

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Review of the Power :
Purchase Agreement Rider : Case No. 18-1004-EL-RDR
of Ohio Power Company for :
2018. :

- - -

In the Matter of the :
Review of the Power :
Purchase Agreement Rider : Case No. 18-1759-EL-RDR
of Ohio Power Company for :
2019. :

- - -

PROCEEDINGS

before Ms. Greta See and Ms. Sarah Parrot, Attorney
Examiners, at the Public Utilities Commission of
Ohio, via Webex, called at 10:06 a.m. on Wednesday,
January 12, 2022.

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VOLUME I

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8 On behalf of Ohio Energy Group.

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Wednesday Morning Session,
January 12, 2022.

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EXAMINER PARROT: Let's go on the record.

The Public Utilities Commission of Ohio
has assigned for hearing at this time and place,
Case No. 18-1004-EL-RDR, which is captioned In the
Matter of the Review of the Power Purchase Agreement
Rider of Ohio Power Company for 2018; and Case No.
18-1759-EL-RDR, captioned In the Matter of the Review
of the Power Purchase Agreement Rider of Ohio Power
Company for 2019.

Good morning, everyone. My name is Sarah
Parrot, along with me is Greta See who is also on
this Webex event this morning with me. We are the
assigned Attorney Examiners to hear these cases.

At this time let's get started with
appearances of the parties, beginning with the
Company.

MR. NOURSE: Thank you, your Honor. Good
morning. On behalf of Ohio Power Company, Steven T.
Nourse, Michael J. Schuler, 1 Riverside Plaza,
Columbus, Ohio 43215; and Matthew S. McKenzie,
M.S. McKenzie Limited, P.O. Box 12075, Columbus, Ohio
43212; Eric B. Gallon with the law firm Porter,

1 Wright, Morris & Arthur, 41 South High Street,
2 30th Floor, Columbus, Ohio 43215. Thank you.

3 EXAMINER PARROT: On behalf of the
4 Commission's staff.

5 MS. KERN: Thank you, your Honor. On
6 behalf of the Staff of the Public Utilities
7 Commission of Ohio, Assistant Attorneys General, Kyle
8 Kern and Thomas Lindgren, 30 East Broad, Columbus,
9 Ohio 43215.

10 EXAMINER PARROT: Ohio Consumers'
11 Counsel.

12 MR. FINNIGAN: Good morning, your Honor.
13 This is John Finnigan, and I am with Angela O'Brien,
14 on behalf of the office of the Ohio Consumers'
15 Counsel. We are at 65 East State Street, Suite 700,
16 Columbus, Ohio 43215.

17 Also with us, or trying to join, is Brian
18 Zets, Z-E-T-S, of the law firm Isaac Wiles, Two
19 Miranova Place, Suite 700, Columbus, Ohio 43215.

20 EXAMINER PARROT: Industrial Energy Users
21 - Ohio.

22 MR. McKENNEY: Good morning, your Honor.
23 On behalf of IEU-Ohio, Matthew Pritchard and Bryce
24 McKenney from the law firm McNees Wallace & Nurick,
25 21 East State Street, 17th Floor, Columbus, Ohio

1 43215.

2 EXAMINER PARROT: Ohio Energy Group.

3 MS. COHN: Good morning, your Honor. On
4 behalf of Ohio Energy Group, Jody Cohn, Michael
5 Kurtz, and Kurt Boehm, from the law firm of Boehm,
6 Kurtz & Lowry, 36 East Seventh Street, Suite 1510,
7 Cincinnati, Ohio 45202.

8 EXAMINER PARROT: Ohio Manufacturers'
9 Association Energy Group.

10 MS. BOJKO: Thank you, your Honors. On
11 behalf of OMAEG, Kimberly W. Bojko, Thomas Donadio,
12 with the law firm Carpenter Lipps and Leland, 280
13 North High Street, Suite 1300, Columbus, Ohio 43215.

14 EXAMINER PARROT: Kroger.

15 MS. WHITFIELD: Good morning, your Honor.
16 On behalf of The Kroger Company, Angela Paul
17 Whitfield with the law firm Carpenter Lipps and
18 Leland, 280 North High Street, Suite 1300, Columbus,
19 Ohio 43215. Thank you.

20 EXAMINER PARROT: Ohio Partners for
21 Affordable Energy.

22 MR. DOVE: Good morning, your Honor. On
23 behalf of Ohio Partners for Affordable Energy, this
24 is Robert Dove with the law firm of Kegler, Brown,
25 Hill & Ritter. 65 East State Street, Suite 1800,

1 Columbus, Ohio 43215. I am also representing Natural
2 Resources Defense Council.

3 And with me I have co-counsel, Tony
4 Mendoza, Kristin Henry, and Megan Wachspress of
5 Sierra Club, at 2101 Webster Street, Suite 1300,
6 Oakland, California 94612.

7 EXAMINER PARROT: Thank you very much.

8 I believe that's the end of my list of
9 parties. Did I miss anyone?

10 All right. At this time I note for the
11 record that this hearing is being held through Webex
12 which enables the parties and interested persons to
13 participate by phone or video through the internet.

14 If access or other issues are experienced
15 during this hearing, individuals should immediately
16 use the chat function within Webex or contact the
17 Commission's Legal Department at (614)466-6843 for
18 assistance. You can also contact Micah Schmidt, our
19 event host, by e-mail, or either of the Attorney
20 Examiners by phone or e-mail.

21 Please be aware that the chat should not
22 be considered private. It is not recorded and it is
23 not part of the official record in these cases.

24 Let's talk briefly about how the hearing
25 will be conducted.

1 In many respects, this virtual hearing
2 will proceed in much the same way as an in-person
3 hearing before the Commission. However, here are
4 some general ground rules and reminders for the
5 hearing:

6 To avoid unnecessary background noise, I
7 ask that counsel keep their microphones on mute
8 unless they are speaking or need to be prepared to
9 speak quickly. The microphones of the witnesses will
10 be kept on mute and until it is time for their
11 testimony.

12 With respect to your video feed, counsel
13 should leave their camera on at all times except
14 during breaks. However, you can also turn your video
15 off if you need to step away from the hearing during
16 periods where your co-counsel is managing things.
17 Just remember to turn it back on when you return.

18 Witnesses will need to turn their video
19 on when it is time for their testimony.

20 Please be mindful of the court reporter.
21 You should speak clearly and at a reasonable speed so
22 that the court reporter can accurately transcribe the
23 hearing.

24 We are going to try to do our best to
25 avoid speaking over each other by taking steps like

1 kind of allowing pauses after questions and generally
2 slowing down the pace of the hearing to allow for
3 connectivity lags as well as objections from counsel.

4 Along with certain procedures that were
5 set forth in an October 5, 2021, Entry issued in
6 these cases, it is my understanding that the parties
7 have agreed upon some additional virtual hearing
8 processes that I am going to document now for the
9 record.

10 The parties have agreed to serve any
11 exhibits that they anticipate using during the
12 hearing on counsel for all of the parties and the
13 Attorney Examiners via e-mail by no later than
14 10 a.m. yesterday, January 11, 2022.

15 The parties also agreed that only
16 documents not filed in the dockets for these cases
17 are required to be exchanged as exhibits.

18 The parties agreed that all exhibits
19 shall be premarked and, unless otherwise agreed in
20 advance with the consent of the AEs, they are to be
21 in PDF format.

22 Counsel may send, but are not to discuss,
23 any exhibits received from opposing counsel with
24 their respective witnesses prior to their use at the
25 hearing.

1 The parties, however, also agreed that,
2 despite these commitments, they are not prevented
3 from presenting an exhibit that has not previously
4 been identified, provided that the party offers a
5 reasonable explanation as to why counsel did not
6 disclose it in advance.

7 The parties agree that after the hearing
8 each day, they would e-mail all exhibits admitted
9 into evidence or proffered that day to the court
10 reporter and copy the examiners.

11 The parties agree not to file hearing
12 exhibits in the dockets, although deposition
13 transcripts may be filed to the extent required under
14 Ohio Administrative Code Rule 4901-1-29 -- I am
15 sorry, 21, paragraph N.

16 I just would note here that counsel
17 should e-mail their exhibits to the reporter by using
18 the e-mail address: carolynburke.rpr@gmail.com. And
19 we'll send that around. I just want to note that
20 now. The exhibits will be going to Carolyn Burke at
21 her e-mail address.

22 The parties also agree that, while
23 testifying, witnesses are prohibited from
24 communicating either electronically via text or
25 instant messaging or through any other method with

1 any person, including, but not limited to, their
2 respective counsel or other witnesses. However,
3 after cross-examination, witnesses may confer with
4 counsel for the purpose of discussing redirect.

5 Finally, the parties agreed that, while
6 testifying, witnesses shall not use, or be asked to
7 use, electronic or digital media, including the
8 internet, other than to access hearing exhibits or
9 filings made in the case docket.

10 One other final matter that I would like
11 to raise at this time. We do have a considerable
12 amount of confidential trade secret information in
13 various -- excuse me -- documents that have already
14 been filed in the dockets of these proceedings.
15 Counsel should do their best to limit their
16 cross-examination of witnesses to information that is
17 within the public domain. However, to the extent
18 it's necessary to question a witness with respect to
19 confidential information, you should hold those
20 questions for a later point. We will need to arrange
21 for a separate confidential session in Webex.

22 Any questions about the process?

23 All right. Hearing none, are there any
24 preliminary matters from the parties?

25 MR. NOURSE: Yes, your Honor. The

1 Company has three preliminary matters and actually
2 three different attorneys addressing each one of
3 these.

4 So I'll start with the issue that I'm
5 addressing, and that is, the NRDC submitted the
6 deposition transcript of Justin Cooper. He is an
7 employee of OVEC. He was subpoenaed in this case for
8 a deposition, and the deposition occurred, but he was
9 not subpoenaed for the hearing.

10 He's -- he's not unavailable and doesn't
11 fall into any of the other categories under
12 Procedural Rule 21 of the PUCO rules or Civil Rule
13 32. He's not here today. He is not represented by
14 an attorney.

15 And the deposition transcript was not
16 filed in advance -- three days in advance pursuant to
17 the rule, procedural rule stipulated to by all the
18 parties. And as 30 -- Civil Rule 32(C) provides, a
19 party does not make a person his own witness for any
20 purpose by taking his deposition. So it's completely
21 inappropriate to use Mr. Cooper's deposition
22 transcript for any purpose in this hearing.

23 EXAMINER PARROT: Response from counsel
24 for NRDC?

25 MS. WACHSPRESS: This is -- this is Megan

1 Wachspress for NRDC. With respect to the three-day
2 deadline, our understanding was that the -- the time
3 and date set for exhibits superseded the statutory
4 provision for the deadline, that the specific ruling
5 in this case controlled, rather than the general
6 statute around the deadline for submitting deposition
7 excerpts.

8 With respect to the appropriateness of
9 his conclusion, I'll note that in -- in the
10 deposition it was made clear there was a common
11 defense agreement between OVEC and AEP Ohio and that
12 there -- there is -- that there is not an arm's
13 length relationship there, and so it is -- it is not,
14 I think, fair to suggest that there's no
15 representation on behalf of OVEC's interests or --
16 or -- there is no attorney present to object relative
17 to -- to Mr. Cooper's testimony at this -- at this
18 hearing today.

19 MR. NOURSE: Your Honor, if I could
20 briefly respond. You know, as you read earlier, the
21 agreement of the parties, including Ms. Wachspress,
22 was to follow the procedural rule on -- on Rule 21
23 on -- in regard to deposition transcripts. That was
24 a specific agreement of the parties.

25 And again, OVEC is clearly not a party to

1 this case. They are not represented. And the Civil
2 Rule 32(C) that I read, you know, makes it clear that
3 that does not change by doing a deposition. So I
4 think the transcript should be -- I am asking for a
5 ruling that the transcript cannot be used in this
6 hearing.

7 MR. FINNIGAN: Your Honor, this is John
8 Finnigan. May I be heard on this issue?

9 EXAMINER PARROT: You may.

10 MR. FINNIGAN: Your Honor, I'm unclear
11 what the purpose is for this deposition transcript to
12 be used, and I would suggest that we defer any ruling
13 on it until NRDC gets to the point where they propose
14 to use it. If the deposition transcript is intended
15 to be used as substantive evidence, I would want to
16 consider that myself and I may object to that use as
17 substantive evidence on grounds of hearsay.

18 However, if the deposition transcript is
19 merely going to be used to impeach Mr. Stegall, I
20 would have no objection to that. I think that would
21 be a proper use of it. In fact, I circulated
22 Mr. Stegall's deposition transcript just a few
23 moments ago so that I could use that for impeachment
24 purposes during the hearing.

25 So I would request that your Honor defer

1 a ruling until we actually get to the point in the
2 hearing where NRDC wants to use it and then states
3 what the purpose is it's being used for, because,
4 until we get to that point, I think it's premature to
5 rule on whether it could be used or not because we
6 don't know how it's going to be used.

7 MR. NOURSE: Your Honor, if I may, you
8 know, again, OVEC is not a party. It was not
9 prefiled. You know, the witness is not -- is not
10 unavailable. He was not subpoenaed for the hearing
11 as I stated earlier. And there is no proper use for
12 that deposition transcript. It certainly cannot
13 impeach Mr. Stegall, who is an employee of AEP and is
14 AEP's Ohio witness. And under Civil Rule 32, there
15 is no use that's listed here that the parties have
16 identified so I think it is appropriate to rule as a
17 general matter.

18 This is -- this has been available. They
19 could have subpoenaed this witness. They certainly
20 subpoenaed him to do a deposition. And it's
21 untimely.

22 Certainly Mr. Finnigan's e-mail from this
23 morning is also untimely but I would distinguish
24 significantly from -- from the -- can you still hear
25 me? I just lost my video.

1 Okay. I would distinguish significantly
2 from trying to say that a party witness, like
3 Mr. Stegall, has any bootstrapping argument to try to
4 get Mr. Cooper's deposition in.

5 AEP Ohio is not going to object to the
6 proper use of Mr. Stegall's deposition if there is an
7 impeachment opportunity or refreshing recollection,
8 et cetera. He is -- he is a witness here today. He
9 is representing a party. Mr. Cooper is not here
10 today and he is not representing a party. Thank you.

11 EXAMINER PARROT: Anything else?

12 All right. I will say at this point I am
13 also struggling to see what use of this deposition
14 may be appropriate in the hearing, but I am, as
15 Mr. Finnigan suggested, going to defer any ruling
16 until we see what, if any, use NRDC or any other
17 party attempts to make of it, so.

18 Next preliminary issue, please.

19 MR. NOURSE: Yes, your Honor. I will
20 defer to Mr. Gallon to address our motion to strike.
21 Thank you.

22 MR. GALLON: Your Honor, Eric Gallon for
23 AEP Ohio. As Mr. Nourse indicated, on Friday AEP
24 Ohio filed a motion to strike specified intervenor
25 testimony. It relates to the testimony of the two

1 witnesses for the Office of the Ohio Consumers'
2 Counsel, the witness for OMAEG, and the witness for
3 NRDC. There are four categories of testimony that we
4 are looking to strike. And the effort here is really
5 to avoid retreading ground that the Commission has
6 already ruled out of bounds for this proceeding.

7 The first category is to avoid testimony
8 on the charges for the PPA Rider before the audit
9 period; the charges for the PPA Rider or the LGR
10 Rider after the audit period; and whether the LGR
11 Rider should continue in 2020 and 2021 or after.

12 The second category relates to the
13 Attorney Examiner's Entry of December 23rd and also
14 January 5th ruling that information and reports that
15 were developed after the audit period cannot be used
16 to question the projections or analyses that led to
17 the inclusion of the OVEC PPA and the PPA Rider in
18 the 14-1693 case.

19 The category -- third category would be
20 testimony regarding and rechallenging the inclusion
21 of the OVEC PPA Rider in the rider.

22 And the fourth category is challenging
23 the attempt to introduce hearsay testimony and
24 discovery responses from the Duke audit proceeding or
25 from other proceedings entirely outside of the Public

1 Utilities Commission of Ohio.

2 We think it's clear, based on the
3 Attorney Examiner's rulings, that each of these
4 categories of testimony and the attachments and
5 exhibits that relate to that testimony are
6 inappropriate and improper in this case. And we are
7 willing to proceed now to argue each of those. We
8 could discuss them categorically at this point. We
9 could discuss them in the context of the testimony
10 that will be coming up in the next few days as that
11 testimony arises. We simply wanted to raise the
12 issue with you and ask the Attorney Examiners how
13 they wish to proceed with regard to the motion to
14 strike.

15 EXAMINER PARROT: Thank you, Mr. Gallon.

16 I would just note because the Intervenors
17 and Staff, if it wishes to weigh in on this motion
18 and have not had the opportunity yet to do that under
19 the time provided under the Commission's rules, the
20 intention of the AEs is to take the motion up as each
21 of the four witnesses takes the stand to testify. So
22 at the outset you will -- counsel will call the
23 witness, go through kind of the preliminary questions
24 on direct, and then at that point we will take up the
25 motion to strike individually for each of the four

1 witnesses. At that point, Intervenors and Staff
2 should be prepared to raise their arguments in
3 response.

4 MR. GALLON: Thank you, your Honor.

5 EXAMINER PARROT: Other preliminary
6 matters?

7 MR. SCHULER: Yes, your Honor. This is
8 Mike Schuler. We are switching the video right now.

9 The third issue that we wanted to talk
10 about relates to OCC Exhibit 17. There are a few
11 issues that the Company has with this document, one
12 of which has arisen over the last 48 hours.

13 OCC e-mailed parties indicating an intent
14 to use OCC Exhibit 17 as part of its cross exhibits
15 in this case. And it appears to be a portion of the
16 draft audit report which was produced confidentially
17 during discovery in these matters.

18 OCC signed a protective agreement in this
19 case which prohibited public dissemination of
20 information labeled confidential by AEP in these
21 matters, absent providing notice of intent of
22 providing it publicly with at least five business
23 days of advance notice. This allows AEP time to
24 review documents to see if they truly are
25 confidential and continue to be confidential or

1 whether -- and whether the Company would like to seek
2 a protective order.

3 And so, on Thursday, January 6, OCC
4 provided notice to AEP Ohio that it intended to
5 publicly use the information that is contained in OCC
6 Exhibit 17 which again had been provided pursuant to
7 a protective agreement executed in these cases.

8 During the five day -- five-business-day
9 window, however, on January 10, OCC publicly
10 disseminated OCC Exhibit 17 to all parties in this
11 matter, the Attorney Examiners included.

12 While AEP Ohio has subsequently
13 determined that the information contained in OCC
14 Exhibit 17 is, in fact, public, the fact still
15 remains OCC did violate the terms and process clearly
16 set forth in the protective agreement they signed in
17 these matters.

18 AEP Ohio takes confidentiality very
19 seriously and, you know, the integrity of the
20 protective agreement is important to be able to
21 continue to share confidential information with all
22 parties in these matters.

23 And so, as a sanction for violating the
24 terms of the protective agreement, AEP Ohio proposes
25 that OCC is barred from using OCC Exhibit 17 and

1 admitting it into evidence of these matters.

2 Just for clarity, this does not prevent
3 OCC from discussing some of the same information that
4 is contained in OCC Exhibit 17 that is already
5 contained in testimony that is in this proceeding,
6 but it should prevent the admission of OCC Exhibit 17
7 as evidence in this matter.

8 We do have additional reasons for
9 prohibiting the admission of OCC Exhibit 17 that we
10 are happy to discuss at this time for reasons of
11 administrative efficiency, or in the event the
12 Commission chooses not to grant the motion for
13 sanction that AEP has set forth.

14 EXAMINER PARROT: Mr. Finnigan, response?

15 MR. FINNIGAN: Yes, your Honor. Thank
16 you. Your Honor, the premise of this motion to
17 strike the document is that it is confidential. So I
18 would propose, as a preliminary matter, that we go
19 into a closed session where your Honor could do an
20 in-camera review and we could hear from AEP why they
21 think it should be confidential. If it's not
22 confidential, I don't think there should be any basis
23 for a motion to strike the document from the
24 proceeding because it's then a public document. So
25 that would be my preliminary request.

1 MR. SCHULER: Your Honor, could I briefly
2 respond?

3 EXAMINER PARROT: You may.

4 MR. SCHULER: For clarity, and I
5 apologize if I was not clear originally, the subject
6 of this motion is not the -- whether this document
7 ultimately ended up being determined to be
8 confidential. As I indicated, we have subsequently
9 decided it is actually public.

10 It is the fact that OCC violated a term
11 of the protective agreement that afforded AEP Ohio
12 five business days to make that determination. OCC
13 provided this notice on Thursday, January 6, but on
14 Monday, January 10, only two business days later, OCC
15 provided the document publicly to other parties.

16 MR. FINNIGAN: Your Honor, may I respond
17 to that?

18 EXAMINER PARROT: Yes.

19 MR. FINNIGAN: And I appreciate that AEP
20 acknowledges that this is a public document. If they
21 would have done it last week when I asked them to, it
22 would have saved a lot of angst this morning.

23 We did release the document inadvertently
24 on the day of the deadline for sharing documents. It
25 was only available to the Attorney Examiners and to

1 counsel for the parties for a short time, about three
2 and a half hours. When it was brought to our
3 attention, we immediately notified the parties that
4 received the document not to use it, not to
5 distribute it in any way. And then we also notified
6 the people who received the link that had the
7 document to please respond to me and let me know
8 whether they even downloaded the document or shared
9 it with anybody. And I haven't received any response
10 to indicate that anyone did that.

11 So we did release the document
12 inadvertently. As soon as it came to our attention,
13 we did everything possible to limit disclosure. From
14 the information I have received to date, I'm not
15 aware of anyone who actually opened the document or
16 downloaded it or shared it.

17 And so I would say that our position is
18 that given the fact that the disclosure was
19 inadvertent, that OCC immediately took corrective
20 action, that there's been no indication that the
21 document was viewed by anybody, and that it's now
22 acknowledged this is a public document, to bar OCC
23 from making any use of what is now a public document
24 would be extremely prejudicial to OCC's due process
25 rights because this is really a key document in the

1 hearing.

