues through line 5.

MR. SETTINERI: Thank you, sir.

A. Yes, I do see that, Mr. Alexander.

Q. Do you have --

MR. ALEXANDER: Your Honor, may I have marked for identification Duke Energy Exhibits 8 and 9, please. Duke Energy Exhibit 9 is the 2021 natural gas statewide percentages and Choice as of the second quarter of 2021, and Duke Energy Exhibit 8 would be the 2012 second quarter statistics from that same website.

EXAMINER ADDISON: They will be so marked.

(EXHIBITS MARKED FOR IDENTIFICATION.)

Q. (By Mr. Alexander) Mr. Crist, have you seen Duke Energy Exhibit 9 before?

A. 9, yes. 9 is the -- yeah, 2021 second quarter, yes.

Q. Is Duke Energy Exhibit 9 the same thing as your Exhibit JC-2?

A. Yes. Is it 2? Hold on. Let me make sure. Yes, that is correct. This exhibit is in color. Mine was black and white. Same data pulled from the same website obviously.

Q. And Duke Energy Exhibit 9 you would agree shows the statewide total percentage of natural gas customers in Choice as of the second quarter of 2021?

A. Yes.

Q. And is the second quarter of 2021 the most recent data available on the Commission's website for natural gas Choice?

A. Yes, it is. And, in fact, I just looked at that this morning.

Q. Now, the website from which you obtained Duke Energy Exhibit 9 goes back to 2012, correct?

A. It does and then there is some -- you can fish around and find some previous data also in a PUC website, but 2012 is on that website.

Q. And the previous data you referenced was

on the Commission's website but different pages in a different format, correct?

A. That's correct.

Q. And so now turning your attention to Duke Energy Exhibit No. 8.

A. 8? Yes.

Q. Is this the 2012 second quarter data from that same website?

A. Yes. That's correct.

Q. So I would like to start with Duke Energy Exhibit 9 because that's the one that was in your testimony, and we'll sort of explore this chart a bit. Starting with the four colors column on the left side of the page, those are total shopping percentages by utility, correct?

A. That is correct.

Q. And the "Statewide Total Percent in Choice" heading at the top of the page shows the total shopping percentage in the state of Ohio?

A. It does. Major utility 56.8 percent it shows.

Q. Thank you. And turning back to the table on the left with the four utilities, the highest is Dominion East Ohio Gas at 77.7 percent?

A. You are reading that correctly.

Q. And the lowest currently is CenterPoint at 40.1 percent?

A. Correct.

Q. Turning to the right-hand side of this page, does that include the data by utility by customer class?

A. It does.

Q. And the total statewide shopping percentage as of 2021 quarter 2 was 56.8 percent?

A. That's right.

Q. Now turning your attention to Duke Energy Exhibit 8.

A. Okay. Yes.

Q. Is this organized in the same manner as Duke Energy Exhibit 9?

A. Yes, it is.

Q. Now, as of 2012, the second quarter, the utility with the most shopping was Dominion East Ohio at 95.6 percent?

A. Yes.

Q. And the company with the lowest amount of customers in Choice was Duke Energy of Ohio at 34.2 percent?

A. Yes.

Q. As of 2012, the statewide total

1 percentage of customers in Choice was 58.7 percent?
2 A. Yes.
3 Q. So focusing on the change here for
4 Dominion East Ohio to start, you don't know what to
5 attribute the cause of the decline in shopping in
6 2012 to 2021, correct?
7 A. Well, obviously I recall you asked me
8 this a couple days ago, and I was curious. So I
9 since Googled and found the supplier meeting document
10 that Duke -- that Dominion East Ohio recently issued,
11 and I'm now suspicious of that data in 2012 for
12 Dominion because in the supplier data that I reviewed
13 which is posted on their website, the shopping
14 numbers were relatively consistent over the past 10
15 years. So I don't have any knowledge or explanation
16 as to why that showed at 95.6 percent on that one,
17 but if I rely on a more recent Dominion East Ohio
18 document, it looks like it -- shopping was consistent
19 in that period for them.
20 MR. ALEXANDER: Your Honor, I am going to
21 move to strike that response because it included
22 hearsay information, documents that the witness went
23 and found on now a third-party's website which does
24 not provide any of this witness's personal knowledge.
25 He is simply repeating what he saw on another website

1 rather than his own personal knowledge, and so I move
2 to strike it.
3 EXAMINER ADDISON: Mr. Settineri?
4 MR. SETTINERI: Yes. This is an expert
5 witness, I think we have established that who has
6 been in the industry many years. It's part of his
7 work. He certainly should be able to review not just
8 a mystery website, but the website of a natural gas
9 company Dominion Energy Ohio I believe it is now
10 called.
11 And so he's -- you heard him say he got
12 it from the Dominion website, so it's clearly a
13 Dominion document. It informs his opinion and it
14 informs his opinion of whether the numbers presented
15 as to Dominion East Ohio Gas on Duke Exhibit 8 are
16 accurate and he's certainly allowed to provide that
17 information based on his expert opinion.
18 MR. ALEXANDER: Your Honor, could I
19 briefly respond?
20 EXAMINER ADDISON: You may.
21 MR. ALEXANDER: The witness has proffered
22 that PUCO website shopping statistics as a reliable
23 source of data. Indeed that's the sole reason why we
24 are discussing this is because it was included in the
25 witness's testimony. As such, if it's flawed, it

should be withdrawn or stricken from the witness's direct testimony. If the Commission shopping data is reliable, the witness should rely on it. It's inappropriate and harmful to the Intervenors to say, well, this document can be relied on when we wish to use -- use it, but when the Commission data does not support our position, we can go to random websites and dispute those facts, so it's either reliable or it's not.