2 I'll also add that the -- part of the
3 document that, you know, the reason we feel it should
4 come into evidence, the matters discussed in the
5 document were already in the public domain. So if
6 you would look at the testimony of Mike Haugh, an OCC
7 witness, there is a series of e-mails attached to his
8 testimony, his attachment 3, and that contains
9 certain communications -- e-mail communications
10 between the Staff and the auditor that discussed the
11 language that's in the confidential exhibit. So I
12 would also submit that the fact that e-mail exchange
13 discussing what AEP claimed to be confidential, that
14 e-mail exchange being public, removed any possible
15 argument that AEP could make that this was ever a
16 confidential document.

17 So, you know, we apologize for
18 inadvertently releasing the document but we think
19 that to prohibit us from making any use of the
20 document at the hearing would impair our rights to
21 fairly present our evidence.

22 MS. BOJKO: Your Honor, this is Kim Bojko
23 with OMAEG. May I be heard on the precedential issue
24 being discussed?

25 I don't think inadvertent disclosure to

1 parties in the case and the Attorney Examiners rises
2 to the level of public disclosure or sanctions. I
3 mean, we are all in this new process. We had an
4 exhibit that got inadvertently cut off and the full
5 document was not produced at 10:00 a.m. on the date
6 of the exhibits.

7 This is a new process for us. We --
8 speaking from a litigator's perspective, we don't
9 typically do all of our cross-examination and all of
10 our exhibits a day and three days before witnesses
11 take the stand. So we are all scrambling, trying to
12 get all of our cross done so that we can recognize
13 and identify exhibits in order to meet the
14 Commission's process of exchanging those ahead of
15 time in the unique virtual world. If we were in the
16 hearing room, this would never have happened.

17 I just think sending it, per that Entry,
18 to parties of record, I think almost all of them have
19 confidentiality agreements signed except for the
20 Attorney Examiners, obviously, and Staff but they are
21 covered, does not rise to public disclosure.

22 And issuing this kind of sanction is
23 unprecedented. The Company, interestingly, did not
24 point to any precedent where the Commission has done
25 such a thing. I think at this stage, because now we

1 are all precluded from filing exhibits, it would
2 punish everybody. It wouldn't just sanction OCC, and
3 it would punish the public record. We cannot use
4 that exhibit if the Commission rules that it cannot
5 be used because we can't meet the 10 a.m. deadline.
6 So AEP didn't raise this with anybody else before to
7 ask if we wanted to use the exhibit. So I think a
8 sanction is inappropriate and unprecedented. Thank
9 you.

10 MR. MCKENNEY: Your Honors, IEU-Ohio
11 would agree with that, with OCC and OMAEG. The
12 sanction seems far out of proportion to the harm, and
13 we haven't established if there was any harm. If
14 there is not a party to this proceeding that has not
15 signed a protective agreement, then I am not even
16 sure there was a public disclosure. So, for those
17 reasons, I think we would support the position of OCC
18 and OMAEG.

19 MS. WHITFIELD: Your Honor, on behalf of
20 Kroger, we would also support that position. As you
21 heard Mr. Schuler concede, it is now a public
22 document, so whether somebody actually signed the
23 confidentiality agreement or not is really a moot
24 point at this point in time. It's not covered by the
25 confidentiality agreement. Thank you.

1 MS. HENRY: Your Honor, Sierra Club would
2 also support that position.

3 MR. DOVE: NRDC.

4 MS. HENRY: Sorry. NRDC.

5 MR. DOVE: And OPAE will as well.

6 EXAMINER PARROT: Mr. Schuler.

7 MR. SCHULER: Does anyone else want to
8 pile on before I have a chance to hopefully respond,
9 your Honor?

10 EXAMINER PARROT: Mr. Schuler, I have a
11 question for you before you respond. Is there any
12 provision in the protective agreement that addresses
13 this situation? In terms of a remedy?

14 MR. SCHULER: Well, there is -- I am not
15 sure I fully understand your question. There is.

16 EXAMINER PARROT: I am just saying --
17 does the protective agreement itself recognize that
18 sanctions would be appropriate?

19 MR. SCHULER: There is no specific remedy
20 section in the protective agreement but there are
21 terms obviously. And if I can briefly respond to
22 some of the things that we did here. The five
23 business days, as I referenced -- I'm happy to
24 provide the protective agreement to the Bench and the
25 other parties if necessary, but the five business

1 days is a provision that is in the protective
2 agreement. I haven't heard anyone, namely OCC,
3 disagree that that is a provision in there.

4 I appreciate the recognition by OCC that
5 it was disclosed and improperly and their attempts to
6 re-call the message, but the fact remains it was
7 publicly disclosed to parties that did not sign a
8 protective agreement.

9 And I disagree with some of the parties,
10 particularly IEU-Ohio. AEP Ohio does not believe
11 this is a draconian sanction. We are not seeking any
12 sort of fees. We are not seeking to strike portions
13 of testimony that contains some of the same
14 information that are contained in OCC Exhibit 17. As
15 I expressly stated during the motion, just simply
16 seeking to prevent admissibility of this document
17 given its improper release.

18 And perhaps briefly to Ms. Bojko's point,
19 you know, this only came up because of a violation of
20 the protective agreement. If parties do not violate
21 protective agreements, this issue will never arise
22 again, but AEP Ohio is concerned that parties are
23 allowed to do this activity.

24 As I said, there are other reasons why we
25 believe this document should be inadmissible.

1 Mr. Finnigan did get into some of those issues. I
2 would like to, at some point, be able to address
3 those but I know we have given you a lot, your Honor,
4 so I will proceed at your discretion.

5 EXAMINER PARROT: Mr. Schuler, given that
6 Mr. Finnigan has represented on the record that this
7 was an inadvertent disclosure and that OCC did take
8 steps to attempt to remedy the situation as quickly
9 as it was discovered, I am going to deny your motion.

10 MR. SCHULER: Just to clarify, your
11 Honor. This would be deny the motion for sanctions
12 resulting in --

13 EXAMINER PARROT: As a result of this
14 inadvertent disclosure, yes. To the extent the
15 exhibit is offered by OCC at a later point in the
16 hearing and you have other objections, we will hear
17 those at that time.

18 MR. SCHULER: Okay. Thank you, your
19 Honor.

20 EXAMINER PARROT: Any other preliminary
21 matters?

22 MS. KERN: Your Honor, Staff does, if AEP
23 has concluded theirs.

24 Okay. Yesterday, OCC -- counsel for OCC
25 distributed a document, OCC Exhibit 20, and Staff

1 objects to this document being used or introduced.

2 As a preliminary matter, it's a copy of
3 an audit report performed by LEI for a docket in --
4 before the Louisiana Public Service Commission. So,
5 first of all, it is not relevant in a proceeding
6 before the Public Utilities Commission of Ohio
7 regardless of the purpose of the use of the document.

8 But, secondly, and perhaps more
9 importantly, that proceeding before the Louisiana
10 Public Service Commission has not moved forward to a
11 hearing. There has been no testimony. LEI has not
12 had the opportunity to testify on the audit report.
13 At this point it's just an audit report. It could be
14 highly prejudicial to the auditor's client in
15 Louisiana to have her testify for the first time on
16 an audit report in Louisiana in the State of Ohio. I
17 am sure Ohio would feel similarly if situated in the
18 same position.

19 So Staff would ask that that document not
20 be allowed to be introduced or used in this hearing.

21 MR. NOURSE: Your Honor, AEP Ohio
22 would --

23 EXAMINER PARROT: Hold off. I think this
24 is an issue that we will table until it's raised at a
25 later point if it's raised at a later point by OCC,

1 Ms. Kern. We will fully hear the arguments, and you
2 may reiterate your -- your point there, but let's
3 just table this until we get to a point at which the
4 exhibit is actually mentioned by OCC.

5 Any other preliminary matters?

6 All right. Hearing none, Staff, you may
7 call your first witness.

8 MS. KERN: Thank you, your Honor. Staff
9 calls Dr. Marie Fagan.

10 MR. SCHMIDT: Dr. Fagan, you've been
11 promoted. If you can enable your audio and video.

12 THE WITNESS: Can you hear me?

13 EXAMINER PARROT: We can. Would you
14 please raise your right hand.

15 (Witness sworn.)

16 MS. KERN: Your Honor, at this time I
17 would like to have marked for identification purposes
18 the audit of the OVEC Power Purchase Agreement Rider
19 of the Ohio Power Company filed in this docket on
20 September 16, 2020, as Staff Exhibits 1 and 1A as
21 there is a confidential version. Staff would like
22 1 to be the public version of the report, and 1A to
23 be the confidential version of the report.

24 EXAMINER PARROT: So marked.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 MS. KERN: Thank you. Can you hear me,
2 Dr. Fagan?

3 THE WITNESS: I can.

4 MS. KERN: Thank you.

5 - - -

6 MARIE FAGAN

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

9 DIRECT EXAMINATION

10 By Ms. Kern:

11 Q. Can you please state your name for the
12 record, please.

13 A. Marie Fagan.

14 Q. And where are you employed?

15 A. I'm employed at London Economics
16 International, LLC.

17 Q. What is your job title and
18 responsibilities?

19 A. My title is Chief Economist, and my job
20 responsibilities include directing, managing, and
21 contributing to client engagements requiring
22 expertise in energy economics. This includes leading
23 management/prudence audits of electric utilities,
24 economic analysis of oil and gas pipelines,
25 econometric analysis of utility operations, and

1 analysis of energy markets and other energy economics
2 subject areas.

3 Q. And you are a consultant under contract
4 with the Commission to testify on behalf of Staff in
5 this proceeding; is that correct?

6 A. That's correct.

7 Q. You were the auditor for this proceeding;
8 is that correct?

9 A. That's correct.

10 Q. Knowing that, do you have before you what
11 I previously marked for identification purposes as
12 Staff Exhibits 1 and 1A?

13 A. Yes, I do.

14 Q. Were you involved in the preparation of
15 those documents?

16 A. Yes, I was.

17 Q. In what way?

18 A. I was the project leader, project manager
19 you could say. I performed analysis. I was the main
20 point of contact with the PUCO Staff and the Company,
21 and -- and lead author of the report.

22 Q. Do you have any corrections that you
23 would like to make to those documents?

24 A. Yes. Counsel filed an errata on
25 December 29, 2021, that contains three corrections to

1 be made to the audit report.

2 Q. Are the contents of what has been marked
3 for identification purposes as Staff Exhibits 1 and
4 1A true to the best of your knowledge and belief?

5 A. Yes.

6 MS. KERN: Your Honor, at this time I
7 would like to have marked for identification purposes
8 the direct testimony of Dr. Marie Fagan that was
9 filed in this docket on December 29, 2021, as Staff
10 Exhibit 2.

11 EXAMINER PARROT: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. KERN: Thank you.

14 Q. (By Ms. Kern) Dr. Fagan, do you see the
15 document or do you have before you the document I
16 just identified and marked as Staff Exhibit 2?

17 A. Yes, I do.

18 Q. And could you please identify that
19 document for the record.

20 A. That is my direct testimony.

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

23 A. Yes.

24 Q. Do you have any corrections to make to
25 your testimony?

1 A. No, I don't.

2 Q. And if I were to ask you the same
3 questions contained in Staff Exhibit 2, would your
4 answers be the same?

5 A. Yes, they would.

6 MR. FINNIGAN: Your Honor, may I -- you
7 mentioned Staff Exhibit 1. Did you -- or 2. Did you
8 mean to refer to 1?

9 MS. KERN: No, Counsel, I did not. Staff
10 Exhibit 2 is Dr. Fagan's direct testimony, so I am
11 asking if she had any corrections to that document.
12 As she indicated, she did file -- we did file an
13 errata on her behalf that pertains to Staff
14 Exhibit 1, the audit report.

15 MR. FINNIGAN: I apologize. I thought
16 Exhibit 2 was the audit report.

17 MS. KERN: No. Staff Exhibit 1 is the
18 audit report. The confidential version has been
19 marked as 1A. And Dr. Fagan's testimony is Staff
20 Exhibit 2.

21 MR. FINNIGAN: I apologize. I
22 misunderstood.

23 MS. KERN: No problem.

24 Q. (By Ms. Kern) And what is the purpose of
25 your testimony today, Dr. Fagan?

1 A. The purpose of my testimony is to sponsor
2 the audit report filed in this docket on
3 September 16, 2020.

4 MS. KERN: Your Honor, the witness,
5 Dr. Fagan, is available for cross-examination. Thank
6 you.

7 EXAMINER PARROT: Thank you, Ms. Kern.
8 Among the Intervenor group, is there a
9 preference as to who proceeds first?

10 MS. BOJKO: Your Honor, Kim Bojko with
11 OMAEG. First, I would respectfully request that AEP
12 be required to cross-examine first as they are
13 supporting the audit report, and so that we do not
14 have any friendly cross, I ask that they go first.

15 Secondly, among the Intervenors, yes, we
16 have coordinated, and I do have an order list if you
17 would like me to share that with you now.

18 EXAMINER PARROT: Go ahead.

19 MS. BOJKO: OCC will be going first after
20 AEP. Then NRDC, OPAC, Kroger, OEG, IEU, and then
21 OMAEG.

22 MR. SCHULER: Your Honor, this is AEP
23 Ohio. We would request to go last. Contrary to
24 Ms. Bojko's suggestion, we are not necessarily
25 supporting the audit report, hence why we may have

1 cross-examination of Dr. Fagan. And we also do have
2 the burden in this matter. Therefore, we would
3 suggest we go last so that we hear all of the other
4 questions that are in the record at the time of
5 cross-examination of the audit report.

6 EXAMINER PARROT: And as the Company does
7 have the burden, the Company will be going last.

8 So, Mr. Finnigan, I will turn it over to
9 you.

10 MR. FINNIGAN: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Finnigan:

14 Q. Good morning, Ms. Fagan. Are you able to
15 hear me okay?

16 A. Good morning, Mr. Finnigan. I can hear
17 you.

18 Q. Okay. I'm the person with almost no hair
19 and with the little seal behind my head. It looks
20 like a halo. It certainly is not. And the brown
21 wooden paneling. So I will wave. So you can see me?
22 Okay. Thank you.

23 All right. Ms. Fagan, first I want to
24 thank you for appearing today as the auditor in this
25 case. I have read your report. I want to thank you

1 for doing such a thorough report and probing into
2 such great detail on the issues of this case.

3 You and I had the opportunity to talk
4 before, about six months ago, in connection with the
5 OVEC charges for 2019. This was not a Webex like
6 this or a formal hearing but it was a session where
7 your attorneys, Ms. Kern and Mr. Lindgren, were
8 present. I was just wondering if you recall that
9 discussion.

10 A. I recall it in general, yes.

11 Q. Do you recall that we talked about, at
12 that time, what your opinion is as to whether the
13 OVEC charges for 2019 were in the best interest of
14 retail ratepayers?

15 A. I don't recall the details of our
16 conversation, but our view on the charges and the --
17 you know, the expenditures related to AEP and OVEC
18 are the findings of the audit report.

19 Q. Okay. Now, I would like to talk a little
20 bit about just what's at issue in the audit report
21 and the amount of the charges. And I'm asking -- I
22 would like to ask if you could please turn to the
23 audit report at page 35, and what I'm going to ask
24 you now is to ask if you could give us the amount of
25 the PPA Rider charges that are at issue in this case

1 for 2018 and 2019. So if you would just let me know
2 when you are at page 35 of your report.

3 A. I'm at page 35.

4 Q. Just so we are clear, are you operating
5 from the public version of your report? That's the
6 one I want to ask you about.

7 A. The one I have printed in front of me is
8 the confidential version. I'm not sure the
9 pagination is exactly the same.

10 Q. Well, I think we can work around that.

11 A. Okay. So in my version page 35 is mostly
12 Figure 16.

13 Q. That's where I wanted to ask you
14 questions.

15 So looking at Figure 16 and I am asking
16 from the public version of the report, if we wanted
17 to establish how much the PPA Rider charges were for
18 2018 and 2019, we could do it from the information
19 that's in Figure 16, couldn't we?

20 A. I need to think about that because
21 Figure 16 is where we looked at the true-up process
22 which actually included charges. So there are
23 charges in there from 2016 and 2017 because of the
24 way the rider was set up.

25 And then some of those charges, they

1 had -- they got paid in 2018 so it would take some
2 reverse engineering. I'm not sure that would be the
3 way to go at it.

4 Q. Okay. What I am going to ask you is what
5 the actual charges are. And if you look at column A,
6 that provides what the actual charges were for each
7 quarter in 2018 and 2019, correct?

8 A. It does include the actuals, but in the
9 PPA there's also this over and under-recovery section
10 that we have there in column C.

11 Q. Okay.

12 A. I'm just not sure that this is the right
13 way to try to work backwards to answer your question.

14 Q. Okay. Well, what I will first ask you
15 about is first what the actual charges were. And if
16 you have any information that you would like to
17 supply about what the true-up amount was, that's
18 fine. And it appears that they may be available in
19 this document. But, in any event, the actual charges
20 are shown in column A; is that right?

21 A. For a particular month and quarter,
22 that's correct.

23 Q. Okay.

24 A. The -- the charges on the bill would
25 include some of these over/under-recoveries also.

1 Q. Okay. Okay. So if we want to look at
2 what the actual charges were in 2018, you have it
3 broken out in column A of Figure 16 by month and it's
4 by quarter starting with January of 2018, so we could
5 calculate the actual charges by adding up those four
6 quarters that are shown for 2018; is that correct?

7 A. That is correct.

8 Q. Now, I've done that and I come up with a
9 number of \$25.4 million as the actual charges for
10 2018. Would you accept that number subject to check?

11 A. Right. Yes. I can't add that quickly in
12 my head what we have on the page, but, subject to
13 check.

14 Q. And then I'm going to ask you the same
15 question for 2019. Column A also shows the four
16 quarters for 2019. If we wanted to calculate the
17 amount of the actual PPA Rider charges for 2019, we
18 would use the same methodology; and I would ask you
19 if the number 49.1 million is the amount of Rider PPA
20 charges for 2019, again subject to check?

21 A. Yes, subject to check.

22 Q. Then combining those two numbers together
23 for 2018 and 2019, I came up with 74.5 million as
24 being the total Rider PPA charges for those two
25 years. Do you accept that number, subject to check?

1 A. Yes, but also considering over -- so over
2 that long period of time, if there is over or
3 under-recovery, some of that money might have gone
4 back to customers, some may have come out. So with
5 that caveat.

6 Q. Okay. And so how would you perform the
7 analysis to show any over-recovery or under-recovery?
8 Is that also shown in Table 16 to the right of the
9 table?

10 A. It's -- it's shown there. That's the
11 summary.

12 Q. And what column would show the
13 over-recoveries and under-recoveries?

14 A. That's column C.

15 Q. I'm sorry. Did you say C as in Charlie?

16 A. Yes, sorry.

17 Q. Okay. So what we initially looked at in
18 column A was the amount of the charges. And then if
19 we wanted to get to an actual true-up, we could just
20 subtract out what those amounts are in column C and
21 then we would have the actual costs for the PPA
22 Rider; is that -- am I understanding that correctly?

23 MR. SCHULER: Your Honor, AEP Ohio
24 objects to the extent Mr. Finnigan is asking
25 Dr. Fagan to do pretty complex math on the stand. We

1 would ask that she be afforded the time to do so.

2 MS. KERN: Staff would join that
3 objection.

4 MR. FINNIGAN: Your Honor, I am just
5 asking what the methodology is.

6 EXAMINER PARROT: And as to that issue,
7 Ms. Fagan -- I'm sorry, Dr. Fagan, go ahead.

8 A. So the methodology involved -- and the
9 reason there is over and under-recovery, you have to
10 step back for a minute. When you're billing
11 customers for a rider or anything, you can't bill in
12 real time. You don't know exactly what consumption
13 will be, right? You don't know how much electricity
14 you are going to really buy. So it's not uncommon,
15 and as it was done here, there is an estimate of the
16 amount of energy customers will use.

17 And to create the rate that the customers
18 pay, that energy is the denominator in the cost, but
19 you don't know until the -- until the period of time
20 happens how much electricity the customers consumed.

21 So you have a rate to charge customers,
22 but let's say they consumed more energy. There's a
23 certain rate. You multiple the price times quantity
24 and it could be that they have overpaid. It is not
25 your fault. You don't know the future. So you would

1 have over-recovered. And then the way this rider is
2 handled by the company is they true-up, they call it
3 true-up, after six months. So if customers overpaid
4 in a given month or quarter, they get something back.

5 Or it could be that they underpaid
6 because, again, there is an estimated rate that
7 they're charged but let's say consumption is a lot
8 lower so the price times quantity is lower. It
9 doesn't cover the cost and there's an under-recovery.

10 Or -- or, as in the case here, it was
11 intentional that in 20 -- in 2016, the costs were
12 intentionally not billed to the customers for 2016,
13 so it was held back and it was all under-recovered
14 and then it got spread out over future months.

15 So -- so what we have here is the cost in
16 column A; and you have what revenue did the Company
17 get compared to the cost; and then column C is the
18 difference, whether things were -- whether the rider
19 was over-recovered or under-recovered for that month
20 or quarter.

21 Q. Okay. Thank you. And I was just asking
22 about the methodology. So we established what the
23 actual charges were for 2018 and 2019. And now I was
24 just trying to get at what would be the methodology
25 to establish what the actual costs would be.

1 MS. KERN: Objection, your Honor. Is
2 that a question? I believe it's been asked and
3 answered now. She's gone through the methodology.

4 MR. FINNIGAN: Well, your Honor, I think
5 she explained what an over and under-recovery is.

6 Q. (By Mr. Finnigan) But let me ask this,
7 Ms. Fagan, could you point us to anywhere in your
8 audit report that indicates what the amount of the
9 PPA Rider costs were for 2018 and 2019?

10 A. Give me a moment.

11 We didn't provide any annual totals, so
12 for the actual PPA charges, your methodology of
13 adding up the quarters for the different years in
14 column A is -- you know, subject to check, is a
15 reasonable way to go at it.

16 Q. Okay. Thank you.

17 And then in a prior answer you mentioned
18 something about 2016 OVEC costs being spread out over
19 several months. What was the period of months over
20 which those 2016 costs were spread out? When did
21 that period begin and end?

22 A. So if you look at page 32, right after
23 Figure 13, you have the charges for 2016. And then
24 right after that --

25 Q. I'm sorry. I apologize for interrupting,

1 but I know you are working from a confidential
2 version of the document. I only have a public
3 version. So I want to make sure that, you know, we
4 are not disclosing any confidential information. So
5 I would ask that for purposes of my questioning, you
6 work from a public version because I think that
7 would -- if you can. I mean, otherwise, every
8 question I ask is going to involve possible
9 disclosure of confidential information. I want to be
10 sure we don't do that. So is there any way you could
11 get a copy of the public version or maybe pull it up
12 on your screen as we are going through this so we
13 don't have that issue?

14 A. Well, if you don't mind and if this is
15 good enough, I've gone through my confidential
16 version and highlighted for myself everything that's
17 been redacted, so I can see it, but it -- but it's,
18 you know --

19 Q. That's perfect.

20 A. It's an alert to me if we go down that
21 road. So if that works.

22 Q. Okay. That's perfect. Sure. And I
23 thank you for doing that. And I would just ask that
24 in this questioning that I'm doing of you this
25 morning, please do not share any confidential

1 information. If I ask you a question, it's not
2 intended to get at any confidential information, so
3 please alert me that, "Mr. Finnigan, to answer your
4 question, I would have to give you confidential
5 information." So can we have that agreement?

6 A. That makes sense to me. I'm not counsel.
7 If it makes sense.

8 Q. Okay. Thank you.

9 MR. SCHULER: I would also suggest that
10 the Company has provided something similar to what
11 Dr. Fagan has done, not that we questioned her work,
12 but it might be safest to use what the Company has
13 provided. Kyle, do you have that and does Dr. Fagan
14 have that?

15 MS. KERN: Are you referring to the --
16 the report that's filed in the docket, in the public
17 docket?

18 MR. SCHULER: No. We provided a
19 confidential version with yellow highlighting to
20 indicate what is confidential I believe on Monday.
21 It was not produced as a cross-examination exhibit.
22 It was provided as a courtesy for parties to use for
23 this very purpose.

24 MS. KERN: I do not.

25 MR. SCHULER: I can check that e-mail.

1 MS. KERN: I don't believe I did provide
2 that to Dr. Fagan. I am confident that her work
3 would prohibit her disclosing any confidential
4 information in the version that she's looking at. If
5 you would prefer -- if we could take a brief recess,
6 I could e-mail it to her if your Honors prefer that.

7 MR. SCHULER: Yeah, I defer to the
8 Attorney Examiners. But at a minimum, perhaps
9 Mr. Finnigan can use it so he is aware what is
10 confidential while he is doing his cross-examination.

11 MR. FINNIGAN: Mike, could you please
12 resend that to everyone so I have it handy?

13 MR. SCHULER: Sure. And for counsel in
14 the case, that was an e-mail that came from myself at
15 8:21 p.m. on Monday.

16 MR. FINNIGAN: Your Honor, I am just
17 going to ask we talk a moment or two until that pops
18 up on our screens from Mr. Schuler so that we can
19 work from this same document as he has suggested.

20 Your Honor, I don't want to delay the
21 proceeding. I have not received the e-mail yet. I
22 am sure it will come through in just another moment
23 or so and we can go back to this.

24 So let me -- my question was about 2016
25 charges and let me just ask -- I will strike that

1 question and ask this one.

2 Q. (By Mr. Finnigan) Ms. Fagan, can you tell
3 me which months the 2016 OVEC costs were collected
4 in, without disclosing confidential information?

5 A. Yes.

6 MR. SCHULER: Objection, outside the
7 scope of this audit.

8 EXAMINER PARROT: Overruled.

9 Q. (By Mr. Finnigan) I'm sorry. Did you
10 answer the question, Ms. Fagan?

11 A. What's the question?

12 MS. KERN: Your Honor, can we please have
13 the question repeated?

14 MR. FINNIGAN: I will withdraw it and ask
15 a new question.

16 Q. (By Mr. Finnigan) Ms. Fagan, can you tell
17 me what months the 2016 OVEC costs were collected in,
18 without disclosing confidential information?

19 MS. KERN: Objection, your Honor. Asked
20 and answered. I believe the witness said yes.

21 MR. FINNIGAN: Okay.

22 Q. Okay. What were those months?

23 A. The 2016 charges, as we said on page 32,
24 began to be recovered in 2017. So what they did was
25 they spread a quarter of the total 2016 forecasted

1 charge across the forecast of energy sales each
2 quarter in 2017 to arrive at the kilowatt-hour charge
3 for each quarter. So that went through all the
4 quarters in 2017.

5 Q. Only 2017?

6 A. So there was a remainder. We have it in
7 Figure 14. There was a remainder to be collected in
8 2018 as well.

9 Q. And can you tell me the amount of 2016
10 OVEC costs that were collected in 2018 without
11 disclosing confidential information?

12 A. Yes.

13 Q. And what was that amount of 2016 costs
14 that were collected in 2018?

15 A. I have to do the math because there was
16 collection of -- again, this is, you know, page 14 --
17 Figure 14, you can see it. There was a collection of
18 3,301,812, but that ended up actually being
19 overcollected, again because you can't perfectly
20 predict energy sales. So then you have to net out
21 1,805,359 if it was overcollected and they gave some
22 back in 2018. And then if you do that, you net
23 out -- it comes to like \$2.62. It -- they evened it
24 out with the customers.

25 Q. And were there any costs from the OVEC

1 plants that was incurred in 2017 that was collected
2 in 2018?

3 MS. KERN: Objection, your Honor, to the
4 extent this isn't addressed as far as 2017 in the
5 audit report, and counsel can't point her to where it
6 is. It is outside the scope of the audit of this
7 proceeding.

8 EXAMINER PARROT: Overruled. To the
9 extent you are able to answer, Dr. Fagan, go ahead.

10 THE WITNESS: Yes, your Honor.

11 A. So in Figure 15, which is public,
12 there's -- we reproduced Schedule 3 of the company's
13 PPA and that's what they call the reconciliation.
14 That's -- what they call the true-up, right, from
15 previous audit. And in that, you can see in the
16 confidential -- the public report there was an
17 over -- well, that's actually the overrecovery of
18 2017 paying back in 2018 that 1.8 million it
19 overcollected. So if the bigger question is did some
20 of those costs roll into 2018, the answer is yes, but
21 they rolled in as paying back the customers from
22 previous overcollections. Again, not necessarily
23 through any fault, just because you can't perfectly
24 predict energy sales.

25 Q. Well, thank you for clarifying that.

1 Now, I would like to change the topic and
2 just talk about your general background and the type
3 of work you do. Now, you hold a Ph.D. in economics.

4 A. That is correct.

5 Q. And you have over 30 years of experience
6 in the electric utility industry.

7 A. I have over 30 years' experience as an
8 energy economist. Some of it has been in what they
9 call upstream oil and gas which is exploration and
10 production, et cetera. Some has been in midstream
11 oil and gas; pipelines, transportation, things like
12 that. And some has been in the electric power
13 sector.

14 Q. And that experience includes doing
15 economic analysis like what you did in this audit
16 report, correct?

17 A. Broadly, yes.

18 Q. And also doing policy analysis.

19 A. On occasion, yes.

20 Q. And you also have experience doing work
21 in both restructured states like Ohio and states with
22 traditional regulation.

23 A. That's correct.

24 Q. Your experience includes doing fuel
25 adjustment clause audits.

1 A. That is correct.

2 Q. And you've done some in Louisiana. Where
3 are -- is that correct?

4 A. We have done fuel adjustment clause
5 audits for the Louisiana Public Service Commission.

6 Q. And have you done fuel adjustment clause
7 audits in any other states?

8 A. We've done audits of utility prudence in
9 other states, not particularly fuel adjustment
10 clauses.

11 Q. And which cases are you referring to for
12 general prudence reviews?

13 A. I'm referring to audits of management
14 performance performed for the Mississippi Public
15 Service Commission. And they're audits of Entergy
16 Mississippi and Mississippi Power Company.

17 Q. Okay. And you also have experience doing
18 both management audits and financial audits for
19 electric utilities?

20 A. I would say management audits, not
21 particularly financial audits in the sense that
22 financial audits are generally performed by certified
23 public accountants and they certify the -- I guess
24 the conformance with GAAP procedures. So we look at
25 company decision-making, prudence, et cetera, but I

1 wouldn't say a financial audit in that classic sense.

2 Q. Okay. And you also have experience
3 working in wholesale markets like PJM and MISO and
4 SPP?

5 A. As a company, London Economics works in
6 all the liberalized power markets. I have
7 particularly -- particular expertise in ERCOT which
8 is Texas. Each of us kind of leads a market area.

9 Q. And then as part of your job as a -- as
10 an economist doing these kinds of audit reviews, do
11 you have occasion to read orders issued by the state
12 public utility commissions in those states where you
13 are doing your work?

14 A. On occasion, yes.

15 Q. And is your purpose in reading those
16 orders not to provide a legal opinion to anyone but
17 simply to understand what the policy objectives are
18 that are laid out in those orders?

19 A. I wouldn't say necessarily to understand
20 the policy objectives but just to give us an informed
21 background. It might not be required to do the audit
22 but it's -- it can help, you know, just your
23 knowledge base.

24 Q. Just, for one thing, it helps you
25 understand what's covered by the audit, correct?

1 A. What's covered by the audit really is in
2 the scope of work that's typically in the RFP, the
3 request for proposals, that we -- you know, that we
4 offer our services for.

5 Q. Okay. Now, in this case, there was an
6 RFP that was issued to do the audit in this case.
7 You have reviewed that before; is that correct?

8 A. We did review the RFP, absolutely.

9 Q. Okay. And is it your understanding that
10 the RFP called for an independent audit?

11 A. That's correct. That's my understanding.

12 Q. And what was your understanding of what
13 that term "independent" meant, independent from whom?

14 A. What it means is that, in the end, the
15 contents of the report are our, LEI's,
16 responsibility.

17 Q. Now, even though the contents of the
18 report are your responsibility, do you sometimes
19 review draft reports with certain stakeholders before
20 those reports are finalized?

21 A. I would say not sometimes, almost always.

22 Q. What's the purpose of doing those reviews
23 of the draft report?

24 A. Well, there's a number of purposes.
25 Whatever entity has issued the RFP, our client, they

1 have a legitimate concern with, you know, is the
2 project on schedule, is the deliverable high quality,
3 is it readable. So, no matter who the client is, it
4 would be very unusual for a client not to want to
5 review a draft.

6 Q. But is there -- is the purpose of that
7 review to offer substantive opinions of what should
8 go in the audit report or what should not go in the
9 audit report?

10 MS. KERN: Objection, your Honor.
11 Counsel's questions in this regard are extremely
12 vague. He's talking about review of audit reports in
13 drafts in general. If he is talking about this
14 specific case, then I would ask that the questions
15 pertain to Ms. -- Dr. Fagan's experience for this
16 specific proceeding and docket, because answering
17 generally, she might have different directives, she's
18 already explained that, for different projects.

19 MR. FINNIGAN: Your Honor, I am just
20 asking generally what the process of review of a
21 draft report does. I am wondering if there is some
22 industry-standard process of whether the different
23 parties that review draft reports are able to offer
24 information that impacts the auditor's independent
25 opinion or not. That's what I am getting at is just

1 what is the industry standard for review and then I
2 will ask some questions about this particular one.

3 EXAMINER PARROT: And as to the
4 rephrasing there of, you know, whether there is an
5 industry standard, as to that question, Dr. Fagan, go
6 ahead and answer.

7 A. I'm not sure there's sort of a written
8 industry standard. But a client, a reviewer, can
9 make -- they can make any suggestion they want to
10 make. Ultimately we decide what to take onboard.

11 Q. Are there industry standards for auditors
12 to follow when doing an audit of this kind?

13 A. Given the other audits that I've seen, I
14 would say no. There -- different auditors take quite
15 different approaches.

16 Q. Are there any that you follow?

17 A. The approach we follow is the one that we
18 used in this audit and others that we have done, and
19 we describe it -- I can tell you if I can find it.

20 I can describe it generally.

21 It's the way that our document is
22 structured, where, for each topic in the audit, the
23 way we structure the audit, and you can see it in the
24 chapters in the section of the report, so for each
25 piece of subject matter that we're asked to audit, we

1 develop a scope and background of the subject matter.
2 We develop evaluative criteria, what -- what's
3 supposed to happen, what happened, et cetera. And
4 then we develop our findings and conclusions and,
5 finally, recommendations. So that's the structured
6 approach that we take.

7 And you can see it in the report from
8 Chapters 4 through 8, maybe the -- hold on. Let me
9 check. Chapters 4 through 9, they are all structured
10 in that exact way.

11 I haven't necessarily seen that same
12 structure in other reports. But -- but this is how
13 we approach it.

14 Q. Are you familiar with an organization
15 called the American Institute of Certified Public
16 Accountants?

17 A. I'm sure that one exists. I don't -- I
18 don't, you know, visit their website or know much
19 about them. I guess it's for CPAs.

20 Q. Have you ever heard of generally accepted
21 audits, auditing standards, published by the American
22 Institute of Certified Public Accountants?

23 A. I don't know those in detail. I do know
24 that they'll set standards for things like the number
25 of invoices that should be checked, et cetera, for

1 things like that. But I don't have an intimate
2 knowledge. And again, I -- it's accounting. And we
3 are not accountants.

4 Q. Have you ever cited to the American
5 Institute of Certified Public Accountants Generally
6 Accepted Auditing Standards in any audit report you
7 ever prepared?

8 A. I don't think so.

9 Q. Have you ever cited to the statistical
10 sampling purposes or methods under the Generally
11 Accepted Auditing Standards?

12 A. I don't think we've done that.

13 Q. Do you recall doing it in connection with
14 a report for the State of Kansas?

15 A. LEI did a report for the State of Kansas.
16 I wasn't involved in that project so -- I am aware of
17 it. I haven't read it in detail. So LEI may have
18 done so.

19 Q. Okay. Now, we've talked for a moment
20 about independence in the auditing process. Now I
21 want to change the subject a little bit and talk
22 about some existing relationships you do have.

23 You do have an existing relationship with
24 the Staff of the Commission in that they selected you
25 to perform this audit, and you are performing this

1 audit on their behalf; is that correct?

2 A. That's correct.

3 Q. And they also have an ongoing
4 relationship with you because you've been awarded
5 contracts to do audits in other cases in Ohio by the
6 Staff and Commission.

7 A. That's correct.

8 Q. And then you also have a relationship
9 with AEP in that after you were selected as the
10 auditor, you entered into a contract with AEP for
11 them to pay you for performing your auditing
12 services.

13 A. That is true. It's -- my understanding
14 is that's how these are done and paid for in Ohio.
15 So our bills go to Commission Staff for approval, our
16 invoices, and once they are approved, then to the
17 company.

18 Q. Okay. Now I would like to change the
19 subject a little bit. And now I want to talk about
20 the concept of prudence. And you are very familiar
21 with the concept of prudence as used in the electric
22 utility industry; is that fair?

23 A. That's fair.

24 Q. And I notice on page 3 of your testimony
25 you say that your job at LEI is to lead management in

1 prudence audits of electric utilities; isn't that
2 right?

3 A. That's correct.

4 Q. And that's what this case involved was a
5 prudence audit, right?

6 A. I would say prudence and --

7 MR. SCHULER: Objection. Objection. The
8 entry from the Commission speaks for itself.

9 MS. KERN: Staff joins the objection.

10 MS. BOJKO: Your Honor, may OMAEG be
11 heard?

12 EXAMINER PARROT: No need. Overruled.

13 MS. BOJKO: Okay. Thank you.

14 EXAMINER PARROT: Dr. Fagan, you had
15 started to respond. If you need us to reread, we
16 can.

17 A. So the -- our scope of work or the
18 purpose that was given in the RFP was prudence and
19 performance.

20 Q. When it comes to prudence, the issue in
21 the audit was the prudence of all the costs that flow
22 through the PPA Rider; isn't that correct?

23 A. It was somewhat more specific. If you
24 look at the scope of work under the RFP, and again
25 it's set up the way we set up the audit report, is

1 disposition of energy and capacity, fuel and variable
2 cost expense, capital expense, environmental
3 compliance, and power plant performance. And then
4 there is a section that is a part of the scope of the
5 work but not really an audit called utility industry
6 perspective.

7 Q. Let me ask if you could please turn to --
8 this is in page 7 of the public audit report, but
9 it's the executive summary, and just let me know when
10 you are at that section of executive summary, 1.1,
11 Objective and Purpose.

12 A. Uh-huh. I am there.

13 Q. Okay. And then in the second full
14 paragraph there's a sentence that begins two lines
15 down, and I am going to read that, "The purpose of
16 the audit is to establish the prudence of all the
17 costs and sales flowing through the PPA Rider, and to
18 investigate whether the AEP Ohio's actions were in
19 the best interest of its retail ratepayers." Have I
20 read that correctly?

21 A. You have.

22 Q. And these are your words. This is what
23 you put out was the purpose of the audit; is that
24 correct?

25 A. I may have been quoting from the RFP, so

1 if you give me a moment, I'll check. Yes. So that
2 is language from the RFP, on page 4, under the
3 heading 2 for "Purpose." "Establish prudence of all
4 costs and sales," okay. So all -- the breakdown of
5 the scope of work is, I guess, presumably all, okay.

6 Q. Thank you.

7 Now, I would like to ask you to turn your
8 attention to a different document and this is one of
9 the cross-examination documents that I supplied to
10 your counsel. Do you have those available to you?

11 A. I have them in electronic format on a
12 drive so hopefully organized enough that I can find
13 quickly when you tell me which it is.

14 Q. Well, take your time. There's no rush.
15 We want to make sure you get the right one, and we
16 can certainly take as much time as you need. So
17 don't worry about that.

18 But I want to ask you about
19 Cross-Examination Exhibit 3 which is a Vantage audit
20 report.

21 A. Okay. Okay. I do have that open.

22 Q. Okay. Now, I noticed in your report at
23 page 52 you refer to this Vantage audit report; isn't
24 that correct?

25 A. That's correct.

1 Q. So I assume you read this Vantage audit
2 report before you prepared your audit if you referred
3 to it there; is that fair?

4 A. Yes, we did.

5 Q. Now I want to direct your attention in
6 that Vantage audit report to pages 8 and 9. If you
7 would just look over those and then I just have a
8 couple of general questions about those pages,
9 pages 8 and 9 of the Vantage report. Take a few
10 moments to refamiliarize yourself and then I just
11 have a couple questions.

12 EXAMINER PARROT: Mr. Finnigan, while she
13 is doing that, let's go ahead and properly identify
14 the exhibit at this time for the record.

15 MR. FINNIGAN: Your Honor, I am referring
16 to OCC Cross-Examination Exhibit 3, the Vantage audit
17 report. That was from Case 18-1003 and it's dated
18 January 11 of 2019. It was filed in that docket.

19 EXAMINER PARROT: Thank you. The exhibit
20 is marked OCC Exhibit 3.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 A. I'm on page 8.

23 Q. Okay. Take a moment to look at 9, too,
24 and just let me know when you have had as much time
25 as you would like to just refamiliarize yourself with

1 those pages.

2 EXAMINER PARROT: Mr. Finnigan, just to
3 be clear here, are you referring to the pages at the
4 top of the page or the different number at the bottom
5 of the page?

6 MR. FINNIGAN: That's a good question,
7 your Honor. I don't have the document opened in
8 front of me, but it's the definition of "prudence"
9 from that document. That's what I wanted to ask the
10 witness.

11 EXAMINER PARROT: So the number
12 originally on the audit report in the lower
13 right-hand corner as page 8.

14 A. Okay. So I've read 7 and 8 through that
15 heading B which starts another section on -- yeah.

16 Q. Okay. And I just wanted to ask, is that
17 a reasonable definition of the term "prudence" or
18 "prudency" as it applies to electric -- the electric
19 utility industry?

20 A. That's -- let me go back. I would say it
21 is, especially because it does point out that, you
22 know, reasonable people, persons can have honest
23 differences of opinion without one or the other
24 necessarily being imprudent.

25 Q. And is this the same general concept of

1 prudency that you apply when doing your prudence
2 reviews?

3 A. Yes. I would say it's essentially the
4 same.

5 Q. And is it fair to say that in the utility
6 industry, there are other terms that are synonymous
7 with "prudency," for example, "just and reasonable"?

8 A. I don't have a view of that. I think
9 there's -- they are more legal terms. They are
10 not -- I can't answer that.

11 Q. That's not a term that you use in your
12 auditing world.

13 MS. KERN: Objection. Clarity as to the
14 term "prudency" or "just and reasonable"? Which one
15 are you asking her about?

16 MR. FINNIGAN: I was asking about "just
17 and reasonable." I was simply asking, she said she's
18 not familiar -- at least I understood her to say she
19 is not familiar with the term "just and reasonable"
20 other than as a legal concept, and I was simply
21 asking do you use the term "just and reasonable" when
22 you are doing your auditing reports in your line of
23 work.

24 A. I have used the word "reasonable," I'm
25 sure, and we could, you know, do a word search on

1 these -- this audit. I don't know that I've used the
2 word "just."

3 Q. Okay. No, that's fair. And have you
4 heard the term "good utility practice" used in the
5 context of an electric utility's actions?

6 A. I have, yes.

7 Q. Now, is that a term that can be used
8 synonymously with "prudence"?

9 MR. SCHULER: Object, your Honor, to the
10 extent Mr. Finnigan is seeking a legal definition.

11 MR. FINNIGAN: Your Honor, these terms --
12 these terms come up in different audit reports. They
13 come up in the testimony of the witnesses in this
14 case, and I am just trying to get some rules of the
15 road established as to what the meanings of these
16 terms are in her mind as an expert.

17 EXAMINER PARROT: But you are not asking
18 her to offer a legal view of this, are you,
19 Mr. Finnigan?

20 MR. FINNIGAN: No, no, no, no, your
21 Honor.

22 EXAMINER PARROT: In that case, go ahead,
23 Dr. Fagan.

24 A. Mr. Finnigan, would you repeat the
25 question?

1 Q. Sure. Have you heard the term "good
2 utility practice" before as used in the electric
3 utility industry?

4 A. I have, yes.

5 Q. Have you used that term yourself in any
6 of your audit reports?

7 A. I don't recall offhand.

8 Q. Have you seen it expressed by other
9 persons as a term that has the same meaning as
10 "prudence"?

11 A. I don't know. I can't answer.

12 Q. Are you familiar with the term "in the
13 best interest of retail ratepayers"?

14 A. That is a term I've heard, yes.

15 Q. Is that a term you used in the past in
16 any of your audit reports?

17 A. When --

18 MS. KERN: Objection, your Honor. It's a
19 very vague question. I mean --

20 EXAMINER PARROT: Overruled. If the
21 witness doesn't know, she may say that.

22 A. We might have used it in this because it
23 was part of the purpose that was expressed in the
24 RFP. I don't know offhand if we used it in any of
25 the other audit -- I don't remember offhand if we've

1 used it in any of our other audit reports.