EXAMINER ADDISON: Thank you. I think I've heard enough.

Karen, as much as I hate to ask, would I be able to have that answer reread?

(Record read.)

EXAMINER ADDISON: Thank you so much, Karen.

I'm going to go ahead and grant the motion to strike in part. I think the middle portion of his answer was responsive and did not cite to any hearsay documents that are not before us today. So I will go ahead and strike everything in the answer up to "So I don't have any knowledge" and then also strike everything after "But if I rely." Thank you.

MR. SETTINERI: I'm sorry. I was on mute. Could you -- could I have that question and

1 then the answer as you have with the revision read?
2 I couldn't quite follow. I just want to know how the
3 answer read.
4 EXAMINER ADDISON: Absolutely.
5 Karen, please. Thank you.
6 (Record read.)
7 EXAMINER ADDISON: Thank you, Karen.
8 Thank you.
9 MR. SETTINERI: And thank you, everyone.
10 MR. ALEXANDER: Thank you, your Honor.
11 Q. (By Mr. Alexander) Mr. Crist, could you
12 please turn to page 15, line 9, when you claim that
13 only Choice suppliers will develop innovative new
14 products and present them to customers. Do you see
15 that?
16 A. Yes, I do, Mr. Alexander.
17 Q. You believe that the creation of innovate
18 new products would drive more customers to shop,
19 correct?
20 A. Yes. It will give them more
21 opportunities to choose among a variety of products
22 and services.
23 Q. Ohio has retail competition for natural
24 gas since at least 2008, correct?
25 A. Yes.

Q. You're not aware that Ohio electric utilities use a Standard Service Offer to procure wholesale electricity to serve nonshopping customers, are you?

A. No. I -- I did not look at the Ohio electric market, correct.

Q. And you have never reviewed the Ohio electric market retail shopping percentages, correct?

A. Correct.

MR. SETTINERI: I'll just object, outside the scope of his testimony.

THE WITNESS: Sorry.

MR. SETTINERI: This is a gas proceeding, not an electric.

EXAMINER ADDISON: I believe Mr. Crist answered "correct," so we'll move on.

But, Mr. Crist, if you want to take a moment to wait to answer.

THE WITNESS: Take a deep breath.

EXAMINER ADDISON: If there is an objection pending, just give me a little time to rule.

THE WITNESS: I will, your Honor.

EXAMINER ADDISON: Thank you.

Q. (By Mr. Alexander) Turning to page 6,

1 line 23 of your testimony where you state that "Duke
2 has no incentive to minimize the cost of gas." Do
3 you see that?
4 A. Yes, I do.
5 Q. You've never viewed any reports to
6 compare GCR costs with the costs of purchasing gas in
7 other ways, correct?
8 A. My -- no, I haven't done that. I put
9 this statement in my testimony to emphasize that
10 under the GCR process, there's not an incentive to
11 minimize the cost of gas. There's an incentive
12 simply to make sure your purchases are prudent.
13 Q. And let's explore that a bit. At page 7,
14 line 2, you state "Imprudent purchases would be
15 disallowed for recovery by the utility," correct?
16 A. Yes. They go through an annual process
17 where those purchases are reviewed.
18 Q. And so the risk of an adverse prudence
19 determination is a risk to Duke Energy Ohio, correct?
20 A. If they had imprudent purchases, correct.
21 Q. Okay. So I believe you testified earlier
22 as part of research you did between your deposition
23 and today, that you learned that Dominion Ohio,
24 Columbia Gas of Ohio, and CenterPoint all
25 transitioned to an SSO before ultimately

transitioning to an SCO, correct?

A. Yes. Back then 10 years ago or more, those were the steps. Now we just can go right to an SCO.

Q. You do not believe that those utilities violated Ohio Revised Code Section 4929.02 when they transitioned to an SSO, correct?

A. No. At the time that was the step that was the usual back then but here we are, you know, it's 2021 going into 2022. We can skip the SSO, jump to the SCO, and get to the point of the policy which is let's get to an expeditious transition to a fully competitive market.

Q. Please turn to page 12, line 18. This is the material we previously covered earlier in the voir dire with regard to my motion to strike, so now we are going to have to delve into it in quite a bit more detail.