2 Q. Is -- in your mind is something that is
3 in the best interests of retail ratepayers, would
4 that generally be considered prudent in your mind?

5 A. I don't -- I don't think so, no, no.

6 Q. Okay. So -- okay. Why not?

7 A. I'm sorry. Did I miss a question?

8 Q. Oh, I just asked why not.

9 A. Well, something could be imprudent but
10 end up being -- just being in the interest of
11 ratepayers but this is all theoretical. They don't
12 mean the same thing. They are different things.

13 Q. If a utility takes an action that is not
14 in the best interests of retail ratepayers, would you
15 equate that as being an imprudent action on their
16 part or a prudent action on their part?

17 MS. KERN: Objection, calls for the
18 witness to speculate. She doesn't know what the
19 action would be, so I don't know how she could
20 formulate an opinion on that hypothetical.

21 EXAMINER PARROT: Overruled.

22 To the extent you are able to answer, go
23 ahead, Dr. Fagan.

24 A. Well, I have to go back to what I said
25 before is they're -- they are two different things.

1 Q. I'm just -- can you explain how they are
2 different?

3 A. So let's say a utility took an action
4 that was imprudent, but for some reason because of
5 how things worked out, it benefited ratepayers; or
6 they could take a prudent action but because of how
7 the future unfolded, it didn't benefit ratepayers.
8 So I think it's apples and oranges.

9 Q. Okay. But the real litmus test is how it
10 affects ratepayers in terms of whether something is
11 in their best interests or not.

12 MS. KERN: Objection, vague. Litmus test
13 for what? Since we are talking about a hypothetical,
14 I don't see how she can answer that question without
15 the specific context.

16 MR. FINNIGAN: I'll withdraw that
17 question.

18 Q. (By Mr. Finnigan) Would you agree with me
19 that it's generally not in the best interest of
20 ratepayers to pay above-market charges?

21 MR. SCHULER: Objection to the extent
22 that calls for a legal conclusion, and also beyond
23 the scope of the audit in this case as defined by the
24 Commission's entry.

25 EXAMINER PARROT: Overruled.

1 A. Mr. Finnigan, would you ask the question
2 again?

3 Q. Yes. Would you agree that it's generally
4 not in the retail ratepayers' best interest to pay
5 above-market costs?

6 A. At a broad level --

7 MR. SCHULER: Objection. That -- excuse
8 me, your Honor. Objection to the extent it is also
9 vague and hypothetical.

10 EXAMINER PARROT: Overruled.

11 A. So on a broad level, you would, as a
12 ratepayer, probably want the lowest cost energy,
13 capacity, reliability, deliverability. All the
14 things that you want from an electric service, you
15 know, you would want it at the lowest cost you could
16 get it.

17 Q. So you would agree with me that it
18 generally would not be in the retail ratepayers' best
19 interest to pay above-market charges.

20 MR. SCHULER: Your Honor, again,
21 objection. This is vague. It is hypothetical to the
22 extent there are no other factors that are being
23 presented as part of this incomplete hypothetical.

24 MS. KERN: Staff joins the objection.
25 It's calling for the witness to speculate on what the

1 scenario is, and I think she just testified that
2 other factors should be considered, but the Staff
3 joins the objection.

4 EXAMINER PARROT: Overruled.

5 A. Well, like I said, in general, people
6 want to get what they want as cheap as they can. But
7 then sometimes people, like electric utility
8 customers, will pay more if they want green power,
9 for example. So you might say, well, that's not in
10 the best interest of the ratepayers because it costs
11 more, but then some of them are choosing this. I
12 just think there is a lot of variables.

13 Q. If someone chooses it, aren't they --

14 EXAMINER PARROT: Mr. Finnigan.
15 Dr. Fagan, were you finished with your response?

16 THE WITNESS: Yeah, yeah.

17 EXAMINER PARROT: Okay.

18 THE WITNESS: Yes, your Honor.

19 EXAMINER PARROT: Go ahead, Mr. Finnigan.

20 Q. (By Mr. Finnigan) If a consumer is
21 choosing a premium level of service, wouldn't it be
22 the consumer that's in the best position to judge
23 what their best interests are?

24 MR. SCHULER: Objection, a number of
25 objections. "Premium service" is not defined. You

1 are continuing to speculate here without things like
2 contract -- or, excuse me, Dr. Fagan has also
3 identified another number of factors she has thrown
4 out off the top of her head and none of these are
5 included in the questions by Mr. Finnigan.

6 EXAMINER PARROT: Overruled.

7 A. So the question is again? I'm sorry.

8 Q. I was just following up on your answer.
9 You pointed out some situations where a consumer
10 might pay a premium level or a premium amount for a
11 certain type of service. I was just following up to
12 ask that, in that situation, wouldn't it be the
13 consumer who is the best judge of what their best
14 interests are?

15 A. Well, the -- possibly if -- I don't know.

16 Q. Okay. Now, let me ask you to refer to
17 another OCC cross-examination exhibit. If you could
18 pull this up on your computer and take a moment to
19 orient ourselves and so that we are at the same page.
20 And this is the one that's marked as OCC Cross-Exam
21 Exhibit 9 and it's an order issued by the Public
22 Utilities Commission on March 31 of 2016, in Case
23 No. 14-1693. Do you have that document before you?

24 A. Yes.

25 Q. Do you recall that the RFP in this case,

1 and by this one I mean the 18-1004 case, the RFP in
2 this case referred to this 14-1693 case?

3 A. Yes. It -- the RFP refers to a lot of
4 cases and I believe that was one of them. I can
5 check. There was kind of a procedural history, I
6 think. Yeah, it did refer to it.

7 Q. Okay. And since it referred to it in the
8 RFP, did you review the order in preparing your
9 response to the RFP?

10 A. I don't think we did that.

11 Q. Do you cite this order in your audit
12 report?

13 A. Me -- I can check. We might have cited
14 it in the introduction. I can check. I'm not sure
15 we cited it specifically.

16 Q. Have you reviewed this order before?

17 A. I -- I don't think so.

18 Q. Okay. Let me ask you about one statement
19 in this order to see if this was any part of the work
20 you did in your audit. If you could turn to page 89
21 of this document.

22 A. Is it 89 of the PDF or is it 86?

23 Q. It's 89 of the order so not the PDF.

24 A. Got it. Now I am on page 89 of the
25 order. Okay.

1 Q. Okay.

2 MS. KERN: If I could ask counsel just
3 wait a minute so I can get there. I'm sorry. I'm
4 moving -- scrolling as fast as I can.

5 MR. McKENNEY: While we are on a pause,
6 are we marking this OCC Exhibit 9. Did I miss that?

7 MR. FINNIGAN: Yes, I would like to have
8 that document marked and --

9 EXAMINER PARROT: OCC Exhibit 9 is marked
10 for identification purposes.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 THE WITNESS: Okay.

13 MS. KERN: I'm there. Thank you.

14 Q. (By Mr. Finnigan) And then I just want to
15 ask you about one or two sentences on that page. And
16 I will represent to you that this is the section of
17 the order where the Commission is talking about the
18 prudence review for these cases and this is the last
19 paragraph on the bottom of that order and there is a
20 sentence that begins "Regarding the process for
21 ongoing Staff review...." Do you see that?

22 A. Yes.

23 Q. Okay. I am going to read that.

24 "Regarding the process for ongoing Staff review and
25 annual audits of the PPA rider, the Commission

1 expects that the process will be carried out in a
2 manner that is consistent with the process for AEP
3 Ohio's prior fuel adjustment clause (FAC) mechanism."
4 Have I read that correctly?

5 A. Yes.

6 Q. And it was your understanding when you
7 did this audit that it was to be conducted in the
8 same way as the fuel adjustment clause audit?

9 MR. SCHULER: Objection, your Honor.
10 Mr. Finnigan is asking Dr. Fagan to apply an Opinion
11 and Order that was subsequently changed substantively
12 in subsequent entries on rehearing.

13 MS. KERN: Staff would object on grounds
14 Dr. Fagan has testified she hasn't reviewed this and
15 she's testified a few times she got her scope of work
16 from the RFP.

17 MR. FINNIGAN: Your Honor, I am just
18 asking her what her understanding was, when she did
19 her work, did she approach it the same way as the
20 traditional fuel adjustment clause audit.

21 MR. SCHULER: Your Honor, just briefly in
22 response. This is an audit that was set up when the
23 PPA Rider was an actual affiliate transaction under
24 the original Opinion and Order, which, as I said,
25 changed substantively in future entries by the

1 Commission.

2 THE WITNESS: Your Honor, you're on mute,
3 I think.

4 EXAMINER PARROT: Thank you, Dr. Fagan.
5 To the extent you are able to answer the question, go
6 ahead. The objection is overruled.

7 MS. KERN: Could counsel please have the
8 question repeated, please?

9 MR. FINNIGAN: Sure.

10 Q. (By Mr. Finnigan) Ms. Fagan, when you
11 were doing this audit for the PPA Rider clause for
12 2018-2019, did you approach it the same way as you
13 would a fuel adjustment clause audit?

14 A. In doing --

15 MR. SCHULER: Objection. That's a
16 completely different question. And beyond the scope
17 of this audit. We are now talking about fuel
18 adjustment clauses which is not what is at issue in
19 this case. It is the PPA Rider as approved in the
20 Commission's entries in case 14-1693 and subsequently
21 provided for in the cases of this docket.

22 EXAMINER PARROT: Overruled. Go ahead,
23 Dr. Fagan.

24 MS. KERN: Your Honor, I do believe, if I
25 may interject, that that was a different question.

1 If the court reporter could please repeat the
2 question that was pending for the previous objections
3 that were overruled, I think that would help.

4 EXAMINER PARROT: Karen, please read the
5 last question that was asked. If Mr. Finnigan wants
6 to go back then to an earlier question, he may do
7 that.

8 (Record read.)

9 THE WITNESS: Is that the question now I
10 should answer?

11 EXAMINER PARROT: Yes.

12 A. So to the extent that we use our LEI
13 auditing format, you know, scope, background,
14 evaluative criteria, et cetera, that's the way we
15 approach this audit, an FAC audit, and other kinds of
16 audits. So from our methodology and work flow, we do
17 approach it the same way. But I hadn't read that
18 order and so I was unaware of any reference to the
19 FAC in Ohio. I hope that's a clear answer.

20 Q. No, that's fine. I think I understood
21 what you said there. And so what I am really trying
22 to find out is that when you rendered your opinion in
23 this case about the prudence of the OVEC costs, did
24 you use the same criteria that you would use for a
25 fuel adjustment clause analysis?

1 MR. SCHULER: Objection, your Honor. A
2 fuel adjustment clause analysis typically under the
3 PUCO practice there are entries that define what
4 audits will look like. Mr. Finnigan has asked
5 generically about a fuel adjustment clause audit with
6 no specificity or foundation that they even exist.

7 EXAMINER PARROT: Overruled.

8 A. I'm not sure how to answer this. The
9 criteria may or may not be the same. A PPA is
10 different than fuel cost. I'm not sure I can answer
11 it.

12 Q. Okay. So you don't know whether your
13 audit report uses the same criteria that would be
14 applied in a fuel adjustment clause analysis then; is
15 that fair? You can't answer that question?

16 A. I don't know about a fuel cost -- fuel
17 adjustment clause analysis but if there were those in
18 Ohio under that other docket, then what we did may or
19 may not be comparable. I think that's all I can say.

20 Q. Okay. Now, if one were to look at the
21 OVEC costs like a fuel adjustment clause analysis,
22 what we have here is the AEP consumers obtain their
23 energy from a Standard Service Offer rate from the
24 Company. Are you familiar with that?

25 A. Not --

1 MS. KERN: Objection, your Honor. It
2 assumes facts that are not in evidence because we are
3 not dealing with a fuel adjustment clause case.

4 MR. FINNIGAN: Your Honor, I'm just
5 trying to ask the witness. She's got expertise in
6 doing fuel adjustment clause analyses. She's done
7 them in other states. She knows how they work. The
8 Commission's order states that these prudency reviews
9 shall be conducted under the same criteria as an FAC
10 audit. So I'm simply walking down that path and
11 going to talk about general FAC criteria for audits
12 and then apply those to this case.

13 MS. KERN: Your Honor, I think the
14 witness has testified where she got her scope of work
15 from and it was not from the document that counsel
16 continues to cite. So I will raise my objection
17 again.

18 EXAMINER PARROT: I'm not sure your
19 question was clear, Mr. Finnigan, so let's try it
20 again.

21 MR. FINNIGAN: Okay.

22 Q. (By Mr. Finnigan) I want to ask you to --
23 well, strike that.

24 Are you aware that AEP Ohio does not own
25 generation?

1 A. I hadn't thought about that, so I would
2 say no, I wasn't aware one way or the other.

3 Q. Okay. What is your understanding of
4 where the power comes from that's used to supply AEP
5 consumers?

6 A. My understanding is that in PJM, load is
7 bid, and generation is offered on a wholesale market.
8 So, at any given time, it's probably safe to say the
9 energy is from the PJM system. I'm not sure you
10 could say which power plants it's from.

11 Q. Okay. So would the PJM wholesale energy
12 and capacity price be a reasonable proxy for the
13 price that AEP consumers generally pay for power?

14 A. Consumer prices include -- they include
15 more levels of costs than just energy and capacity,
16 right. You have got distribution charges and various
17 things.

18 Q. Well, I am setting aside transmission and
19 distribution charges that all customers would pay. I
20 am just simply asking for consumers who are served by
21 AEP and who receive their energy from AEP as the
22 provider, if the PJM wholesale price is a reasonable
23 capacity -- or is a reasonable proxy for what the
24 consumers would pay for their energy price aside from
25 any transmission and delivery charge?

1 A. It could be -- it could be a good
2 benchmark of trends. It probably doesn't include
3 everything. It depends how you measure it, you know,
4 monthly average, peak -- on-peak, off-peak,
5 et cetera. But as a benchmark, it -- it's a helpful
6 benchmark.

7 Q. And then we established at the beginning
8 of your testimony the PPA Rider charges were
9 \$74.5 million above that PJM benchmark; isn't that
10 right?

11 A. I do not think we established that, no.

12 Q. Well, I mean, you said you would accept
13 that subject to check, I thought. We can go back
14 over that.

15 A. That was the rider charge we were talking
16 about in Figure 16, right? We calculated -- I don't
17 have those numbers in front of me. So we have the
18 actual PPA charges. I think -- I know in chapter --
19 Figure 16 they are net of -- no, that's net of
20 revenue from customers. The actual PPA charges in
21 Schedule 3, they are net of earnings from PJM. Okay.
22 So repeat the question.

23 Q. Yes. I'm simply asking whether the PPA
24 Rider charges themselves are, by definition, in
25 excess of the PJM wholesale prices for energy and

1 capacity.

2 A. For the audit period, because those
3 charges are positive, they're charges not deduction,
4 yes, by definition, they are higher.

5 Q. And if the AEP Ohio consumers have access
6 to energy at the PJM wholesale price, would you agree
7 that it is not in their best interests to pay these
8 above-market charges under the PPA Rider?

9 MS. KERN: Objection, your Honor, to the
10 extent that counsel's questioning goes outside of the
11 scope of this proceeding which is to examine AEP
12 Ohio's decisions with respect to the specific audit
13 period, and it is not looking at the approval of the
14 rider in and of itself. That's already been decided
15 in other Commission proceedings.

16 MS. HENRY: Can I address that for a
17 second, your Honor?

18 EXAMINER PARROT: Go ahead.

19 MS. HENRY: When AEP presented its rider
20 application, it obviously assumed that it would
21 have -- it would be a benefit to customers. And the
22 way that it's a benefit for customers, there is
23 always capital costs and usually what -- and what
24 they projected was that there would be such a large
25 energy margin that would be positive, it would offset

1 all of the costs, all of the capital and fixed costs.
2 As you can see, it's always a charge. So how well
3 they prudently operated their energy market impacts
4 all of the fixed costs, so all of these costs.

5 It's not questioning whether the rider
6 was appropriately approved. What we are challenging
7 is did they prudently operate this, because, right
8 now, it's always -- almost always a charge to
9 customers. You have to look at all of the elements.

10 MR. SCHULER: Your Honor, AEP Ohio would
11 join Staff's objection here. We would also point out
12 this is essentially a collateral attack of the
13 underlying decision in the PPA case. The -- the
14 Examiners have already ruled -- excuse me -- ruled on
15 this issue in the entries that have been issued over
16 the last two weeks.

17 MS. HENRY: The entries -- may I be heard
18 again, your Honor?

19 EXAMINER PARROT: You may.

20 MS. HENRY: Whether -- whether this was
21 prudently operated has always been the subject of the
22 audit. That is unquestionable. The orders that came
23 out were about discovery. And it was the scope of
24 the discovery. But I think all parties would agree
25 whether AEP acted prudently in its actions is always

1 the subject of this audit and that includes all of
2 the costs that have been charged to ratepayers,
3 because the costs that have been charged to
4 ratepayers are because there is not a positive energy
5 margin that offsets all those capital costs.

6 MR. FINNIGAN: Your Honor, may I be heard
7 on this point?

8 MS. BOJKO: Me as well, your Honor.

9 EXAMINER PARROT: Go ahead, Mr. Finnigan.

10 MR. FINNIGAN: Your Honor, we are not
11 here to relitigate the 2016 order. We understand
12 that's not the subject of -- of today's proceeding.
13 We are only here to talk about the prudence of the
14 2018 and 2019 costs. That's the only thing we care
15 about.

16 But, at the same time, you cannot look at
17 those costs in a vacuum. You have to look at what
18 the expected costs were for the 2018 and 2019 period.
19 And then, when you look at what the expected costs
20 were and you compare that to the actual costs, then
21 you can make the judgment as to whether the hedging
22 mechanism is performing as expected or not. And if
23 it's not, then you can do something about it and take
24 prudent actions to replace it or eliminate it. And
25 so that's really a major focus of this case in

1 judging the prudence of AEP Ohio's actions during
2 2018 and 2019.

3 When they obtained original approval for
4 this PPA Rider, they represented to the Commission
5 that it would be a \$110 million credit over the life
6 of the rider. That's in the March 31, 2016, Order.
7 And so, when they got to 2018 and they found that
8 it's not a credit, it's a charge of \$74 million
9 instead, much different than it was expected, that's
10 when, in 2018, they could have, and they should have,
11 taken some action to do something about it.

12 There was a recent ruling by the Michigan
13 Public Service Commission that we will get into with
14 this witness that talks about just that fact, what is
15 the utility's duty to monitor and to take action on
16 long-term wholesale contracts that are not performing
17 as expected.

18 So we are not here to relitigate that
19 2016 order. We understand that. But -- the prudence
20 of the charges in 2018 and 2019 cannot be viewed in a
21 vacuum and can't be judged unless we know how the
22 contract was expected to perform.

23 MS. KERN: Your Honor, if I may? There
24 was a lot of testimony there by counsel. And cost
25 was not the only consideration in approval of the

1 rider. So while Counsel Finnigan has expressed that
2 we are not looking at it in a vacuum, I would just
3 renew my objection to the question on the basis I
4 previously stated.

5 MS. BOJKO: Your Honor, may OMAEG be
6 heard, please?

7 EXAMINER PARROT: Go ahead.

8 MS. BOJKO: Just briefly, your Honor. We
9 support Ms. Henry and Mr. Finnigan's comments.

10 I would just add that the point of an
11 audit is to determine if the costs were imprudent or
12 unreasonable. And if they are determined to be
13 imprudent or unreasonable, the Commission can
14 disallow those costs.

15 So no one is challenging the existence of
16 the rider. We are advocating that the costs be
17 disallowed because they are either unreasonable or
18 imprudent. That's the whole point of an audit. We
19 wouldn't be here if that wasn't the point of the
20 audit. If it was just to allow all costs to be
21 passed through the rider, there would be no need for
22 an audit and no need for this proceeding. So that's
23 the whole point and that is what we are challenging
24 is whether those costs are imprudent or unreasonable.
25 Thank you.

1 EXAMINER PARROT: And the objection is
2 overruled as to the question that's pending.

3 Dr. Fagan, you may need us to reread it
4 at this point. If so, let me know.

5 THE WITNESS: I do, please, your Honor.

6 EXAMINER PARROT: Okay.

7 (Record read.)

8 A. So that question kind of goes beyond the
9 scope. We pointed out, for example, in Figure 26,
10 again doing the math, doing the audit, looking at
11 costs and, as I mentioned before, looking at PJM
12 prices as a benchmark, you know, to compare
13 performance, to compare outcome.

14 For example, in Figure 26, we show for
15 the set of months that we sampled that in a number of
16 months the energy charge, which is a component of --
17 it goes into the PPA Rider, doesn't necessarily
18 cover -- it's more expensive than power bought in
19 PJM. And in other months the cost is in the money.
20 So in some months it's out of the money; in some
21 months it's in the money.

22 Q. You are just talking about the energy
23 charge, though, aren't you?

24 A. That's correct.

25 Q. And the consumer has to pay both the

1 energy charge and the capacity or demand charge,
2 both, right?

3 A. That's correct.

4 Q. And the measure of the PPA Rider is the
5 difference between the PJM wholesale prices and the
6 OVEC costs for energy plus capacity.

7 A. So in the -- the accounting in the rider,
8 there are, of course, you know, offsets for capacity
9 market payments and energy market payments and there
10 is some other things in there as well, ancillary
11 services and costs and charges that are smaller but
12 you incur them where you earn them as a generator in
13 PJM, and all of those are offsets to the bill that
14 the participating companies like AEP Ohio get from
15 OVEC.

16 So, yes, demand charges are in that bill.
17 What can offset -- and so it's demand charges and
18 it's these energy charges which are fuel charges so
19 that's all in the OVEC bill. AEP Ohio pays a share
20 of that based on its participation. It gets a share
21 of the energy capacity sold in PJM and then the
22 difference is charged to customers. And I think
23 we're at the same place we were before, the
24 difference is positive, it's a charge to customers.

25 Q. Okay. And when you say "the difference,"

1 you are referring to the difference between the OVEC
2 energy and capacity costs versus the PJM energy and
3 capacity market prices.

4 A. The -- it is based on those prices, but
5 it's the -- but technically it's the earnings that
6 are credited to the Company from the operations of,
7 you know, their portion of -- the PPA is their
8 portion of OVEC generation and capacity.

9 Q. Okay.

10 A. So yeah.

11 Q. But they get those revenues by
12 participating in the PJM wholesale markets and
13 selling into those markets, right?

14 A. That's correct. That's where the
15 revenues come from.

16 Q. Okay. So the PPA Rider is a netting of
17 the PJM wholesale prices for energy and capacity
18 versus the OVEC costs for energy and capacity.

19 A. That's correct.

20 Q. Okay. And that netting resulted in
21 customers being charged \$74 million above wholesale
22 costs.

23 A. Over the two-year period and assuming the
24 math is right, that's what Figure 16 shows.

25 Q. Now, that wasn't in their best interest,

1 to be charged 74 million above prices they could have
2 gotten from the wholesale market, was it?

3 MS. KERN: Objection, argumentative.

4 EXAMINER PARROT: Rephrase, Mr. Finnigan.

5 Q. (By Mr. Finnigan) Do you have an opinion
6 as to whether it was in the best interest of retail
7 ratepayer customers of AEP Ohio to pay \$74 million
8 above the market price for energy and capacity that
9 they could have obtained from PJM?

10 MR. SCHULER: Objection, your Honor.

11 This goes directly to what was addressed in the
12 entries earlier in December. This is a question that
13 goes directly to the decision made to include the
14 OVEC PPA in the PPA Rider which your Honors
15 determined was beyond the scope of these proceedings.

16 EXAMINER PARROT: And I think that's a
17 different issue than what Mr. Finnigan is getting at,
18 so the objection is overruled.

19 MR. FINNIGAN: I would ask if the court
20 reporter could read back the question, please.

21 (Record read.)

22 A. Rendering that opinion is, I would say,
23 out of the scope of the audit, but our view was
24 that -- that OVEC -- that AEP Ohio, in its role on
25 the Operating Committee of OVEC, reconsider the sort

1 of default must-run offer strategy, to, you know,
2 help add flexibility in addressing changes in the
3 energy markets and perhaps improving energy market
4 revenues.

5 Q. So are you saying that the costs that AEP
6 Ohio flowed through the PPA Rider in 2018 or 2019
7 were imprudent to some extent because of the way they
8 did the must-run strategy?

9 A. We didn't make any findings of
10 imprudence. We had some findings for improvement.
11 So the short answer is no, not imprudence. But
12 markets change, the world we live in changes all the
13 time, and sometimes it's a good idea to carefully
14 review a strategy, look at all the drivers that are
15 involved in, you know, developing a more flexible
16 offer strategy. There's a lot of complex decisions
17 to be made which is why we recommended
18 reconsideration, careful reconsideration, based on
19 the numbers that we saw.

20 Q. Okay. And your answer a moment ago
21 talked about, you know, the scope of your audit. The
22 scope of your audit included all costs and sales
23 flowing through the PPA Rider, correct?

24 A. That's correct.

25 Q. Was it prudent for AEP Ohio to flow

1 \$74 million in above-market costs to their retail
2 ratepayers when the same amount of power could have
3 been purchased from the PJM market at a lower amount
4 of \$74 million less?

5 MR. SCHULER: Objection, beyond the scope
6 of this audit to the extent it is comparing, as
7 Mr. Finnigan has suggested, to the PJM market.

8 MS. KERN: Staff joins that objection as
9 being -- the question being outside the scope. The
10 rider has already been approved.

11 MS. HENRY: Your Honor, the -- may I be
12 heard?

13 EXAMINER PARROT: Go ahead.

14 MS. HENRY: The rider was approved.
15 Everyone is agreeing the rider was approved. Nobody
16 is questioning whether -- nobody is questioning the
17 validity of the rider.

18 What we are saying is, when the rider was
19 presented, it was presented as a credit to
20 ratepayers. And the way it was presented as a credit
21 to ratepayers is that it was always assumed there
22 would be so much money made on -- there would be a
23 positive energy margin that would offset all of the
24 demand charges, all of the capital charges. And that
25 obviously has not played out in real life. So what

1 we need to look at is whether this was prudently
2 operated. Because the way that it is being operated
3 is it's being charged to ratepayers and that is
4 subject to this docket and to this audit.

5 MR. SCHULER: Your Honor, I believe
6 Ms. Henry has made my point that these questions are
7 seeking to review the PPA Rider and the underlying
8 ICPA contract that was approved as part of the case,
9 which the Commission acknowledged when approving it
10 that there would be costs that flowed through it;
11 hence, the need for the rider.

12 MS. KERN: Your Honor, if I may. I
13 believe the Intervenors are missing a step and they
14 need to talk about Company actions that are relevant
15 to this proceeding other than just charges because
16 this proceeding is looking at the Company's actions
17 in 2018-'19. They are skipping right to charges.

18 MS. HENRY: Your Honor, when we talk to
19 AEP witnesses, we will go to AEP's actions and
20 whether those were prudent -- whether those actions
21 were prudent and whether the charges themselves are
22 just and reasonable.

23 MS. KERN: Just one final point. That
24 was the scope of the audit was to look at the
25 Company's actions, that was the stated purpose by the

1 Commission, so it would pertain to the auditor more
2 than anyone.

3 EXAMINER PARROT: The objections are
4 overruled. Go ahead, Dr. Fagan.

5 THE WITNESS: Could I just get the
6 question again?

7 EXAMINER PARROT: Sure.

8 (Record read.)

9 A. I'm not sure I can answer that. It's out
10 of scope and it -- I mean, I think it would presume
11 that they could decide. I just don't know the legal
12 ramifications under their ICPA and if they didn't
13 take -- it's beyond what I can answer.

14 Q. (By Mr. Finnigan) Just setting aside any
15 legal issues, would you just agree at -- well, strike
16 that.

17 The purpose of the audit, as you
18 described in your audit report, is to review the
19 prudence of all costs that flow through the PPA
20 Rider; is that correct?

21 A. That's correct.

22 Q. Part of the costs that flowed through the
23 PPA Rider in 2018 and 2019 were \$74 million in
24 above-market charges; is that correct?

25 A. That's correct.

1 Q. Do you have an opinion as to whether
2 flowing through those \$74 million in above-market
3 charges in 2018 and 2019 was prudent?

4 A. I feel like that's out of scope. I think
5 that's more you are asking if the vehicle, if the
6 rider is prudent. I don't think I can answer.

7 Q. Let me go back to your audit report. And
8 please refer to page 7.

9 A. I'm on page 7.

10 Q. Okay. And we touched on this again but
11 since we are dealing with this question of prudence,
12 I feel that it's important to bring up again. I have
13 some follow-up questions.

14 So looking at the second full paragraph
15 on page 7, there is a sentence that begins "The
16 purpose of the audit." Do you see that?

17 A. Yes.

18 Q. And it says, "The purpose of the audit is
19 to establish the prudence of all the costs and sales
20 flowing through the PPA Rider...." Have I read that
21 part correctly?

22 A. Correct.

23 Q. So -- okay. Now, the \$74 million in
24 above-market costs were flowed through the PPA Rider,
25 correct?

1 A. Correct.

2 Q. And if those costs were flowed through
3 the PPA Rider and the prudence of all the costs is
4 within the scope of your audit, are you still unable
5 to render an opinion as to whether it was prudent to
6 flow through those costs?

7 A. In my view, the audit is about the
8 prudence of how the costs were incurred, you know,
9 the decisions made about, you know, giving into --
10 offering into energy markets, et cetera.

11 The flowing-through-the-rider part, like
12 I said, I think that's the vehicle, that's the
13 framework that we worked within.

14 Q. So would it be your opinion -- I'm sorry.
15 Would it be your answer you have no opinion as to
16 whether it was prudent to flow through 74 million in
17 above-market costs through the PPA Rider in 2018 and
18 2019? You have no opinion on that.

19 A. That is out of scope.

20 Q. And you have no opinion on that. It --

21 MS. KERN: Objection, your Honor. She
22 just answered that question. To the extent he is
23 asking her for a personal opinion that's not in the
24 audit report, I am not clear.

25 MR. FINNIGAN: Your Honor, I asked her a

1 simple yes or no question. She didn't respond with a
2 yes or no answer. I am just trying to get a yes or
3 no answer to my question. Does she have an opinion
4 or does she not have an opinion. And I will reask it
5 because that was -- I thought I had framed it as a
6 simple yes or no.

7 MS. KERN: If I may have the last
8 question and the response from Marie repeated --
9 excuse me, Dr. Fagan, so I can understand, because I
10 thought there was a response there.

11 MR. FINNIGAN: Your Honor, I am just
12 looking for a simple yes or no answer. Do you have
13 an opinion or do you not have an opinion. And, you
14 know, at that point I can move on. That's really
15 going to guide what other questioning I might have.
16 And I am simply trying to get a yes or no answer. I
17 think she, frankly, answered with something about the
18 scope. And I thought her intent was to say no. But
19 I am just trying to get a clear record so we know
20 what -- what her opinion is. I am just trying to get
21 her opinion.

22 EXAMINER PARROT: Dr. Fagan, if you feel
23 you can give a yes or no, please do so. But if you
24 feel like it's not a simple kind of yes or no
25 question, you may say that.

1 THE WITNESS: Well, thank you, your
2 Honor.

3 Well, as I said before, the question
4 about what I am calling the rider, the vehicle, any
5 view of that is out of scope. So I guess a short
6 answer for Mr. Finnigan is no.

7 Q. (By Mr. Finnigan) Okay. Thank you.

8 Now I would like to ask you to turn to
9 another exhibit. And this is one that we provided to
10 you as OCC Cross-Examination Exhibit No. 18. If you
11 could please turn to that.

12 MS. BOJKO: Your Honor, is it possible to
13 take a brief recess while we are turning to a new
14 exhibit for a personal health break?

15 THE WITNESS: I would second that.

16 EXAMINER PARROT: Yes. Let's go off the
17 record for a minute.

18 (Discussion off the record.)

19 (Recess taken.)

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

22 MR. FINNIGAN: Thank you, your Honor.

23 Q. (By Mr. Finnigan) Ms. Fagan, in the area
24 of fuel adjustment clause audits, are you familiar
25 with the general concept known as "economy purchased

1 power"?

2 A. In general, yes.

3 Q. What is your understanding of what that
4 means?

5 A. In the -- in some of the audits we've
6 done, it -- you can have a utility that owns a power
7 plant that there is a fuel adjustment clause, but if
8 you are in a wholesale market, you're not selling
9 that particular power from that plant to your own
10 customers. The owner is bidding its load into the
11 power market and it's offering its generation into
12 the power market. So it's -- so you add sales into
13 the market or sometimes you even have sales out of
14 the market into, you know, related balancing areas or
15 something, but it has to do with the fact that you're
16 not sending particular electrons from a particular
17 plant to your own load necessarily.

18 Q. Does it have any bearing on what costs
19 you are allowed to recover under a fuel adjustment
20 clause?

21 MR. SCHULER: Objection, your Honor.
22 There is not a fuel adjustment clause at issue in
23 this case. I don't see the relevance to this matter.

24 MR. FINNIGAN: Well, your Honor, the
25 relevance is we reviewed the language in the

1 March 31, 2016, Order, previously, saying that the
2 scope of these PPA prudency reviews would be to do
3 them just like an FAC analysis.

4 MS. KERN: Objection to the extent that
5 Dr. Fagan has testified she got her scope of work
6 directly from the RFP that was issued for this
7 proceeding.

8 EXAMINER PARROT: Overruled. To the
9 extent you are able to answer, Dr. Fagan, go ahead.

10 A. During this audit, the PPA audit, I had
11 nothing in my mind about FAC audits or what's allowed
12 or not allowed. It's just -- I didn't contemplate
13 any of that during this particular audit.

14 Q. I appreciate that. And I understand.
15 But I'm simply saying if we applied those concepts
16 now just to look at it, and I want to focus on the
17 concept of economy purchased power, that's what we
18 are talking about. If you did apply that concept to
19 this case, and I'm simply asking under the concept of
20 economy purchased power and fuel adjustment clause
21 cases, is there any limit on the amount of costs that
22 the utility can recover as determined by the
23 relationship between the costs of the economy
24 purchased power versus the cost of the generation
25 that the utility gets for its consumers from its own

1 generation?

2 MR. SCHULER: Objection, compound
3 question. Assumes facts not in evidence. It is a
4 hypothetical that, as I said in my last objection, is
5 about fuel audits. That is not the subject of this
6 case. In response to the prior question, Dr. Fagan
7 said that FAC audits, fuel adjustment clause audits,
8 weren't even in her mind when she was conducting this
9 audit so it would also be irrelevant.

10 EXAMINER PARROT: I'm going to go ahead
11 and sustain the objection at this point. I think
12 she's said this was not something she was considering
13 at the time of her review and audit, Mr. Finnigan.

14 MR. FINNIGAN: And, your Honor, I'm not
15 asking in the context of the audit report. I'm just
16 asking, in her opinion as an expert in the electric
17 utility industry, if she did apply that concept, how
18 would it apply to this case. So I wasn't asking her
19 to answer on the basis of whether it was in the audit
20 report or not. I understand. I will move on to
21 something else.

22 Q. (By Mr. Finnigan) Dr. Fagan, are you --
23 you talk about in the audit report what the
24 relationship is between AEP and OVEC; is that right?

25 A. That's correct.

1 Q. Okay. And can you find the place in the
2 audit report where you talk about that. I think it's
3 page 16. That's what my notes say. Let's turn to
4 page 16.

5 A. I'm on page 16.

6 Q. Okay. Is that where you talk about the
7 relationship between AEP and OVEC?

8 A. It starts on page 15, but it goes on to
9 page 16.

10 Q. And so AEP and OVEC have overlapping
11 management. One area of overlap would be Mr. Chodak?

12 A. We didn't mention names. We mentioned
13 titles.

14 Q. Okay. Take a look at footnote 17 with
15 the note Chodak.

16 A. Oh, okay, yes. Yep.

17 Q. Yeah, that footnote 17 is citing the same
18 person who is the Executive Vice President for
19 Generation of AEP Ohio is also responsible for the
20 OVEC IKEC, I-K-E-C, generating assets; is that right?

21 A. Correct.

22 Q. And based on that footnote, that's
23 Mr. Chodak, right?

24 A. Correct.

25 Q. And Mr. Chodak is an officer of AEP

1 corporation?

2 A. I would assume so. I don't -- we
3 didn't -- probably, you know, but we didn't say that
4 in the report.

5 Q. Okay. Well, you do say that Mr. Chodak
6 serves on the Executive Committee of AEP; is that
7 right?

8 A. That's correct.

9 MR. SCHULER: Objection. I believe
10 Dr. Fagan mentioned she does not talk about
11 Mr. Chodak in the audit report.

12 Q. And Mr. Chodak also serves on the
13 Executive Committee of OVEC?

14 A. The -- the role -- rather than talking
15 about people by name, it's the role that we talk
16 about.

17 Q. Okay.

18 A. Executive Committee -- as we've said
19 here, the Executive Committee of AEP and OVEC.

20 Q. Okay. It's the same person.

21 A. Yes.

22 Q. And couldn't those entities have a
23 conflict of interest in terms of their own objectives
24 and what's in the best interests as between those two
25 companies?

1 MR. SCHULER: Objection, legal
2 conclusion.

3 MS. KERN: So, we join that; and calls
4 for speculation.

5 EXAMINER PARROT: Maybe rephrase,
6 Mr. Finnigan.

7 MR. FINNIGAN: Yeah. Let me withdraw
8 that question, your Honor, and try a different one.

9 Q. (By Mr. Finnigan) Given the fact that
10 there is this overlap between certain positions at
11 AEP and OVEC, could you see any conflict of interest
12 between what's in the best interests of retail
13 ratepayers of AEP versus what's in the best interests
14 of AEP shareholders?

15 MR. SCHULER: Objection. Same legal
16 conclusion just adding extra words at the end of the
17 question.

18 EXAMINER PARROT: Just to be clear,
19 Dr. Fagan, we are not asking you to offer a legal
20 opinion on the question, but to the extent you can,
21 go ahead and answer.

22 THE WITNESS: Thank you, your Honor.

23 A. We did not examine that perspective at
24 all.

25 Q. Okay. In the context of a fuel

1 adjustment clause analysis, is it important to
2 determine whether there is an affiliate relationship
3 between the utility and the company that it purchases
4 power from?

5 MR. SCHULER: Objection. Again, we are
6 getting back to fuel adjustment clause audits that
7 Dr. Fagan said was not in her mind at the time of the
8 audit.

9 EXAMINER PARROT: Sustained.

10 MR. FINNIGAN: Your Honor, I would like
11 to make a proffer for the record at this time.

12 EXAMINER PARROT: Go ahead, Mr. Finnigan.

13 MR. FINNIGAN: Your Honor, for the
14 record, I would just like to make a proffer that I
15 have a line of questioning to follow up on the
16 concept of a fuel adjustment clause audit. I believe
17 that this is relevant to the issues in the case
18 because the Commission stated in its March 31, 2016,
19 Order, in Case No. 14-1693, that the prudence audit
20 for the PPA Rider would be conducted in the same
21 manner as the fuel adjustment clause audit. And so,
22 as a result of that, I believe that there is a line
23 of questioning that is important for me to ask this
24 witness about what are the general principles of fuel
25 adjustment clause analyses that might apply to this

1 case if they were applied.

2 And the witness has testified that she is
3 familiar with fuel adjustment clause analyses. She's
4 done them in other states such as Louisiana. We have
5 a cross-examination exhibit that goes to that.

6 And there are questions that I would have
7 of this witness with respect to the principle of
8 lower or cost -- lower of cost or market, meaning
9 that when a utility buys power from an affiliate, it
10 can only pass through a fuel adjustment clause the
11 lower of the market or cost price, which would
12 disallow all of the PPA Rider costs in this case.

13 There's also a separate doctrine in the
14 area of fuel adjustment clause analysis that has to
15 do with economy purchased power. So even aside from
16 the issue of whether there is an affiliate
17 relationship between AEP and OVEC, the doctrine of
18 economy purchased power would provide that a -- a
19 utility cannot flow through an FAC cost clause any
20 costs that are above its own costs for providing
21 generation to consumers.

22 In this case the witness has testified
23 that the cost of providing generation to consumers as
24 the PJM wholesale price is the reasonable benchmark.
25 And all of the PPA Rider charges are above that

1 price. And under the doctrine of economy purchased
2 power, they would all be considered disallowed in
3 this case.

4 And if permitted to ask the witness those
5 questions, that's what I believe her testimony would
6 be as established by her audit report in the
7 Louisiana case, and also by a law review article by
8 Mr. Duffy that I also have marked as a
9 cross-examination exhibit. Those are the areas I am
10 proffering into evidence.

11 And in addition, I would like to proffer
12 certain exhibits which would be Exhibit 20, the
13 Louisiana audit report that is a fuel adjustment
14 clause audit, and also Exhibit 18 which is the law
15 review article by Mr. Duffy that explains how a fuel
16 adjustment clause audit is performed in Ohio.

17 So if I were permitted to ask those
18 questions, that's what I believe the witness's
19 answers would be, and that's the proffer I would like
20 to make at this time.

21 EXAMINER PARROT: Thank you,
22 Mr. Finnigan. It's noted for the record.

23 I would just note at this time that my
24 view of the paragraph cited there in the Commission's
25 Order at the bottom of page 89, over to page 90, is

1 that the Commission there is focused on how the
2 process for the PPA Rider quarterly filings will
3 work; how, in these audit cases, parties would be
4 afforded the opportunity to participate and so forth;
5 and that the scope of this audit proceeding, though,
6 is set by RFP that was issued in these cases by the
7 Commission. And so I will note that. Your proffer
8 is noted. Let's go ahead and move on.

9 MR. FINNIGAN: Okay. Thank you, your
10 Honor.

11 Your Honor, one other document I forgot
12 to add in my proffer was OCC Cross-Examination
13 Exhibit No. 19. Exhibit 19 is a P -- an FAC decision
14 by the Commission involving OVEC costs that was
15 performed in -- I forget the year. I want to say
16 2013. But in any event, the decision showed that
17 under an FAC analysis involving costs from OVEC, this
18 same company, those were disallowed because they were
19 above the costs of the utility's own generation. So
20 I just want to include that in the proffer.

21 EXAMINER PARROT: Okay. Thank you.

22 Q. (By Mr. Finnigan) Okay. Now, I am going
23 to change the topic, Ms. Fagan. I would like to talk
24 about what your preparation was to give your
25 testimony here today, and I would like you to turn to

1 a different exhibit and this is OCC Cross-Examination
2 Exhibit 1. If you could take a moment to turn to
3 that, please.

4 A. I'm there.

5 Q. Okay. And can you take a moment just to
6 read over that.

7 A. It's 22 pages.

8 Q. Oh, I meant -- well, let me strike that.
9 Let me ask a different question.

10 Have you seen a document before that is a
11 subpoena to you to bring certain documents to this
12 hearing?

13 A. No.

14 Q. Okay. And if you could open that
15 document and start at the end on page 22 and that's
16 where this document I want to ask you about is
17 located. If you could -- this is only a two-page
18 document that I want to ask you about that's the
19 actual subpoena. So if you could go to the last page
20 of that document. I could tell you how many pages it
21 is from the back in a moment here.

22 A. Oh, okay.

23 MS. KERN: If I may interject. I am not
24 sure that Ms. Fagan -- Dr. Fagan has the right
25 exhibit as OCC Exhibit 1. Give me just a moment

1 because I'm not actually in the AG e-mail right now.

2 EXAMINER PARROT: While she is doing
3 that, Mr. Finnigan, are you proposing to mark this
4 for identification purposes?

5 MR. FINNIGAN: Yes, your Honor.

6 EXAMINER PARROT: Can we try to do that
7 more formally, please?

8 MR. FINNIGAN: Yes. Your Honor, at this
9 time I would like to mark what is labeled OCC
10 Cross-Examination Exhibit 1 and mark it with the same
11 markings for purposes of identification.

12 EXAMINER PARROT: OCC Exhibit 1 is marked
13 for identification purposes.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Mr. Finnigan) Okay. Ms. Fagan, let
16 me ask you to just go from the back of the document
17 and this would be on the --

18 MS. KERN: Your Honor, if counsel may
19 interject. I am having my co-counsel send Ms. --
20 Dr. Fagan, OCC Exhibit 1, just to make sure she has
21 the proper document before she answers anything
22 because I think we are not on the same page here.