A. I'm there.

Q. You're --

A. I'm sorry. We are going to talk about IGS now.

Q. Well, and we are going to discuss this question and answer.

A. Okay.

1 Q. You're not an employee of IGS Energy,
2 correct?
3 A. Right. We've established I'm not
4 employed by IGS Energy or IGS Ventures, and I never
5 have been.
6 Q. And this is going to be a little
7 repetitive but since the prior questions were in voir
8 dire, I want to make sure the record is clear.
9 A. I'm good with that, Mr. Alexander.
10 Q. Okay. You are aware the Intervenor in
11 this case is Interstate Gas Supply, Inc.?
12 A. Yes, the competitive retail marketer.
13 Q. And you did not know the relationship
14 between Interstate Gas Supply, Inc., and IGS Ventures
15 at the time of your deposition, correct?
16 A. Right, several days ago. I hadn't done
17 anything with IGS Ventures, and because of your
18 questions to me, I was curious. So I looked at their
19 website, and now I understand that they came into
20 business in -- created 2013 as the holding company.
21 Q. And you don't have any personal knowledge
22 of that. You found it on the address of what
23 website?
24 A. Actually I found it on the Ohio
25 Department of State website. I searched for business

1 creation and found their business creation filing
2 with the Ohio Department of State which I believe to
3 be true and accurate.
4 Q. You don't know whether IGS Ventures is
5 licensed to provide competitive retail natural gas
6 service in the State of Ohio, correct?
7 A. I believe they are a subsidiary. IGS
8 Energy is the natural gas competitive retail
9 supplier.
10 Q. But my question was you don't know
11 whether IGS Ventures is licensed to provide
12 competitive retail natural gas service in the state
13 of Ohio, correct?
14 A. I don't believe they would be, but again,
15 I don't know that for sure.
16 Q. The information you have included in this
17 response on the employees and payroll of IGS Ventures
18 was provided to you by counsel for IGS Energy,
19 correct?
20 A. Correct, Mr. Oliker.
21 Q. Mr. Oliker gave you this information on a
22 document which claimed that these are the
23 employees -- strike that. Let me start over.
24 Mr. Oliker informed you that these are
25 the employee and payroll numbers for IGS Ventures,

1 correct?
2 MR. SETTINERI: Just object. Facts are
3 not in evidence. Assumes facts that are not in
4 evidence.
5 EXAMINER ADDISON: I'm -- hold on. I am
6 going to provide Mr. Alexander quite a bit of
7 latitude for this particular question given my ruling
8 on the motion to strike.
9 You may answer, Mr. Crist.
10 A. That is salary data and employee data for
11 IGS Ventures, the current data, and I am just going
12 to pull up the data. The -- yeah. The 2010 data, so
13 IGS Ventures didn't exist in 2010, formed in 2013.
14 So that clarification helps. So the 2021 data which
15 I cited into in my testimony does include Ventures,
16 although the lion share of the employees and the
17 salary budgeted in Ventures is for their competitive
18 retail gas marketer IGS Energy.
19 Q. Isn't it true you have no personal
20 knowledge regarding the percentage of the payroll of
21 the IGS Ventures which is associated with the
22 competitive marketer IGS Energy?
23 A. Yeah. I have no knowledge of that, but I
24 certainly understand the magnitude that IGS Energy
25 has as a competitive retail supplier. These guys are

1 involved in a number of states in competitive retail
2 supply markets.
3 Q. And you don't know whether the alleged
4 $77 million in annual payroll for IGS Ventures
5 represents actual payroll or budgeted payroll,
6 correct?
7 A. That represents actual payroll because
8 it's the historic period November 2020 through
9 October 2021 so that's payroll, would be the wages
10 paid to the employees not including fringe benefits,
11 so it's a substantial number is the point that my
12 testimony was making. And this competitive market
13 created the growth of a substantial company and there
14 is other companies in Ohio, but certainly IGS has
15 been a huge success story for the competitive market.
16 Q. Mr. Crist -- I'm sorry. I didn't mean to
17 interrupt. Was your answer complete?
18 A. I said it -- just pointing out it created
19 an Ohio business so that's a success.
20 Q. Did someone from IGS tell you those were
21 actual payroll numbers after your deposition?
22 A. I discussed it with Mr. Oliker, and I
23 looked at the title on that to confirm that that was
24 an actual since it said November 2020 through
25 October 2021.

1 MR. ALEXANDER: Your Honor, again, move
2 to strike. This question and answer and all related
3 discussion of the payroll of IGS Ventures, the
4 witness is simply parroting information provided to
5 him by Mr. Oliker who I cannot cross-examine. There
6 is no way for me to effectively challenge these
7 facts. And as such, I renew my motion in light of
8 this new testimony that the witness was provided
9 information after his deposition and ask that it be
10 stricken.
11 EXAMINER ADDISON: Mr. Settineri?
12 MR. SETTINERI: Your Honor, the
13 information was provided to Duke Energy prior to
14 Mr. Crist's deposition, No. 1. No. 2, as part of his
15 work, Mr. Crist is certainly able to discuss with IGS
16 as to its business, and to the extent he has received
17 information, not just verbally, and it's certainly
18 relevant. He also has, again, special experience
19 with a number of employees there, and so I do think
20 it's relevant to his testimony, your Honor. And I
21 would note we are only talking about the IGS portion.
22 MR. OLIKER: Your Honor, if I may be
23 heard briefly, I only offer this, I would like
24 Mr. Settineri to speak, my name was mentioned in the
25 conversation that he had with me --