23 EXAMINER PARROT: Okay.

24 MS. KERN: I appreciate your patience.

25 MR. McKENNEY: While we are doing this,

1 would it be a good time to go off the record and
2 discuss what the plans are for the rest of the day?

3 EXAMINER PARROT: We can do that, I
4 guess. Let's go off the record.

5 (Discussion off the record.)

6 (Thereupon, at 1:18 p.m., a lunch recess
7 was taken.)

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1 Wednesday Afternoon Session,
2 January 12, 2022.

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

6 We have had a lunch recess at this point
7 and we are ready to go ahead and pick it back up. I
8 believe we were making sure that the witness,
9 Dr. Fagan, has all of the exhibits. I think
10 hopefully we are ready to proceed.

11 THE WITNESS: I do have them, your Honor.

12 EXAMINER PARROT: Okay. Very good. Go
13 ahead, Mr. Finnigan.

14 MR. FINNIGAN: Thank you, your Honor.

15 Your Honor, just for level setting, I
16 believe before our break we had the document labeled
17 as OCC Cross-Exam 1 was actually marked for
18 identification for that purpose?

19 EXAMINER PARROT: That's right.

20 MR. FINNIGAN: Okay. Thank you, your
21 Honor.

22 Q. (By Mr. Finnigan) And then Ms. Fagan, do
23 you now have that document open before you, that is
24 the document that's been marked for identification as
25 OCC Cross-Exam Exhibit 1?

1 A. I do.

2 Q. Thank you.

3 Now, could you please turn to page 16 of
4 22 using the numbers in the upper right-hand corner
5 of that document.

6 A. Okay.

7 Q. Thank you. Now, take a moment to review
8 that, please, that two-page document beginning at 16.

9 EXAMINER PARROT: Mr. Finnigan, could you
10 point me to a specific page. I do not -- I just
11 pulled the document right from the docket so I do not
12 have the page numbers.

13 MR. FINNIGAN: Oh, I am sorry. Your
14 Honor, this would be, counting from the end of the
15 document, I believe it's seven pages back from the
16 end.

17 EXAMINER PARROT: Okay. That helps.
18 Thank you.

19 MR. FINNIGAN: They are numbered not
20 sequentially because some of these are attachments.

21 EXAMINER PARROT: Right.

22 A. Okay. I've read it.

23 Q. Now, have you seen a copy of this
24 particular document before, that is, the two pages
25 marked as pages 16 and 17 of 22 of OCC Cross-Exam

1 Exhibit 1?

2 A. I have not.

3 Q. Now, if you'll look at the bullet points
4 that begin at the bottom of page 16 of 22, it's
5 asking that you bring certain documents to this
6 hearing. Would you please take a moment to review
7 those three bullet points at the bottom of page 16 of
8 22 and at the top of page 17 of 22.

9 MS. KERN: Your Honor, I object.
10 Dr. Fagan can review the bullet points. However, she
11 is not testifying today pursuant to the subpoena. If
12 I recall, your Honors found that the subpoena request
13 was moot and denied it with respect to Dr. Fagan.
14 She's here testifying as a witness supporting the
15 audit report. So she did not -- I did not instruct
16 her to bring any documents pursuant to the subpoena.

17 EXAMINER PARROT: That's correct,
18 Ms. Kern.

19 So, with that, Mr. Finnigan, are you --
20 are you still asking that the witness review the
21 bullet points?

22 MR. FINNIGAN: Yes. If she can just
23 confirm that she brought none of those documents with
24 her. I just wanted to get that on the record.

25 EXAMINER PARROT: Okay.

1 A. I did not. All documents -- I have not
2 examined e-mails from whatever, a year ago, whatever,
3 that cover all this material. I don't have these
4 with me.

5 Q. (By Mr. Finnigan) Okay. Thank you.

6 Let's move on, and I want to ask about
7 another cross-examination exhibit. And this is the
8 one that's been marked as cross-examination
9 Exhibit 2. If you could please take a moment and
10 pull up that document.

11 MR. FINNIGAN: Your Honor, while she is
12 doing that, I would ask that for the record the court
13 reporter mark the document that's labeled as OCC
14 Cross-Exam Exhibit 2 and have it marked for
15 identification as OCC Cross-Exam Exhibit 2.

16 EXAMINER PARROT: I now have Exhibit 2.

17 MR. FINNIGAN: Okay.

18 EXAMINER PARROT: So marked.

19 Hold on. So marked

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 EXAMINER PARROT: Go ahead, Mr. Finnigan.

22 Q. (By Mr. Finnigan) That is a Staff Notice
23 of Filing Errata Sheet for the Audit Report, is what
24 it says on the first page. Have you seen this
25 document before?

1 A. I don't know that I've seen that exact
2 document but I -- but I was the one who developed the
3 errata that are in that document.

4 Q. Okay. Tell me about that process of, you
5 know, how did it begin that you developed errata for
6 your testimony.

7 A. I reviewed the report more recently and
8 discovered a couple of places where I was not
9 entirely happy about how we characterized capacity
10 prices for PJM. It was broad. It was more like a
11 placeholder. That was the errata for page 20 and 23.
12 So, you know, upon further reflection looking at
13 this, it doesn't -- it doesn't change the results of
14 the audit, but it's not strictly accurate and I
15 decided it shouldn't be in the report.

16 Q. Okay. I am just trying to understand the
17 nature of the inaccuracy that you found. So let's
18 just -- I want to just talk about the first two of
19 those. I think the third one is self-explanatory.
20 So let's talk about that first bullet point in the
21 errata filing that goes to page 20 of the audit
22 report. So if you could please take a moment to turn
23 to page 20 and this is the audit report.

24 A. Yes. I'm there on page 20.

25 Q. Okay. Okay. Now, in the errata filing,

1 it says a whole paragraph should be stricken. And
2 just to make sure we're clear, if we look at page 20
3 of your audit report, there is a heading that says
4 "3.2 -- section "3.2 PJM ancillary service markets."
5 Do you see that heading?

6 A. Yes, I do.

7 Q. Okay. And then in the errata filing you
8 propose to strike the entire paragraph above that
9 section heading.

10 A. Yes, that's correct.

11 Q. And what is it that's inaccurate about
12 that paragraph?

13 A. What is inaccurate is the capacity
14 clearing price in 2018.

15 Q. And what should it be?

16 A. I don't have it off the top of my head.
17 But it doesn't change the final results of the audit
18 but it wasn't calculated correctly.

19 Q. Would the difference in calculation be
20 material to the amount that you mentioned here where
21 you have the total energy and capacity at 41.25
22 meg -- per megawatt-hour?

23 A. I don't have that off the top of my head.

24 Q. So you don't know if it's a material
25 difference or not.

1 A. Not off the top of my head.

2 Q. Do you know whether -- strike that.

3 When you say that there was an error in
4 the capacity calculation, did you prepare a new
5 calculation that you could share with us?

6 A. No.

7 Q. Then was it the methodology that you --
8 you were dissatisfied with and that was the reason
9 for your errata filing?

10 A. Yes. I wasn't happy with how we
11 calculated the capacity price. It's my
12 responsibility to have an accurate report and I
13 hadn't caught that the first time. So rather than
14 live with the mistake, I decided that the
15 paragraph -- the report doesn't stand or fall on the
16 paragraph, our conclusions are the same, it's just
17 simpler not to have that.

18 Q. Okay. And so just so I'm clear on this,
19 you didn't perform any new calculation to determine
20 what you think the right capacity price should have
21 been for 2018.

22 A. We did not do that.

23 Q. And if you were going to do it, can you
24 explain what the right methodology should be for
25 doing that?

1 A. We should have used the PJM capacity
2 market price, maybe the capacity market prices kind
3 of overlap years, which is in megawatt-days and not
4 in megawatt-hours. So it was calculated here and
5 translated in some way that's not accurate into
6 megawatt-hours which isn't how capacity prices are --
7 it's not what capacity prices are. They are not for
8 energy hours. They are for the megawatts. So the
9 methodology was incorrect.

10 Q. If you were trying to arrive at a price
11 of energy and capacity per hour, how would you
12 convert the capacity price if it's expressed in terms
13 of a megawatt-day?

14 A. If you were going to do that, you would
15 need to make some assumption about how many hours a
16 year a plant would run, so it would be different for
17 different plants. It's just -- it was not a useful
18 exercise.

19 Q. As a -- have you seen some people, as a
20 rule of thumb, convert a megawatt-day price to a
21 megawatt-hour price for capacity by just dividing by
22 24?

23 A. I think that's what we did here that I
24 was not happy with.

25 Q. Okay. But in terms of industry practice,

1 have you seen that done, you know, frequently in the
2 industry to express a mega -- to express a price for
3 capacity on an hourly basis?

4 A. I can't think of anything offhand.
5 Perhaps, you know, it's done. I didn't like it as a
6 methodology here.

7 Q. Okay. Are you familiar with the reports
8 published by the independent market monitor for PJM,
9 the State of the Market Reports?

10 A. Oh, yes, I've -- I've read probably a
11 couple from PJM. You know, I follow them through
12 ERCOT and, you know, so generally, yeah.

13 Q. And those are prepared by the independent
14 market monitor whose job it is to monitor energy and
15 capacity prices in PJM.

16 A. That's correct.

17 Q. And the independent market monitor who
18 prepares these reports is an expert in calculating
19 energy and capacity prices for PJM.

20 A. Okay. Yes.

21 Q. And if we wanted to find out what would
22 be an authoritative source of information to get the
23 energy and capacity price for PJM at a particular
24 point in time like 2018, we could pull that
25 information from the independent market monitor's

1 State of the Market Report for that time period.

2 A. I'm pretty sure you could.

3 Q. Okay. And that would be an authoritative
4 source of information.

5 A. I would say -- I would say generally,
6 yes.

7 Q. Okay. And now, so to go back to this
8 statement here, you have the cost of power from the
9 OVEC power plants in 2018 as \$54 a megawatt-hour.
10 Have I read that correctly?

11 A. That's correct.

12 Q. Now, do you know whether the market price
13 for energy and capacity for PJM for 2018 was greater
14 or less than the OVEC costs for capacity and energy?

15 MS. KERN: Objection, your Honor. The
16 errata sheet and Dr. Fagan's testimony was to
17 eliminate this paragraph for the reasons she's
18 explained. So I think it will cause confusion in the
19 record if -- if we are going to accept the paragraph
20 that she wants deleted from the -- from the audit
21 report as part of the record.

22 EXAMINER PARROT: Response?

23 Mr. Finnigan, did you have a response?

24 MR. FINNIGAN: Yes, your Honor. The
25 point I am trying to get at here is whether the OVEC

1 charges are greater or less than the market price for
2 energy and capacity. And her statement that was --
3 that was stricken says that the OVEC costs were
4 greater than the market price for energy and
5 capacity. And I'm still trying to understand
6 whether, if a different methodology were used, would
7 the result be that it's still a situation where the
8 OVEC costs still remain greater than the market price
9 for energy and capacity such that in our -- our
10 position would be they were imprudent.

11 MR. MCKENNEY: Your Honor, if I could be
12 heard?

13 EXAMINER PARROT: Go ahead.

14 MR. MCKENNEY: I would just note IEU-Ohio
15 has a similar line of questioning and has very much
16 the same questions on this particular issue. We
17 think it is relevant actually to this audit, we think
18 it's a fundamental issue in this case, and so we
19 would join OCC in its arguments in support of this
20 question.

21 EXAMINER PARROT: Overruled as to the
22 specific question that's pending.

23 Go ahead, Dr. Fagan.

24 A. I mentioned earlier that taking the
25 paragraph out or leaving it in isn't material to the

1 results because we know from Figure 16 where we look
2 at all the, you know, the net OVEC charges that
3 were -- or the actual PPA charges in column A, so
4 that's the OVEC charges net of energy payments,
5 capacity payments, ancillary services, whatever.
6 They're positive. So we know even just with that,
7 that the -- you know, the total bill is higher than
8 energy plus capacity in PJM. So rather than have a
9 paragraph and a number in the report that I wasn't
10 entirely happy at the methodology, I would rather not
11 have that there because we've made the point
12 elsewhere.

13 Q. I understand. Thank you for that
14 explanation. Okay. I am going to move on then.

15 And I just have a question about this
16 second bullet point in this errata sheet and then
17 that's the only other question I have about that. So
18 let's take a look at that very quickly. Just give me
19 one moment to pull that up on my computer. Okay.
20 The second one has to do with page 23 of the audit
21 report. Could you take a moment to turn to page 23
22 so we can reference where that is in the audit
23 report, what it is that you are striking.

24 A. Yes, I'm there.

25 Q. Okay. Is that within the section that's

1 labeled "3.5" or is it in section 3.4?

2 A. It's in 3.5.

3 Q. So let me take a moment and orient myself
4 to that. Okay. So this section 3.5 that begins on
5 page 23, what you're striking, you're beginning at
6 the beginning of that paragraph, "The price of energy
7 and capacity," correct?

8 A. Correct.

9 Q. Right. And are you just striking that
10 one sentence or something different than that?

11 A. I'm striking the one sentence but it's
12 actually a somewhat long and complex sentence. So
13 striking it through the colon. And the reason for
14 that is it refers to the total PJM energy and
15 capacity price of 41.25 that we mentioned earlier
16 that I'm just -- I'm just not happy with how -- I
17 mean, you could measure capacity that way. I am not
18 that happy with how we did it, so I didn't want to
19 mention it again.

20 Q. So this is just the same point you were
21 discussing earlier but this is just a slightly
22 different context because -- well, actually it's the
23 same thing because they both had to do with 2018.
24 This is just another instance where you are
25 referencing that calculation in your report. That's

1 why you are striking it; is that right?

2 A. Yes. That's correct.

3 Q. All right.

4 MS. BOJKO: Your Honor, may I just
5 interrupt for a point of clarification? I thought
6 the errata said just the first sentence and I heard
7 something different from the witness.

8 THE WITNESS: Oh, you're right.

9 MS. BOJKO: Can we seek clarification?

10 THE WITNESS: Correct. I am very sorry.
11 I didn't want to refer to the price before because I
12 am not happy with how we calculated it. But you're
13 right, the next piece is a new sentence. It's too
14 low to support a new CCGT. But I suppose now, if we
15 strike the first sentence, then the "too low" doesn't
16 have anything to refer to. So I guess for the
17 logical progression we would have to strike the first
18 half of that second sentence.

19 Q. (By Mr. Finnigan) Okay. Is there
20 anything else you would propose to strike in this
21 section?

22 A. I think the rest of it generally makes
23 sense when comparing the levelized cost of new entry
24 in PJM with the cost of the OVEC plants, the LCOE is
25 lower then the cost of the OVEC plants. So I -- but

1 the 42 and 47.5 have to be compared to something.

2 I think for just, I guess, purposes of
3 the reader understanding the comparison, perhaps we
4 just need the comparison of the levelized cost of new
5 entry with the total cost of the OVEC plants that
6 we -- we got from the OVEC annual report. So a lot
7 of this could be simplified, I suppose.

8 Q. Okay. I do want --

9 A. Editing rather than correcting, and I
10 know that gets complicated.

11 Q. Okay. I do want to ask you some
12 questions about this levelized cost of entry and what
13 the significance of that is, but I want to come back
14 to that in a little bit. So let me move on and just
15 go through some of these other documents.

16 So with that I am going to ask if you
17 could please turn your attention to what has been
18 labeled as OCC Cross-Examination Exhibit 4 and take a
19 moment to pull that up on your computer, please.

20 A. Okay. I have it.

21 MR. FINNIGAN: Okay. Now, your Honor, I
22 would like to mark for the record the document
23 labeled as OCC Cross-Examination Exhibit 4, have that
24 labeled for identification purposes as OCC
25 Cross-Examination Exhibit 4.

1 EXAMINER PARROT: And, Mr. Finnigan, if
2 you could just briefly note what it is for the
3 record.

4 MR. FINNIGAN: Yes. Your Honor, this is
5 a ratemaking study that articulates general
6 principles of ratemaking, and it was prepared by her
7 firm, London Economics, and so it establishes what
8 certain industry standards are that are relevant to
9 this case.

10 EXAMINER PARROT: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Mr. Finnigan) Okay. Ms. Fagan, do
13 you have that document before you, what's been marked
14 as Exhibit 4?

15 A. Yes, I have it.

16 Q. And did you prepare this document? Were
17 you the lead author?

18 A. I was not involved in this project.

19 Q. Have you seen this document before?

20 A. I've seen bits and pieces of it but I
21 don't think I have read it all the way through.

22 Q. Okay. I am just going to ask you about a
23 few bits and pieces. Now, I would like to ask you to
24 turn your attention to page 137 of the document.

25 A. Okay.

1 Q. Okay. Now, it will take me a moment to
2 get there. Bear with me, please.

3 Now, there's a discrepancy between how
4 these pages are numbered. If you look at the top, it
5 says page 138 of 324, but then at the bottom of that
6 same page is 137. So what I am referring to just to
7 be clear is I'm referring to the numbers at the
8 bottom of the page when I ask you to turn to 137.
9 And it's a section entitled "6.1.4 Competitive
10 Procurement Framework." Do you see that?

11 A. I do.

12 Q. Okay. Please take a few moments or as
13 long as you would like to review that page and then
14 the next couple of pages through the end of that
15 section until you come up to section 6.1.5 about
16 using a totex, T-O-T-E-X, framework.

17 MR. SCHULER: Your Honor, while she is
18 doing that, AEP Ohio will object. Dr. Fagan
19 indicated that she was not involved in this project
20 at all. Mr. Finnigan has not established a
21 foundation that any of the sections she's looking at
22 are the bits and pieces.

23 Beyond that, this is some sort of report
24 that allegedly was filed with the Kansas Commission.
25 We don't know the status of this case, we don't know

1 under what law it was analyzed under, so there is
2 zero probative value and it potentially could be
3 prejudicial in this case.

4 So, for multiple reasons, we would object
5 to not only the admission of this exhibit, not that
6 Mr. Finnigan has moved to admit it yet, but any
7 questioning because it could potentially lead to
8 irrelevant evidence with no foundation into the
9 record.

10 MS. KERN: Staff would join Counsel's
11 objection for the reasons stated. Thanks.

12 EXAMINER PARROT: And I think at this
13 point Mr. Finnigan had just asked her to look at this
14 reference so we'll see what his question is and go
15 from there.

16 MR. SCHULER: Thank you, your Honor.

17 A. I've read it over.

18 Q. Okay. Now, would you agree with me that
19 the description in section 6.1.4 establishes what
20 would be considered good utility practice for
21 procuring resources to serve customers?

22 MR. SCHULER: Your Honor, I object and
23 renew the objection that I just stated --

24 EXAMINER PARROT: All right. And let's
25 back up, Mr. Finnigan, and see if she has at least

1 reviewed this part of the notice of filing of the
2 rate study and we will kind of go from there. Ask
3 some foundational questions first, please.

4 MR. FINNIGAN: Yes. So -- and your
5 Honor, I was just asking for foundational purposes
6 whether she agrees that the description of the
7 competitive procurement framework in this report is
8 consistent with her understanding of good utility
9 practice. That's my basic question.

10 EXAMINER PARROT: And before we get
11 there, let's -- I think she has only said she is
12 maybe somewhat familiar with this filing, so let's
13 see if this is one of those portions.

14 MR. FINNIGAN: I will get at that.

15 Q. (By Mr. Finnigan) So in your work as a
16 utility industry expert in doing prudence reviews,
17 have you had to familiarize yourself with the concept
18 of competitive procurement for generation or supply
19 resources?

20 A. Yes, we have. Broadly.

21 Q. Okay. And would you agree with me that
22 in the utility industry it's generally considered
23 good utility practice when a utility is procuring
24 supply resources to use a competitive procurement
25 process?

1 MS. KERN: Objection. Calls the witness
2 to speculate on the other circumstances of the
3 question.

4 EXAMINER PARROT: To the extent you are
5 able to, go ahead and answer, Dr. Fagan.

6 A. I just want to understand, so is the
7 question about this report?

8 Q. Not yet. I will get to that. But now I
9 am just asking your understanding of the utility
10 industry generally based on your experience, and so I
11 am just asking at a high level, do you have any
12 understanding as to whether it's considered good
13 utility practice for a utility to use a competitive
14 procurement process before obtaining generation or
15 supply resources for its consumers?

16 A. There are a lot of pieces to that
17 because -- so there could be RFPs that are issued
18 under integrated resource plans. You know, there is
19 RFPs when specific things are desired like some
20 utilities want to add solar, wind, whatever. But
21 utilities -- you know, a lot of utilities operate in
22 wholesale, you know, energy and capacity markets and
23 the idea there is that there are market signals
24 rather than procurement specifically. So I am not
25 quite sure I can answer your question.

1 Q. Okay. So talk to me about that concept
2 you were just going to. What are these market
3 signals and how do they work and what use does the
4 utility make of them?

5 A. By "utility" you mean the load-serving
6 entity or?

7 Q. Sorry. I didn't hear what you are
8 asking. By the way, I am supposed to ask the
9 questions here. I'm just kidding.

10 A. Okay.

11 Q. I didn't hear what you were saying. You
12 were asking for clarification of my question.

13 A. Yes. So, by "utility," do you mean a
14 load-serving entity?

15 Q. Yes, I do.

16 A. Okay. So load-serving entities don't --
17 you know, they don't own generation so they would be
18 what we call bidding, bidding load, buying, you know,
19 real time energy, day-ahead energy, they are in very
20 often RTOs which have capacity markets so that these
21 capacity markets, like in PJM, signal, or, you know,
22 in an ideal world, they signal when capacity might be
23 short a few years out. Those are investment signals
24 for folks who want to build power plants.

25 So that -- in that context you are not

1 doing RFPs for supply or capacity necessarily. The
2 idea is that market signals provide incentives for
3 potential sellers. It's just -- it's not like, you
4 know, a vertically-integrated utility in the old days
5 where they have their generation and they serve their
6 own load. It's just different.

7 Q. Would AEP Ohio be considered a
8 load-serving entity?

9 A. I believe so.

10 Q. Okay. Now, a load-serving entity like
11 AEP Ohio, they react to market prices. And are you
12 referring to the PJM energy and capacity market
13 prices?

14 A. Well, for -- yeah, they are operating in
15 PJM.

16 Q. Okay. And so how is it that they are
17 supposed to react to those prices if they don't have
18 their own generation?

19 A. Well --

20 MR. SCHULER: Objection, vague. What do
21 you mean by "react to those prices"? What prices are
22 you referring to and what reaction?