1 MR. HEALEY: Your Honor, I object to
2 Mr. Oliker being heard. This is a joint witness for
3 IGS and RESA, and they have one lawyer sponsoring and
4 supporting this witness, so I object to both of them
5 being heard on this.
6 MR. OLIKER: A comment was made about a
7 conversation he had with me.
8 EXAMINER ADDISON: Thank you. Thank you.
9 I don't feel that any additional statements are
10 necessary. No one can claim that AEs never revisit
11 decisions. Based on the additional testimony
12 provided Mr. Crist, I was tempted to provide a little
13 bit more latitude and allow -- allow this testimony
14 to stand given Mr. Alexander's earlier motion to
15 strike. However, given his additional testimony in
16 terms of this question and answer, I have changed my
17 mind. I will be granting the renewed motion to
18 strike from page 12, line 18, through page 13, line
19 20.
20 MR. SETTINERI: And, your Honors, I know
21 I may be criticized for asking you to reconsider, I
22 would note that the specific issue here that has been
23 raised that triggered the motion to strike related to
24 the second sentence and the issues as to IGS and IGS
25 Ventures. The discussion we have just had does not

1 relate to the information on Duke as well, so I would
2 ask that the question and answer not be stricken but
3 rather the answer be appropriately revised to take
4 out the -- to the extent obviously the Bench has
5 decided what to do about the IGS information here but
6 that the answer be looked at because the first
7 sentence, "Yes, and the economic impact is
8 significant period," I don't believe that should be
9 stricken. Continuing on --
10 EXAMINER ADDISON: Mr. Alexander?
11 MR. ALEXANDER: Your Honor, I do not
12 object to the -- in the event the Bench is inclined
13 to grant Mr. Settineri's request, but I don't believe
14 that would be -- that would be it as far as the
15 redactions. I think it flows through the remainder
16 of the paragraph. So if the Bench is inclined to
17 agree with Mr. Settineri, I do think there are
18 additional portions which would need to be stricken.
19 MR. SETTINERI: Yeah. And, your Honor,
20 if I may be heard.
21 EXAMINER ADDISON: You may.
22 MR. SETTINERI: So assuming -- again, I
23 won't assume. You have already done it. I would
24 strike -- I would ask that language be stricken,
25 would be the second sentence starting at line 20

1 carrying through line 23 stopping for -- before "To
2 put this into perspective." And then continuing on
3 striking "Collective" -- would be "Collectively
4 Duke's salary expense," end of line 11 through the
5 end of line 14 on page 13.
6 MR. ALEXANDER: Your Honor, no objection
7 to that here with the understanding that your earlier
8 motion to strike also included the oral references by
9 the witness to those facts, that it's all
10 encompassed, so we are not going to have the
11 witness's oral references to those numbers being
12 cited as well.
13 So with that if my -- my understanding of
14 your ruling is correct, we have no objection to the
15 clarification Mr. Settineri did and go on to the Duke
16 numbers next.
17 MR. SETTINERI: And, your Honor, I have
18 to say I just read with my revisions it completely
19 changes the answer, so I would just -- I am going to
20 change my mind, if I'm allowed, and say I will not --
21 I will withdraw my motion, my request to reconsider
22 adding the language with those revisions. It
23 completely changes the answer.
24 EXAMINER ADDISON: Thank you. Well, I
25 certainly do appreciate the parties' willingness to

1 come to some sort of resolution on that, but given
2 Mr. Settineri's withdrawal, we will go ahead and move
3 on.
4 MR. ALEXANDER: With that, your Honor,
5 may I have one moment, please?
6 EXAMINER ADDISON: You may.
7 MR. OLIKER: Your Honor, may I inquire,
8 was the testimony proffered?
9 EXAMINER ADDISON: I don't believe anyone
10 made a proffer yet.
11 MR. SETTINERI: While we are waiting,
12 your Honor, RESA would go ahead and proffer the
13 stricken testimony.
14 EXAMINER ADDISON: Absolutely. That
15 proffer is noted.
16 MR. OLIKER: And, your Honor, IGS would
17 join the proffer and note that the underlying
18 document that was a workpaper associated with the
19 information has not been reviewed by anybody, at
20 least on the record, although it has been discussed
21 in the deposition and that the evidence is relevant
22 that shows while Duke Energy Ohio sent jobs out of
23 the state from 2010 to 2021 moving jobs towards North
24 Carolina and shrinking the size of its business, IGS
25 exponentially increased its investment in the state

and through -- largely through the success of the gas market.

And we are happy to brief that in the record, that this was evidence that the witness should have been able to rely upon as provided to him by any company, and I am sure that to the extent that it is not reversed, we will all be citing to this case in the future any time a utility puts up a witness that doesn't work for the company and relied on any piece of evidence they have been given, we will move to strike it.

Thank you, your Honor.

EXAMINER ADDISON: Thank you. Your proffer is noted.

Mr. Alexander?

MR. ALEXANDER: No further questions, your Honor.

EXAMINER ADDISON: Thank you.

Mr. Healey?

MR. HEALEY: Yes, your Honor.

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CROSS-EXAMINATION

By Mr. Healey:

Q. Mr. Crist, can you please turn to page 12 of your testimony.

A. Yes, Mr. Healey, I'm there.

Q. On line 15, "It is clear that there is national gas price volatility, and consumers benefit by having risk-management products from suppliers in a Choice Program." Do you see that?