23 MR. FINNIGAN: Your Honor, I was just
24 following up on a prior answer. She gave that
25 explanation. I was just trying to get a

1 clarification of her answer.

2 EXAMINER PARROT: If you followed the
3 question, Dr. Fagan, go ahead and respond.

4 A. Well, a load-serving entity bids its load
5 into -- into the market so that helps the -- the
6 system operator, PJM, figure out how much supply it
7 needs to meet load, day-ahead, hour-by-hour basis, so
8 the amount of load that bids in, the quantity helps,
9 and combined with the cost of the, you know, most
10 expensive unit, it's where supply and demand cross,
11 it creates a market clearing price. So as a
12 load-serving entity, you are part of the market, and
13 your load helps, you know, determine what the price
14 will be.

15 Q. And then would it be true that, to the
16 extent possible, a load-serving entity should strive
17 to serve its customers at the market price?

18 MS. KERN: Objection. The question calls
19 for her to speculate without knowing, you know, the
20 facts and circumstances of the specific situation.

21 MR. SCHULER: AEP Ohio would join that
22 objection.

23 MR. FINNIGAN: Your Honor, this goes to
24 the basic definition of prudence that's in the
25 Vantage report we talked about at the beginning of

1 the witness's explanation. And this is kind of the
2 underpinning of the whole audit report, I suspect, is
3 if it's a prudency analysis, this concept of serving
4 customers at the lowest cost is a fundamental
5 principle of prudency and that's all I am asking
6 about. She agreed with that principle. And, you
7 know, maybe -- I'll tell you what. I will strike
8 that, your Honor. I am going to go back to the
9 Vantage report and we can get it from there.

10 Q. (By Mr. Finnigan) Now, Ms. Fagan, can you
11 take a moment and get back to a document we were
12 talking about. Give me a moment to pull it up on my
13 screen. I believe it's No. 3. Okay. So do you have
14 that document before you?

15 A. Yes. Exhibit 3, the Vantage report?

16 Q. Yes. We talked about this earlier and I
17 just want to go back to pages 8 and 9 where this
18 concept of prudency was discussed. And if you would
19 take a moment to scroll down to that -- those pages.

20 A. Okay.

21 Q. And I guess -- let's see here, okay. So
22 just so we're clear, in the document itself it's
23 labeled as page 8 of the report but at the -- the way
24 the exhibit is labeled it says page 13 of 104, so.
25 I'm referring to page 8 of the report where it's got

1 that prudence definition. Do you see that?

2 A. Yes, I do.

3 Q. Okay. I just want to ask a couple of
4 questions about this document.

5 A. Should I read through it all to part B
6 again?

7 Q. No, no. I mean, I'm sorry. I was just
8 taking a moment myself to review this.

9 A. Okay.

10 Q. I don't have a question pending at this
11 time but just give me a moment, please.

12 Okay. I guess rather than talk about
13 this concept in terms of the prudence definition, let
14 me ask this on a more broad level.

15 Is it your understanding in the electric
16 utility industry that there is any least cost
17 principle that's applied in different settings like
18 fuel adjustment cost proceedings or integrated
19 resource proceedings?

20 A. In IRP proceedings, there are generally
21 always -- I have seen recently -- they are very
22 forward looking so there might be multiple scenarios
23 of the future and different costs assigned to
24 different scenarios depending on, you know, the menu
25 or the portfolio of resources you procure. And

1 obviously cost is important, but when you are looking
2 at issues like this, there's other factors. There is
3 reliability, for example. So it's a factor.

4 Q. Okay. I am not sure I heard your answer.
5 You said, it sounded to me, like car is important or
6 something is important. I probably misheard you. I
7 am just trying to --

8 A. Cost.

9 Q. Cost is important. Okay.

10 A. Among other things like, for example,
11 reliability.

12 Q. Reliability, sure.

13 And would you agree with me that just as
14 a very general principle, the objective that
15 utilities should have under good utility practice is
16 to strive to serve their consumers with a reliable
17 source of electricity at the lowest reasonable cost?

18 A. I would say their commissions make those
19 determinations. You know, there is lots of important
20 values and some of them are consistent with one
21 another. Some are mutually exclusive. And it's a --
22 it's a determination that's made at the regulatory
23 level, you know, as well as by utilities. I wouldn't
24 want to comment more than that.

25 Q. Well, I know there is lots of factors

1 that could enter into what's the lowest reasonable
2 cost. I am just asking, is that a general objective
3 that utilities strive for, that is, to provide their
4 consumers with a reliable source of electricity at
5 the lowest reasonable cost? Is that their general
6 objective?

7 MR. SCHULER: Objection. Asking
8 Dr. Fagan to opine on the objectives of each
9 individual utility in presumably the entire United
10 States, none of which is she an employee of.

11 EXAMINER PARROT: If you have an opinion,
12 Dr. Fagan, on this issue, go ahead.

13 A. It's complex. I actually don't have an
14 opinion. Different commissions and different
15 utilities in different states weigh values -- they
16 weigh things differently. I don't have a view.

17 MR. FINNIGAN: Give me a moment here,
18 please.

19 Q. Okay. Now, going back to this document
20 that's the Vantage audit report. Do you still have
21 that in front of you?

22 A. Exhibit 3. Yes, I have it.

23 Q. And then the page I want to refer you to
24 is numbered page 8 at the bottom.

25 A. Okay.

1 Q. And there is a heading that says
2 "Prudency Definition." Do you see that at the top of
3 the page?

4 A. I see that.

5 Q. Okay. Now, take a moment to read through
6 that paragraph, if you would, please.

7 A. I've read it.

8 Q. Okay. This paragraph is distinguishing
9 what could be characterized as prudent actions versus
10 mismanagement or negligence assessments and it's
11 giving criteria for judging both; is that right?

12 A. Yes.

13 Q. Okay. And then about, let me count, six
14 lines down from the beginning of that paragraph there
15 is a sentence that says, "The former seeks an
16 assessment...." Do you see that line?

17 A. Yes.

18 Q. When it says "the former," is it your
19 understanding that's talking about what would be
20 considered a prudent course of action?

21 MR. SCHULER: Objection. Mr. Finnigan is
22 asking Dr. Fagan about a report that she did not
23 conduct. He is requesting her to opine on what was
24 meant.

25 MR. FINNIGAN: I asked her at the

1 beginning of her testimony, your Honor, if she read
2 the report. She said she did. If she agrees with
3 the general concept of prudence as outlined in this
4 report. She said she did. So I am just following up
5 with some additional questions about particular
6 statements in this definition of prudence.

7 EXAMINER PARROT: Overruled.

8 Q. And my -- let me reask the question.

9 So if you take a look at that sentence
10 about six or seven lines down, it says, "The former
11 seeks an assessment...." When it says "The former,"
12 it's talking about prudence; is that your
13 understanding?

14 A. Let me read it again. I hate when people
15 say "former" and "latter" because I always have to go
16 back to what they said before, so let me go back.

17 Q. I agree.

18 A. So if you are asking me a question about
19 grammar, I think that the word "former" refers to the
20 prudence, and then like "latter" would be
21 mismanagement or negligence assessment.

22 Q. Okay.

23 A. My view is as good as anyone else's
24 reading this because I'm just reading it.

25 Q. Okay. Thank you.

1 Now, sticking with that sentence "The
2 former," defining "prudence," if you read through
3 that sentence, it says that what's considered prudent
4 would be an action unfettered by bias. Have I read
5 that correctly?

6 A. That's -- that's their view, I guess.

7 Q. Yes?

8 A. I said that's their view.

9 Q. Yes. I mean, you say you agree with
10 their view.

11 A. When -- when we talked about this earlier
12 today, I said I particularly agreed with their point
13 that the prudence standard recognizes that reasonable
14 persons can have honest differences of opinion
15 without one or the other necessarily being imprudent.

16 Q. Okay. But I am not talking about
17 reasonable minds could differ at this point. I am
18 just talking about bias. And I'm just asking you
19 whether in a -- in a situation where there is a
20 potential conflict of interest between a utility's
21 shareholders and a utility's ratepayers, does that --
22 does that create a situation for potential bias?

23 MR. SCHULER: Objection. Hypothetical.
24 It is incomplete or it is assuming facts not in
25 evidence.

1 MS. KERN: Staff would join the
2 objection. Also from the standpoint that it's using
3 the words of the Vantage audit report. Dr. Fagan
4 conducted an audit and has a report for this
5 proceeding. Perhaps it would be helpful if we looked
6 at that report to see what she actually found, rather
7 than asking her opinions on Vantage.

8 EXAMINER PARROT: Mr. Finnigan, response?

9 MR. FINNIGAN: Yes, your Honor. I'm just
10 asking about general standards for auditing and
11 prudence within the industry and just asking whether
12 she agrees with this characterization that when there
13 is a potential for bias that's one indicator of
14 potential imprudence.

15 MR. SCHULER: Your Honor, I would also
16 briefly respond. He asked Dr. Fagan her context --
17 if she agreed with this section and she said she only
18 agreed with a certain portion of this section. He
19 has not established she even agrees with this
20 sentence much less asked follow-up questions about
21 it.

22 MR. FINNIGAN: I will ask that, your
23 Honor.

24 Q. (By Mr. Finnigan) Would you agree with
25 that -- that phrase in the Vantage report that if a

1 utility's actions are -- could be characterized as
2 bias, that could be one indicator of imprudence?

3 MR. SCHULER: Objection, mischaracterizes
4 the Vantage audit report.

5 EXAMINER PARROT: Go ahead and rephrase,
6 Mr. Finnigan.

7 Q. (By Mr. Finnigan) Ms. Fagan, would you
8 agree with me that if a utility is faced with a
9 decision where it has a conflict of interest as
10 between its shareholders and its ratepayers, that the
11 potential for bias in that situation in favor of
12 shareholders could be one indicator of imprudent
13 action by the utility?

14 MR. SCHULER: I will renew my objection
15 from about 4 minutes ago where it assumes facts not
16 in evidence or it is an incomplete hypothetical.

17 EXAMINER PARROT: And I will overrule it.
18 To the extent you are able to, Dr. Fagan, please go
19 ahead and respond.

20 A. We didn't contemplate the issue of bias.

21 Q. Okay. Now, let's talk about this PPA
22 Rider transaction. AEP Ohio owns a -- a share of the
23 output from the OVEC plants under the ICPA, and it's,
24 what, a 19.93 percent share of the output?

25 A. Mr. Finnigan, can you direct me to the

1 part of the report we are talking about now?

2 Q. It's in the OVEC annual report at page 1
3 that has -- I am just trying to establish what the
4 ownership shares -- I don't need an exact number.
5 Just for discussion purposes we can use a round
6 number. Is it your understanding that, for purposes
7 of discussion, AEP Ohio has a right to about 19 or
8 20 percent of the output from the OVEC plants per the
9 terms of the Inter-Company Power Agreement?

10 A. Okay. So we show this on Figure 3 which
11 is not a redacted figure. It's not confidential.

12 Q. What page is that on, please?

13 A. 15.

14 Q. Sorry. Did you say 6?

15 A. It's Figure 3, I'm sorry, on page 15.

16 Q. Just take a moment to flip through that,
17 please. Okay. Just to establish a foundation for my
18 next couple of questions, per page 15 of your audit
19 report, Figure 3 that you were just referring to,
20 shows that AEP Ohio owns a 15.49 percent share of the
21 output from the OVEC plants; is that correct?

22 A. That's correct.

23 MR. SCHULER: Objection.

24 Q. And that would be combined with a
25 share -- the share shown for Columbus at

1 4.44 percent; is that right?

2 A. That's correct.

3 Q. So if you add those two together, that
4 comes to between 19 and 20 percent.

5 A. That's correct.

6 Q. And that's AEP Ohio's ownership share of
7 the output of the OVEC plants.

8 A. It's what's called the participation
9 ratio. So it's the share -- I think your shorthand
10 way of describing it is accurate for our purposes.
11 They call it the participation ratio.

12 Q. Participation ratio, okay. Thank you.

13 And then given the fact that AEP Ohio
14 owns 19 percent of the output from the OVEC plants,
15 if -- if this PPA Rider were not in existence, how
16 would -- how would AEP Ohio be impacted?

17 MR. SCHULER: Objection to the extent
18 it's vague and also an incomplete hypothetical.

19 Q. Let me clarify that then. We established
20 earlier in your testimony the PPA Rider costs for
21 2018 and 2019 were \$74.1 million above the PJM market
22 price for energy and capacity. Do you recall that
23 discussion?

24 MR. SCHULER: Objection, mischaracterizes
25 prior testimony.

1 Q. I'm sorry. Do you recall that,
2 Ms. Fagan?

3 EXAMINER PARROT: Mr. Finnigan, there is
4 an objection.

5 MR. FINNIGAN: Oh.

6 EXAMINER PARROT: Did you wish to
7 respond?

8 MR. FINNIGAN: Yes. Earlier in testimony
9 at the very outset we were discussing page 35,
10 Figure 16, and we walked through, per her audit
11 report, what would be a reasonable calculation of the
12 amount of the PPA charge for 2018 and 2019. And she
13 agreed, subject to check, that for 2018 it would be
14 25.4 million and that for 2019 it would be
15 49.1 million. And then the total of those two
16 numbers would be 74.5 million. So I was just
17 asking -- and I'll -- let me ask a new question.

18 Q. (By Mr. Finnigan) So, Ms. Fagan, do you
19 recall our discussion earlier today where we
20 discussed the amount of the PPA Rider charges for
21 2018 and 2019, and you agreed, subject to check, that
22 the amount was \$74.5 million?

23 A. Yes.

24 Q. And by definition, that amount is above
25 the market price for PJM energy and capacity prices.

1 A. That's correct.

2 Q. And if there were no PPA Rider, AEP Ohio
3 would be stuck with the output from the OVEC plants,
4 that is, \$74.5 million above the market price.

5 MR. SCHULER: Objection. Incomplete
6 hypothetical. It's simply saying if the PPA Rider
7 doesn't exist. It doesn't establish any other
8 assumptions. It also calls for Dr. Fagan to
9 speculate about what AEP Ohio would do under this
10 hypothetical situation. She is not an employee of
11 AEP Ohio.

12 EXAMINER PARROT: To the extent you are
13 able to respond, Dr. Fagan, go ahead.

14 A. We did not examine that.

15 Q. Okay. But would you agree with me, if
16 the rider didn't exist, that would be the case.

17 MS. KERN: Objection, your Honor. The
18 question -- excuse me, Mr. Finnigan. If you would
19 like to finish. I interrupted you.

20 MR. FINNIGAN: Well, yeah. Your Honor, I
21 am not asking whether she covered it in her audit
22 report but just her understanding of how the PPA
23 Rider works and how the transaction works. She goes
24 into great detail in her audit report about how OVEC
25 was established, the history of OVEC, the history of

1 AEP, the overlapping management, and how the ICPA
2 works. And I am just trying to explore her general
3 understanding of these concepts of what would happen
4 in terms of the consequences to AEP Ohio if this PPA
5 Rider were not in effect. So it goes to the
6 information in her audit report where she discusses
7 the general relationship among the party -- among the
8 different entities and the way the -- and the way the
9 PPA Rider works.

10 MS. KERN: And, your Honor, that goes to
11 the heart of my objection that I didn't let
12 Mr. Finnigan -- excuse me, finish, but I have also
13 raised this previously. He is asking if there were
14 no PPA Rider and that is outside the scope of this
15 proceeding.

16 EXAMINER PARROT: And I asked her to
17 respond to the question prior, and she did that, so I
18 think the objection is sustained, Mr. Finnigan. We
19 have gotten her response.

20 MR. FINNIGAN: Your Honor, may I just
21 have a moment, please?

22 EXAMINER PARROT: You may.

23 Q. (By Mr. Finnigan) So as I understand your
24 testimony, Ms. Fagan, if the PPA Rider did not exist,
25 you have no idea what the consequences would be to

1 AEP Ohio if it were not recovering the 74.5 million
2 from consumers?

3 MR. SCHULER: Objection, your Honor.
4 This is the same line of questioning that you just
5 sustained an objection on that's seeking to have
6 Dr. Fagan opine on.

7 MR. FINNIGAN: Your Honor, I am just
8 trying to explore her understanding of the
9 transaction. She's laid it out in the audit report.
10 This is my last question. If she doesn't understand
11 what those consequences are, I will move on, but I
12 would like to get an answer for the record.

13 EXAMINER PARROT: And to which she has
14 given you an answer. So let's move on, Mr. Finnigan.

15 MR. FINNIGAN: Okay.

16 Q. (By Mr. Finnigan) Ms. Fagan, do you --
17 have you seen any information that discusses how the
18 PPA Rider was projected to work over the life of the
19 rider? In other words, whether it was expected to be
20 a net credit or a net charge?

21 A. We did not look at anything like that to
22 prepare the audit.

23 Q. Okay. Wasn't there a study that you
24 mentioned at page 24 of your audit report, you
25 referred to a Benchmark Study that was appended to

1 the 2011 revised and amended ICPA that provides that
2 sort of a projection that you describe in your audit
3 report?

4 A. Yes. You mentioned it. We looked at
5 that. What I was looking at in that study was the
6 LCOE.

7 Q. Okay.

8 A. You know, a slice of that.

9 Q. Okay. Now, so do you know if there was
10 any sort of projection made at any earlier period of
11 time as to how the PPA Rider was expected to perform
12 during 2018 and 2019?

13 A. I do not know.

14 Q. Okay. And to the extent that there is
15 such a projection in that Benchmark Study we just
16 discussed, do you know what that projection was?

17 A. I don't know. Like I said, we used that
18 study to give us a comparison of levelized cost of
19 energy, so I don't know the other pieces.

20 Q. Wasn't the point of your referencing that
21 Benchmark Study to make the observation that it was
22 overly optimistic because there was an error in that
23 study regarding the price of natural gas used for the
24 projected PPA performance in the Benchmark Study?

25 MR. SCHULER: Objection. Assumes facts

1 not in evidence.

2 EXAMINER PARROT: Back it up,
3 Mr. Finnigan.

4 MR. FINNIGAN: Okay.

5 Q. Could you please turn to page 24 of your
6 audit report.

7 A. I'm there.

8 Q. Could you take a moment to read the
9 paragraph just above section 3.6.

10 A. I've read it.

11 Q. And you talk in that paragraph about how
12 LEI's LCOE analysis, and that's levelized cost of
13 energy, how your analysis compares with one submitted
14 by AEP Ohio in the Benchmark Study. That's what
15 you're talking about in this paragraph, right?

16 A. That's correct.

17 Q. Okay. And the point you make in this
18 paragraph is that the Benchmark Study used, as one of
19 its inputs, the cost of energy, the levelized cost of
20 energy from a CCGT at 96.53 per megawatt-hour, right?

21 A. That's correct.

22 Q. Okay. And so how would that impact the
23 calculation of, you know, OVEC plant performance
24 projections using that high of a price for LCOE for a
25 CCGT?

1 A. We did not perform that calculation for
2 the audit.

3 Q. Well, I know you didn't perform the
4 calculation, but I am just saying, as a general
5 principle, if somebody used a much higher LCOE in
6 doing a price projection, wouldn't that result in an
7 overly optimistic projection as compared to whether
8 somebody used a lower LCOE?

9 MR. SCHULER: Objection, relevance.

10 EXAMINER PARROT: Overruled.

11 A. The LCOE here we're using is for a
12 combined cycle gas turbine. A gas plant. I don't
13 know if they had an LCOE number for the OVEC plants
14 in that report. They might have. But I wasn't
15 looking for that. I don't think I can answer your
16 question because this LCOE has to do with gas plants.

17 Q. Well, I'm just -- I asked it pretty
18 inartfully. Let me -- let me ask it this way: If
19 one were preparing a projection of how plants would
20 perform as against the market price for electricity
21 and one used a price for the LCOE that was too high,
22 wouldn't that tend to result in an overestimate of
23 how well the plants would perform?

24 A. I can't answer. I think there's just too
25 many variables.

1 Q. Okay. Now, I am going to switch gears a
2 little bit. Let me ask you to turn your attention to
3 what's been labeled as OCC Cross-Exam Exhibit 8, an
4 order from the Michigan Public Service Commission.

5 A. Okay. I have that open.

6 Q. All right. What I would like you to do
7 is please turn to page 19. Let me see if that's the
8 one in the upper right-hand corner or the one down in
9 the bottom. It's near the end of the document.

10 A. I think 19 is the same whether you look
11 at the top or the bottom.

12 Q. That's good.

13 EXAMINER PARROT: While she is finding
14 the reference, if we could identify it more
15 specifically for the record, Mr. Finnigan.

16 MR. FINNIGAN: Yes. Your Honor, at this
17 time I would like to have what has been labeled as
18 OCC Cross-Exam 8 marked for identification purposes.
19 And I will represent for the record that this is an
20 order by the Michigan Public Service Commission in a
21 case that is case numbered 020 -- I'm sorry, U-20804,
22 and the decision is dated November 18, 2021.

23 EXAMINER PARROT: Thank you. OCC
24 Exhibit 8 has been identified on the record for
25 purposes of identification.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Finnigan) Okay. And I will
3 represent to you, Ms. Fagan, that this is an order by
4 the Michigan Commission dealing with the OVEC plants.
5 Have you seen this order before?

6 A. I have not.

7 Q. If you are doing an audit of the OVEC
8 costs for 2019 and there is an order from a state
9 public utilities commission that covers the same time
10 period and also covers the OVEC plants, is that
11 something that would generally be of interest to you
12 as an auditor?

13 MR. SCHULER: Objection. Assumes facts
14 not in evidence, not the least of which were that
15 this report came out over a year after the audit
16 report in this case.

17 EXAMINER PARROT: The objection is
18 overruled as to the question pending.

19 A. The previous audits were of interest to
20 us. We looked at the Vantage audit. The one we have
21 been looking at, I guess it's Exhibit 3 so far. So
22 previous audits, yes, of interest. But this one was
23 filed after we did the work and filed the audit in
24 this case so there's -- you know, we couldn't have.

25 Q. Well, I understand that, but you have

1 ongoing audits that are in progress for the OVEC
2 plants, don't you?

3 A. The cases are open. The audits are
4 complete. And they were delivered, I want to say,
5 December. So the bulk of that work would have been
6 done before the Michigan one was posted.

7 Q. Okay. Now, could you please direct your
8 attention to that page 19 that I mentioned, and you
9 see where it says, the first full paragraph, it's
10 about five lines down from the top of the page, it
11 begins, "As the Commission stated in its December 9,
12 2020 order...." If you could take a moment and just
13 read that paragraph.