A. Yes, I do.

Q. Is it your belief that if Duke transitions from a GCR to an SSO, there will no longer be any risk-management products available from Choice suppliers?

A. Risk-management products from Choice suppliers will still be available. My point in this testimony is that we need to get to the end game of a fully competitive market, and so the transition to SSO, not SCO delays that process.

MR. HEALEY: Your Honor, I move to strike the second sentence there. I asked him whether they would still be available in the market. I did not ask him what the point of that testimony was; it's, therefore, nonresponsive.

EXAMINER ADDISON: Thank you.

I will provide Mr. Crist the same opportunity to take advantage of the one bite rule and deny the motion to strike and let the answer stand.

However, Mr. Crist, if you could just simply listen to counsel's question and answer only that question, Mr. Settineri, I am sure, will be happy to bring up any additional information on redirect.

THE WITNESS: Yes, your Honor.

Q. (By Mr. Healey) Mr. Crist, I would like you to turn to page 17 of your testimony now, please. And starting at line 12, and I know you made some corrections to this, so I hope I get it right, you testify "If the parties to the Stipulation were sincere in their desire to address the serious issue of cleanup of the Manufacturing Gas Plant and to properly allocate the financial benefits of the Tax Cut and Jobs Act to the ratepayers," removing the topic of default service transition, "should have no effect." Is that your testimony?

A. Yes, it is.

Q. You used the word sincere. Is it your belief that the parties to this Stipulation are not being sincere?

A. No. I believe they were sincere in the Tax Cut and Jobs Act, the money back, give that back to the ratepayers, and in the cleanup of the waste issues associated with the manufacturing gas plant.

Absolutely they were sincere. Those are important issues that need to be resolved. What I said here is if you pull out the whole transition from the GCR, that shouldn't affect at all those two important issues.

Q. Let's turn to page 9 -- I'm sorry. If you have more, please finish.

A. No, I'm done. Go ahead, Mr. Healey.

Q. Can you turn to page 9, please.

A. 9. Yes, Mr. Healey, I'm on page 9.

Q. Thank you. Starting on line 7, you state that "If the Company shifts to an SSO model, it will continue to buy gas from wholesale suppliers, there will be no direct link between a competitive retail natural gas service supplier and the customer, and I believe the development of Choice in the Duke market will continue to be stagnant." Do you see that?

A. Yes, I do.

Q. When you say that the "market will continue to be stagnant," are you referring to relatively low shopping rates for Duke gas customers?

A. And -- correct. I am referring to the historic low shopping rates.

Q. And for Duke natural gas it's below 50 percent shopping, correct?

A. Yes.

Q. Do you believe that natural gas suppliers provide offers to customers that are superior to GCR?

A. Yes, in many ways and the customers themselves decide who to give their patronage to based on the features and benefits of those offers.

Q. And do you believe that suppliers provide offers to customers that would be superior to an SSO as well?

A. Yes.

Q. And if the suppliers' products are, in fact, superior, as you state, wouldn't you expect intelligent, rational customers to shop at a higher rate than they currently do?

A. Well, no. Let me explain why I say no there. We've had a relatively stagnant period in terms of gas prices, and stagnant is probably the wrong word. We had a relatively flat and inexpensive price period for gas in the past 10 years. But if you look at what's happening this year, and I put in price data in my testimony, it's more than doubled in terms of the GCR. When prices go up, and that's what engages customers to think a little more about what they are going to spend on energy, and that will indeed have an effect of enhancing the shopping

activities.

Q. Do you believe that one of the reasons that shopping rates are not as high as they could be is because suppliers are not effective at marketing their products to consumers?

A. No, I don't believe that.

Q. So you believe they have a superior product, their marketing is effective, and yet less than half the population chooses to buy that product?

MR. SETTINERI: Just object, argumentative.

EXAMINER ADDISON: Perhaps you could rephrase, Mr. Healey.

MR. HEALEY: I can move on, your Honor.

EXAMINER ADDISON: Thank you.

Q. (By Mr. Healey) Mr. Crist, you use in your testimony the phrase "fully competitive market," correct?

A. Correct.

Q. And when you say "fully competitive market," you mean that there is no default offer, correct?

A. That is correct. Once you remove the default offer, then customers will be shopping.

Q. And we discussed at various points in the

1 hearing today three different types of default
2 offers, GCR, SSO, and an SCO, correct?
3 A. Yes.
4 Q. I want you to consider a hypothetical.
5 Let's suppose in Ohio that the Standard Choice Offer
6 was not allowed. Do you understand that assumption?
7 A. Yes.
8 Q. And also a fully competitive market was
9 not allowed. Do you understand that assumption?
10 A. Yes.
11 Q. So given these two assumptions, if I
12 asked you would you prefer that Duke had a GCR or an
13 SSO, which would you choose and why?
14 MR. SETTINERI: Objection. This is just
15 simply not relevant, your Honor. This is a
16 hypothetical that has no existence in this world
17 whatsoever and it's -- it's prejudicial to the record
18 and I would ask -- that's my objection, your Honor.
19 EXAMINER ADDISON: Thank you.
20 Mr. Healey?
21 MR. HEALEY: Yes, your Honor, two things.
22 One, it's relevant because it's asking the witness
23 his expert opinions on the benefits of a GCR versus
24 an SSO.
25 And the second thing is that I asked him

these precise questions at his deposition with no objection; and, therefore, those objections are waived.

EXAMINER ADDISON: Thank you.

I will allow the question, but I will also provide Mr. Crist some latitude to explain his answer thoroughly.

A. Okay. Mr. Healey, I recall when you asked me this question at the deposition, right? I said at the time an SSO would be more advantageous than the GCR, and I went on to explain that is because an SSO involves a competitive auction. Having reflected on that, I was thinking, well, the GCR that Duke does there's no reason they couldn't make that a competitive auction. They are not directed to, but they certainly could do that. So my testimony today is that I'm -- it's a toss up, GCR, SSO; they are in the same bucket for me.

Now, your hypothetical situation of where there is not an SCO, sorry, the other three companies in Ohio have an SCO. Hypothetical situation of where there is no end game of a fully competitive market, well, the policy says we need to get this expeditiously, so your hypothetical example is -- is just fantasy.

1 Q. Mr. Crist, do you have a copy of your
2 deposition transcript in front of you?
3 A. Yes.
4 Q. Can you turn to page 45, please.
5 A. Yes.
6 Q. And you recall being deposed by
7 Mr. Alexander and by me, correct?
8 A. I do, yes.
9 Q. And you understand you were under oath?
10 A. Yes.
11 Q. And on page 45 I am going to read from
12 your deposition transcript now starting at line 1,
13 "Question: I want you to consider a hypothetical.
14 Let's suppose in Ohio that the Standard Choice Offer
15 was not allowed. Do you understand that assumption?
16 Answer: So no Standard Choice Offer. Question:
17 Correct. And also a fully competitive market was not
18 allowed. Do you understand that assumption? Answer:
19 No. Okay. Question: So given those two
20 assumptions, if I asked would you prefer that Duke
21 have a GCR or an SSO, which would you choose and why?
22 Answer: In your hypothetical world, I would say an
23 SSO is a step better than a GCR. Question: And why
24 do you think that? An SSO involves -- Answer: An
25 SSO involves competitive bidding and auction format.

1 Question: Any other reasons? Answer: No." Did I
2 read that correctly?
3 MR. SETTINERI: Objection, your Honor.
4 It's improper impeachment. His prior answer he
5 explained what he said in his deposition, so I just
6 note an objection. This is improper impeachment.
7 EXAMINER ADDISON: Objection noted.
8 MR. SETTINERI: Thank you, your Honor.
9 MR. HEALEY: Thank you, your Honor. I
10 have no further questions.
11 EXAMINER ADDISON: Thank you.
12 OEG?
13 MS. COHN: No questions, your Honor.
14 EXAMINER ADDISON: OPAE? Oh, I believe
15 Mr. Sandor had noted earlier that Mr. Dove did not
16 have any questions for this witness.
17 Kroger?
18 MS. WHITFIELD: No objections, your
19 Honor.
20 EXAMINER ADDISON: OMAEG?
21 MS. BOJKO: No questions, your Honor.
22 Thank you.
23 EXAMINER ADDISON: Commission Staff?
24 MR. MARGARD: No questions, thank you.
25 EXAMINER ADDISON: Thank you.

Any redirect, Mr. Settineri?

MR. SETTINERI: Just a few questions, your Honor, if I may.

EXAMINER ADDISON: Absolutely. Please proceed.

MR. SETTINERI: Thank you.

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REDIRECT EXAMINATION

By Mr. Settineri:

Q. Mr. Crist, you were asked questions about Duke Exhibit 8 which was a shopping statistic sheet. Do you recall those questions?

A. Yes, I do recall.

Q. Okay. And on Duke Exhibit 8, it shows in the column in red for percent of total customers for Dominion Ohio as being 95.6 percent. Just for expediency here, you recall questions about that figure?

A. I do.

Q. Okay. Do you believe the 95.6 percent figure is accurate?

A. I do not.

Q. And why not? Before I ask that question, let me back up. And in the course of your work in the natural gas industry, do you look at utility

1 websites to collect information?
2 A. I do.
3 Q. All right. Do you have any reason to
4 believe that information on the utility website would
5 be inaccurate?
6 MR. ALEXANDER: Objection.
7 EXAMINER ADDISON: Sustained.
8 MR. SETTINERI: Okay. That was a quick
9 sustained.
10 EXAMINER ADDISON: I try every once in
11 awhile.
12 Q. (By Mr. Settineri) So let me jump to the
13 question, Mr. Crist, why do you believe the
14 95.6 percent figure is not accurate?
15 A. It's tremendously high for a state such
16 as Ohio and a utility in Ohio that hasn't already
17 moved to eliminating the default service capability.
18 And what I did is I went back and looked at that PUCO
19 website, the powerbigov.us and looked at each
20 quarter. So the first quarter Dominion was
21 96.3 percent, second quarter 95.6 percent, third
22 quarter dropped to 80.4 percent, fourth quarter
23 dropped to 72.0 percent. Those are huge numbers to
24 drop. Again, I don't know the reason, but I am quite
25 suspicious of the data back in 2012 is not accurate,

1 and it's not reflective of what was really the
2 percentage of shopping in Decane -- Dominion's
3 territory.
4 Q. You were asked questions about IGS
5 earlier just generally. Do you recall that?
6 A. I certainly do.
7 Q. Okay. How -- how long have you been
8 aware of IGS?
9 A. Oh, I would have to say since 1982 which
10 is -- actually IGS wasn't around in '82. The founder
11 Marv White was very active at the time I worked at
12 East Ohio Gas which is currently Dominion East Ohio.
13 We had a self-help program to bring gas from local
14 producers to industrial customers in northern Ohio
15 and that was one of the things that he was active in.
16 And then IGS was formed later that decade, tail end
17 of the '80s.
18 So, yeah, I've been familiar with him
19 then, and like I mentioned, I went to their office
20 building, not the brand new, shiny green one that's
21 in Dublin but the much tinier one, and so I've seen
22 the growth that IGS's experienced all because of the
23 Choice market development not only in Ohio, but IGS
24 serves in multiple states.
25 MR. SETTINERI: All right. Thank you,

1 your Honor. No further questions.
2 EXAMINER ADDISON: Thank you.
3 Mr. Alexander, any recross?
4 MR. ALEXANDER: It's late. No, your
5 Honor. Thank you.
6 EXAMINER ADDISON: Thank you.
7 Mr. Healey?
8 MR. HEALEY: Nothing further, your Honor.
9 EXAMINER ADDISON: Thank you.
10 OEG?
11 MS. COHN: No, your Honor. Thank you.
12 EXAMINER ADDISON: Kroger?
13 MS. WHITFIELD: No, your Honor. Thank
14 you.
15 EXAMINER ADDISON: OMAEG?
16 MS. BOJKO: No, your Honor. Thank you.
17 EXAMINER ADDISON: And Commission Staff?
18 MR. MARGARD: No, thank you, your Honor.
19 EXAMINER ADDISON: Thank you.
20 Mr. Crist, I have no additional questions
21 for you this evening. Thank you very much for being
22 so patient with us during today's hearing. We really
23 appreciate you providing your testimony tonight.
24 THE WITNESS: Thanks, your Honor. We are
25 all in this together.

1 EXAMINER ADDISON: Have a good night.
2 THE WITNESS: No one else is going home
3 earlier than I am.
4 EXAMINER ADDISON: All right. Let -- oh,
5 real briefly, Mr. Settineri, does that conclude your
6 presentation of witnesses?
7 MR. SETTINERI: If Mr. Oliker is on as
8 well, I will speak only for RESA to say, yes, this
9 does conclude our presentation of witnesses.
10 EXAMINER ADDISON: Of course. And thank
11 you for that.
12 Mr. Oliker, would you agree with that?
13 MR. OLIKER: Yes, it does, your Honor.
14 EXAMINER ADDISON: Thank you.
15 MR. ALEXANDER: Your Honor, I don't
16 believe we've moved the exhibits from this witness.
17 EXAMINER ADDISON: Thank you,
18 Mr. Alexander. It is getting late, isn't it?
19 MR. SETTINERI: I warned you.
20 EXAMINER ADDISON: You did. You did.
21 All right. Mr. Settineri?
22 MR. SETTINERI: Yes, your Honor. At this
23 time I would move for the admission -- RESA would
24 move for the admission of RESA/ -- RESA/IGS Exhibit 3
25 into the record, and I will also allow Mr. Oliker an

opportunity to weigh in on that request.

EXAMINER ADDISON: Thank you.

MR. OLIKER: Yes, your Honor, IGS would continue to proffer the stricken testimony from earlier for reasons I previously stated.

EXAMINER ADDISON: Thank you very much. That proffer is noted.

Any objection to the admission of RESA/IGS Exhibit 3, subject to, of course, the motions to strike?

MR. ALEXANDER: No, your Honor.

EXAMINER ADDISON: All right. It will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. ALEXANDER: Your Honor, Duke Energy Ohio would move for the admission of Duke Exhibits 8 and 9.

EXAMINER ADDISON: Any objection to the admission of Duke's Exhibits 8 and 9?

MR. OLIKER: Your Honor -- go ahead, Mr. Settineri.

MR. SETTINERI: I was just going to say I'll start first. We don't need to duplicate Exhibit -- is it 9? Let's see, Mr. Alexander.

MR. ALEXANDER: It's 9.

MR. SETTINERI: No. It would be -- yeah, 9 is already in Mr. Crist's testimony.

EXAMINER ADDISON: Thank you for that reminder. Yes, I will note for the record Duke Exhibit 9, I believe we've already covered this, but it is also attached to Mr. Crist's testimony as Exhibit JC-2. I will note, although it is already included in the testimony, I think it does make sense given the several references during cross-examination to that exhibit that we go ahead and admit it just to keep the record clear. However, parties will obviously be able to cite to either Mr. Crist's testimony or Duke Exhibit 9 when referring to that information.

(EXHIBITS ADMITTED INTO EVIDENCE.)

MR. OLIKER: Your Honor, may I make a request that we take administrative notice of the Commission shopping statistics in the event it is discovered that data may be incorrect which is my assumption but? I am trying to ensure we all have access to the most accurate data possible.

EXAMINER ADDISON: Anyone care to respond to that?

MR. ALEXANDER: Yeah, I would, your Honor.

MR. HEALEY: Yeah. Go ahead, Trevor.

EXAMINER ADDISION: Mr. Alexander, go ahead.

MR. ALEXANDER: Absolutely. I don't feel that is an appropriate administrative notice under the rules. Those are -- administrative notice isn't intended for things beyond reasonable dispute. The exact percentages in a utility's territory in a given period are things commonly known in the area or beyond subject of reasonable dispute. That's why we have these hearings is to delve into those things.

And so as such, taking notice of the Commission's entire website I don't think is an appropriate subject for administrative notice, and as such, I would oppose it.

MR. OLIKER: And I am simply trying to avoid just to the extent that the Commission does change its shopping statistics, we are going to see a motion in this docket that is treated to reopen the record or change data in the record, and I would like to not be in that position given that I know we would like to go to the briefing process while relying on the most accurate data available.

EXAMINER ADDISON: Thank you.

Anyone else care to weigh in?

MR. HEALEY: Yeah. I mean, I share Mr. Alexander's thoughts, and I just don't even think it's feasible to -- feasible to take administrative notice of an entire website and any and all data we didn't cross-examine a witness on. You know, the data that was provided at the hearing was subject to cross to the extent witnesses were knowledgeable about it. If Mr. Oliker is going to cite other data claiming that it's now more accurate, we haven't had a chance to cross anything on that or test any of that, so it would just be unfair to the other parties.

MR. OLIKER: I am just asking for administrative notice of the shopping statistics and that's all. I am not talking about the whole website, just the shopping statistics.

EXAMINER ADDISON: Noted, Mr. Oliker.

Anyone else care to weigh in?

MS. BOJKO: Well, your Honor, I would support Duke and OCC. I don't think this is appropriate. The witness I think in my mind speculated, and it just doesn't seem like it would be something that would be proper for administrative notice without the ability to cross on the data.

EXAMINER ADDISON: Thank you.

I tend to agree with the concerns raised by Mr. Alexander, Mr. Healey, and Ms. Bojko. So the request to take administrative notice will be denied.

MR. SETTINERI: Yeah. And, your Honor, if I may, to the extent an error is discovered, would the Bench be -- procedurally be able to entertain a motion if it turns out the information is inaccurate if it is corrected by the Commission at some point?

EXAMINER ADDISON: Well, anything could be filed in the docket at any point, correct?

MR. SETTINERI: Well said. Thank you.

MR. OLIKER: Don't be surprised.

MR. SETTINERI: Your Honor, I do --

EXAMINER ADDISON: Is that what you are saying?

MR. SETTINERI: Your Honor, I do have another quick note for the record.

EXAMINER ADDISON: Certainly.

MR. SETTINERI: The stricken testimony from Mr. Crist, the answer -- the entire question and answer was stricken, that answer also referred to two exhibits, and I want to make sure for the record, I assume that those exhibits are also stricken, JC-5 and JC-6.

EXAMINER ADDISON: Yes, that would be

1 correct. Without the question and answer referencing
2 the exhibits, I think it would be inappropriate to
3 leave those in. Thank you for asking for
4 clarification on that point, Mr. Settineri.
5 MR. SETTINERI: Thank you, your Honor.
6 EXAMINER ADDISON: Okay. Let's go ahead
7 and go off the record for just a moment.
8 MR. ALEXANDER: Your Honor, I don't
9 believe you've actually admitted Duke Exhibit 8.
10 EXAMINER ADDISON: You are absolutely
11 correct, Mr. Alexander, and you had moved for the
12 admission of Duke Exhibits 8 and 9, correct?
13 MR. ALEXANDER: That's correct, your
14 Honor. I believe you already granted 9 but had not
15 ruled on 8 yet.
16 EXAMINER ADDISON: Well, just to make
17 sure the record is as clear as possible, I will be
18 admitting both Duke Exhibits 8 and 9 into the record.
19 Thank you. I apologize for that.
20 (EXHIBITS ADMITTED INTO EVIDENCE.)
21 EXAMINER ADDISON: Okay. Now we may go
22 off the record for a moment.
23 (Discussion off the record.)
24 EXAMINER ADDISON: We'll go ahead and go
25 back on the record at this time.

Pursuant to discussions that the parties had with the Bench off the record, we believe that we've come up with a reasonable briefing schedule that everyone has agreed to initial briefs will be due December 9, and reply briefs will be due December 23.

And with that is there anything else that the parties need us to address before we adjourn this evening?

All right. I just wanted to note on the record how much the Bench appreciates the parties staying late to finish this hearing this evening. It was a very -- very long day for everyone and I just wanted to just note our appreciation to you all. Thank you.

Let's go off the record.

(Thereupon, at 8:19 p.m., the hearing was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, November 18th, 2021, and carefully compared with my original stenographic notes.

_____
Karen Sue Gibson, Registered Merit Reporter.

(KSG-7192)

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Summary: Transcript November 18th 2021 Duke Energy electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.