14 MR. SCHULER: Your Honor, while Dr. Fagan
15 is reviewing that paragraph, I will lodge an
16 objection here. Dr. Fagan has already testified that
17 she has never seen this document before, so any line
18 of questioning would be inappropriate and just
19 arguably reading some of this document into the
20 record.

21 MR. FINNIGAN: Your Honor, if I may
22 respond. I am just trying to establish generally
23 accepted industry standards and good utility
24 practices and this is just one articulation of a good
25 utility practice in our view. And I just am going to

1 ask the witness, after she's read it, whether she
2 agrees that what the Commission described here in
3 this order would be considered a good utility
4 practice in the industry.

5 MS. KERN: Your Honor, Staff would object
6 to the line of questioning of referencing this
7 Michigan proceeding for the reasons stated by counsel
8 from AEP that she's not familiar. She's never seen
9 this document before. She didn't work on this
10 proceeding. And it's not relevant to this
11 proceeding. But I know she's only been asked to look
12 at the paragraph at this point, so.

13 EXAMINER PARROT: Yes. Go ahead and ask
14 your question, Mr. Finnigan, and I'll issue my ruling
15 after that.

16 Q. (By Mr. Finnigan) Have you had a chance
17 to review the paragraph?

18 A. Yes.

19 Q. Would you agree that the following is a
20 statement of good utility practice in the electric
21 utility industry: "While long-term contracts are
22 encouraged, this does not absolve a utility from
23 monitoring and responding to market conditions and
24 system needs and making good faith efforts to manage
25 existing contracts"?

1 A. I'm not comfortable answering the
2 question. I don't -- this is a little snippet. I
3 don't have the context. I just -- I'm not
4 comfortable commenting.

5 Q. Okay. Okay. Let me ask you a
6 hypothetical question now. So let's assume that when
7 the PPA Rider was approved in 2016, it was projected
8 to result in a net credit to consumers over the life
9 of the rider of \$110 million. I am going to ask you
10 to assume that.

11 And let's assume that now that the rider
12 has been in effect through 2020, actually there have
13 been no credits passed on to customers. It's only
14 been charges, including charges of 74.5 million in
15 2018 and 2019 where it had been projected to be
16 paying a credit to consumers at that time. So I want
17 you to assume those facts, okay?

18 And my question is, assuming those facts
19 to be true, would it be good utility practice for a
20 utility, such as AEP, to be monitoring the expected
21 performance of this PPA Rider against the actual
22 performance, and if they are not aligning well, then
23 to do something about it?

24 A. We did not examine that for the audit.

25 Q. Well, I understand that, but I am asking

1 you a hypothetical question of what is good utility
2 practice. So that's my question.

3 MR. SCHULER: Objection. Asked and
4 answered.

5 MR. FINNIGAN: And, you know -- well,
6 I'll strike that.

7 EXAMINER PARROT: To the extent you are
8 able to respond, Dr. Fagan, go ahead.

9 THE WITNESS: Could we ask the court
10 reporter to repeat the question?

11 EXAMINER PARROT: Yes.

12 (Record read.)

13 MR. SCHULER: Objection. I believe
14 that's an incomplete question.

15 MS. KERN: Yeah, I was going to ask if
16 the question prior --

17 MR. FINNIGAN: Your Honor, I could
18 simply -- your Honor, may I -- I mean, I could
19 perhaps simplify by just re-asking the question.

20 EXAMINER PARROT: Okay. Let's go at it
21 that way.

22 MR. FINNIGAN: All right.

23 Q. (By Mr. Finnigan) Ms. Fagan, please
24 assume some hypothetical facts for purposes of this
25 question.

1 Please assume that an analysis was done
2 showing that in 2016, it was projected that the PPA
3 Rider would flow through a net credit to consumers of
4 \$110 million over the life of the rider. And then
5 assume that, from the time the rider was in effect,
6 it's only flowed through charges, including charges
7 of 74.5 million in 2018 and 2019.

8 So with those facts assumed for purposes
9 of this question, do you have any opinion as to
10 whether a utility -- whether it would be good utility
11 practice for a utility to examine whether there is
12 anything that could possibly be done to improve the
13 performance of the PPA Rider.

14 MR. SCHULER: Objection. This is an
15 incomplete hypothetical once again. At this point,
16 particularly with the last piece of that question, it
17 does apply to the PPA Rider and, in our opinion, your
18 Honor, this is a -- simply a question that is posed
19 as a hypothetical that is trying to get at the issues
20 that were already ruled upon by the Attorney
21 Examiners that information regarding the basis for
22 AEP Ohio's decision to include the OVEC PPA in the
23 PPA Rider is beyond the scope of these proceedings.

24 EXAMINER PARROT: As I said before, I
25 believe that's a separate issue from what

1 Mr. Finnigan is trying to get at with some of these
2 questions; so, Dr. Fagan, to the extent you have an
3 opinion, you may offer it.

4 A. The question just brought up questions in
5 my mind like -- so I don't know if this is
6 hypothetical or not, but who did the analysis, and
7 for how long the benefits were -- there is lots of
8 bits and pieces that I just -- I can't comment.

9 Q. Okay. And let me ask you, would you
10 agree that, as a general principle, utilities should
11 operate with a plan and then always be comparing
12 actual results to their plan?

13 MR. SCHULER: Objection, incomplete
14 hypothetical.

15 Q. Let me re-ask it.

16 Do you have any understanding whether in
17 the electric utility industry the way electric
18 utilities plan and operate their business is they
19 start out by making a capital budget that looks out
20 for some period of years, usually five years, and
21 that's their plan?

22 A. Are you referring to the IRP process?

23 Q. No. I am just referring to the utility's
24 business in general in terms of planning for their
25 operations and planning their finances.

1 So just at a very general level, would
2 you agree with me that utilities, for Wall Street,
3 will typically make projections of what their
4 expected earnings are and they will report those to
5 financial analysts?

6 A. I think that's a different question. The
7 first part was do they have five-year plans. I am
8 not sure if you could break it up.

9 MS. KERN: Objection, your Honor. To the
10 extent that this was a compound question there,
11 please, Mr. Finnigan, if you can specify what you
12 want her to answer or what you are asking.

13 MR. FINNIGAN: Sure. I'll rephrase it.

14 Q. (By Mr. Finnigan) So would you agree with
15 me in the electric utility industry generally it's
16 very common that electric utility industries will
17 report forecasted earnings to Wall Street?

18 A. Many, many publicly-traded companies do
19 earnings forecasts, utility or not.

20 Q. Okay. And to do a forecast, you have to
21 do a projection of your costs versus your revenues.
22 Would you agree?

23 A. If you are doing a profit forecast.

24 Q. Yeah.

25 A. I imagine lots of companies do lots of

1 different things within their forecasting.

2 Q. But would you agree with me that -- well,
3 how do they get -- how do they get these forecasted
4 earnings? What process do they go through to -- as
5 an electric utility expert, tell me your
6 understanding.

7 A. If we all knew this, we would be able to
8 invest in it and we would all be rich. I don't
9 exactly know how companies do -- it's a really
10 general question. They have, you know, planning
11 committee meetings and, you know.

12 Q. Do you think they need to base their
13 decision on some forecast of what their revenues are?

14 A. You would hope companies do that. There
15 is lots of companies out there who make a ton of
16 money in the markets. The markets love them. They
17 have no revenues. So I honestly -- I don't know.

18 Q. Now, is it your understanding that this
19 PPA Rider was supposed to function as some sort of
20 financial hedge?

21 A. That -- I think that's out of scope. We
22 didn't think about that one way or the other.

23 Q. Do you have any opinion as to whether it
24 would have been prudent for AEP Ohio to be monitoring
25 the expected performance of the PPA Rider as a

1 financial hedge versus the actual performance?

2 MS. KERN: Objection, your Honor. She
3 just answered that was outside of the scope and not a
4 part -- it was not considered for purposes of this
5 audit.

6 MR. FINNIGAN: She didn't answer that
7 question, your Honor. I was asking her -- she just
8 said she didn't consider what a financial hedge was.
9 I asked her if she considered the performance of the
10 PPA Rider as something that should be monitored by
11 the utility.

12 EXAMINER PARROT: To the extent you have
13 an opinion, Dr. Fagan, you may offer it.

14 A. We didn't think about it from that
15 perspective.

16 Q. Don't you think that goes to prudence?

17 A. Well, we don't know that they didn't do
18 that, so I can't comment.

19 Q. Well, weren't you supposed to examine the
20 prudence of all costs?

21 A. Yes.

22 Q. And then wouldn't one important issue for
23 assessing prudence be whether the rider was
24 performing according to plan?

25 MR. SCHULER: Objection. That is not the

1 scope of this audit. Rider performing -- and the
2 actions of AEP Ohio with respect to -- is not how
3 it's compared to another case that established the
4 PPA Rider.

5 MR. FINNIGAN: Your Honor, we've
6 established that the scope of the audit was the
7 prudence of all costs flowing through the PPA Rider,
8 and I am just asking the witness whether one element
9 of prudence would be an obligation on the utility's
10 part to monitor actual performance versus expected
11 performance.

12 MS. KERN: Objection, your Honor. I
13 believe Dr. Fagan has testified a number of times
14 that her scope of work pertains to the RFP. While
15 the Commission might have stated a purpose for the
16 proceeding, Dr. Fagan has been consistent where her
17 scope of work came from. And to the extent that the
18 question is argumentative, or somehow suggesting
19 that, you know, she did not perform that scope of
20 work, we would object.

21 MS. BOJKO: Your Honor, may I have the
22 question reread?

23 (Record read.)

24 MS. BOJKO: Your Honor, may I be heard
25 now?

1 EXAMINER PARROT: Go ahead.

2 MS. BOJKO: Even though counsel keeps,
3 and it seems to be a theme, keeps stating what the
4 auditor did or did not do, and how the auditor
5 interpreted the RFP as well as the Commission order,
6 really does not go to the scope of the proceeding
7 itself.

8 The scope of the proceeding itself is
9 whether the costs were imprudent or unreasonable.
10 And just because the auditor did or did not do
11 something does not somehow change the scope of the
12 proceeding and the Commission's directive and the
13 burden that AEP has to sustain.

14 So we are allowed to inquire into the
15 prudence issues. And what the auditor did or did not
16 do will flow into whether the auditor could or could
17 not make those reasonable prudence decisions. But it
18 does not go to whether the Commission will ultimately
19 make those prudence decisions.

20 We obviously have a different
21 interpretation of what the Commission order and the
22 RFP says. And so just because it's beyond the scope
23 of the audit itself doesn't mean that we can't
24 explore those issues and what the auditor did or
25 didn't do and what the auditor's opinion on those

1 issues are.

2 MR. SCHULER: Your Honor, I believe
3 that's the basis of Ms. Kern's objection is that
4 Dr. Fagan has already testified she did not look at
5 these issues. Mr. Finnigan has then asked her to
6 opine generally. We have spent a lot of today
7 talking about general concepts when Dr. Fagan says
8 she doesn't know a topic or has not looked at it
9 because it is beyond the scope of her work in this
10 case.

11 MS. BOJKO: Your Honor --

12 EXAMINER PARROT: We are done. She said
13 she cannot comment, so we are moving on. Next
14 question.

15 MR. FINNIGAN: Okay. Your Honor and
16 Ms. Fagan, I would like to direct your attention to
17 another exhibit, please, and this is OCC
18 Cross-Examination Exhibit 17. If you could please
19 take a moment to pull up that exhibit and then we'll
20 ask you some questions about that.

21 THE WITNESS: I don't have it in my
22 folder but I know which one that you mean, so let me
23 just check my e-mails.

24 EXAMINER PARROT: Mr. Finnigan, while she
25 is doing that, if you are planning on marking it for

1 identification purposes, go ahead and do that.

2 MR. FINNIGAN: Okay. At this time -- at
3 this time I would like to mark the document that's
4 labeled OCC Cross-Examination Exhibit 17 as OCC
5 Cross-Examination Exhibit 17 for identification
6 purposes.

7 EXAMINER PARROT: And just a brief
8 description of what it is, Mr. Finnigan.

9 MR. FINNIGAN: And I will represent for
10 the record that this is a two-page document. It's a
11 draft of an audit report prepared by Ms. Fagan on or
12 about September 19, along with a one-page excerpt
13 from the audit report showing some language that
14 appeared in a prior draft of the audit report.

15 MS. BOJKO: And, your Honor, just for the
16 record, because all of our copies are deemed
17 confidential, this has now been deemed to be
18 un-confidential. Would you confirm that, please?

19 MR. SCHULER: Yes. The Company confirms
20 it is now a public document. Thank you.

21 EXAMINER PARROT: And it's been marked as
22 OCC Exhibit 17.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. FINNIGAN: Your Honor --

25 MS. KERN: Your Honor, I have to check

1 with Dr. Fagan to see if she has located it, and if
2 not, I can send it to her e-mail if that's okay.

3 THE WITNESS: I would appreciate it. I
4 am going through my e-mails but there is many. If
5 that's fine, I would appreciate if you would do that.

6 MR. FINNIGAN: Your Honor, while we are
7 doing that, I have a question and I think that the
8 point Ms. Bojko raised is a good one in that the
9 document now is marked confidential and we've
10 established that it's a public document.

11 However, if it is, you know, gathered up
12 by the court reporter and it goes and is filed with
13 the transcript, people are going to say, why does it
14 say "Confidential" on here? So I would ask that we
15 take the version of this document that's been marked
16 for identification and whether all the parties would
17 stipulate that the word "Confidential" can be
18 stricken from the document that is appended to the
19 transcripts so there is no confusion where anybody
20 might mistakenly think it's a confidential document.

21 MR. SCHULER: Yeah. Mr. Finnigan, you do
22 raise a good point. Perhaps we can just redact the
23 red language on the first page that says "Contains
24 Company Confidential Information." That's applicable
25 to the whole report but I don't believe anything on

1 this page or these two pages contain anything
2 confidential so that would not be applicable to this
3 document.

4 MR. FINNIGAN: Your Honor, that would be
5 satisfactory with us. If we could just ask that AEP
6 Ohio, after this hearing, supply a version of this
7 same document with the word re -- with the word
8 "Confidential" redacted and that be used for purposes
9 of this hearing as the exhibit.

10 MR. SCHULER: To the extent the document
11 is admitted, we will do that, and we would also
12 probably redact the word "Confidential" in the title
13 in the upper right-hand corner which it was
14 identified as for purposes of discovery.

15 MR. FINNIGAN: And then also, your Honor,
16 the same appears on the cover page of the report in
17 red letters where it says "Contains Confidential" --
18 "Company Confidential Information." If we can just
19 have an agreement that that be stricken, too, by AEP
20 Ohio.

21 EXAMINER PARROT: I think -- I think we
22 are getting a little ahead of ourselves at this point
23 but we will take that up if it's offered as an
24 exhibit into evidence.

25 MR. FINNIGAN: Okay.

1 EXAMINER PARROT: I am not hearing any
2 issues, but, assuming it is admitted, I think that's
3 reasonable but we're getting ahead of ourselves a
4 little bit, Mr. Finnigan.

5 MR. FINNIGAN: All right.

6 Q. (By Mr. Finnigan) Ms. Fagan, just take
7 your time and then whenever you have a moment to get
8 that document from Ms. Kern and take a look at it,
9 just let us know when you are ready and just take
10 your time.

11 A. I've been refreshing e-mails every few
12 seconds. It hasn't popped up yet but I am sure it's
13 on its way through the ether. There it is. Let me
14 open it. Okay. I have it open.

15 Q. Okay. Is that a document you prepared?

16 A. This is -- this is part of it, yes. It's
17 pieces of it.

18 Q. And what this is, this is an excerpt from
19 a prior draft of the audit report that's been
20 admitted into evidence of this case.

21 MR. SCHULER: Objection,
22 mischaracterizes. This is not -- this -- the version
23 of this -- strike that.

24 Mr. Finnigan's question seemed to
25 indicate that a -- the draft version of the audit

1 report has already been admitted into evidence in
2 this case when, in fact, no documents have been
3 admitted into evidence yet in this case.

4 MR. FINNIGAN: Your Honor, let me
5 withdraw that question.

6 Q. (By Mr. Finnigan) Ms. Fagan, can you
7 identify this document that's been marked for
8 identification as Exhibit 17 as a prior draft of the
9 audit report?

10 A. That's correct.

11 Q. And I -- this particular document is two
12 pages. The first page is the cover page.

13 A. That's correct. With the extra headings
14 on the top, but yeah.

15 Q. Okay. And according to the cover page,
16 this draft of the audit report was prepared when?

17 A. It has a September 9 date.

18 Q. Now, if you would take a moment and
19 compare this document with the audit report that you
20 authenticated in your direct examination by Ms. Kern,
21 and I want to ask you to compare the two documents.
22 Do you have both documents before you?

23 A. I do.

24 Q. Okay. And there's a difference between
25 the two documents and the difference is in this

1 second full paragraph under Section 1.3.

2 A. That's correct.

3 Q. So going -- looking at Exhibit 17, that
4 second full paragraph that begins "However, LEI's
5 analysis shows." If I could just walk you through
6 that. This sentence says that "However, LEI's
7 analysis shows at this time that the OVEC plants cost
8 customers more than the cost of energy and capacity
9 that could be bought on the PJM wholesale markets."
10 Have I read that correctly?

11 A. I don't think you read it verbatim.

12 Q. I thought I did, but I may have goofed so
13 let me try again.

14 "However, LEI's analysis shows" -- well,
15 you know what? I didn't read it correctly because I
16 am reading from the wrong report. I am reading from
17 the actual audit report. Let me go back and I
18 appreciate you pointing that out.

19 Let's go back to Exhibit 17. That's
20 where I was intending to read from.

21 So on Exhibit 17, that second full
22 paragraph under Section 1.3, it begins "However,
23 LEI's analysis" in that first sentence of the second
24 paragraph says "However, LEI's analysis shows that
25 the OVEC contract overall is not in the best interest

1 of AEP Ohio ratepayers." Have I read that correctly?

2 A. Yes.

3 Q. Why did you say that in this September 9
4 draft?

5 A. We made that as I would say a broad
6 statement and, in the process of review with our
7 client, came back and looked at it and said it's too
8 broad. Best interest is the purpose of the audit.
9 It might not have been LEI's assignment.

10 And the -- our client, Staff, asked us to
11 edit, take it out, whatever, and all the rest of the
12 audit stands without it. All the, you know, the
13 findings, the true-up parts, our comments about the
14 must-run offer strategy, our recommendations about
15 perhaps capital spending, none of those things
16 changed. It wasn't material. I think Staff referred
17 to it as tone and intensity, so -- and we don't make
18 any edits that we don't agree with, so, you know,
19 upon reflection and getting the reaction back from
20 our client, we took it out. It doesn't change the
21 material findings of the audit.

22 Q. Okay. And -- but would it be fair for us
23 to say when you made the statement in the draft
24 audit, you believed it to be true.

25 A. I would say it was overly broad.

1 Q. Why did you put it in this if it was
2 overly broad?

3 A. Sometimes when you are drafting things,
4 you have your -- your initial take on things. I'm
5 sure as a lawyer you drafted materials, come back,
6 you know, edit, et cetera. So it was just part of
7 that process.

8 Q. Okay. And now I am not asking you for --
9 from a, you know, editorial purpose, whether it's too
10 broad or too narrow but only if it's true. And I am
11 just asking when you wrote this statement in the
12 September 19 draft that is Exhibit 17 that we just
13 discussed which says "LEI's analysis shows that the
14 OVEC contract overall is not in the best interest of
15 AEP Ohio's ratepayers," without regard to whether
16 it's too broad or not, did you believe the statement
17 to be true at that time?

18 MS. KERN: Objection, your Honor. This
19 is from, as we know, an excerpt of a draft audit
20 report. Dr. Fagan has testified that she had
21 discretion over what went in the final audit report.
22 The final audit report is what is filed in this
23 docket. So she, in her discretion, removed this
24 statement for the reasons she's explained and
25 testified. So her opinion on whether it is true or

1 not is irrelevant to this proceeding because it is
2 not in the final audit report that was filed in this
3 docket.

4 MR. SCHULER: AEP Ohio would join Staff's
5 objection and also add that Mr. Finnigan previously
6 asked this exact same question, "but would it be fair
7 for us to say when you made the statement in the
8 draft audit, you believed it to be true." Dr. Fagan
9 answered, "I would say it was overly broad." So she
10 has already asked -- answered this exact same
11 question.

12 MR. FINNIGAN: Well, by saying it was
13 overly broad did not answer my question of whether
14 she thought it was true.

15 MR. MCKENNEY: Your Honor, if I can be
16 heard as well?

17 EXAMINER PARROT: Go ahead.

18 MR. MCKENNEY: IEU-Ohio would support
19 Mr. Finnigan and OCC's question. We think it is a
20 worthy subject to be addressed in this hearing. We
21 think that the question has not -- we think it was
22 rephrased in a manner that has not been asked and
23 answered. So we, on this particular question, would
24 support OCC and ask that the objection be overruled.

25 MS. WACHSPRESS: NRDC also supports OCC

1 with respect to this question that it should be --
2 that the witness should have to answer it. She has
3 not yet answered the question, and so we support
4 overruling the objection as well.

5 MS. KERN: Your Honor, if I may, the fact
6 that she answered the previous question that it was
7 overly broad supports my point that the question of
8 whether it's true or not is outside the scope of this
9 proceeding. It's outside the scope of what she was
10 asked to do. And I will leave it at that.

11 MS. WACHSPRESS: Your Honor, if I may,
12 she actually said directly in response to an earlier
13 line of questioning that the best interests of the
14 customers was the subject of the proceeding. That --
15 I mean, we can read back the transcript and --

16 MS. KERN: Two different uses of best
17 interest of consumers -- of customers, though, so
18 I --

19 MS. WACHSPRESS: Her prior answer
20 indicated that she understood that to be the subject
21 of the proceeding, and then she -- she averred that
22 it was -- it was too broad as a topic to cover in the
23 audit but that does not address the question of
24 whether on the issue of best interests of consumers
25 what her beliefs are which is the question pending.

1 MR. MCKENNEY: Your Honor, we would
2 agree. We think there is a lot of room for probing
3 what "overly broad" means. What is overly broad?
4 Why is it overly broad? So we think there is a whole
5 line of questioning along this. What does overly
6 broad mean? And why did the auditor remove this from
7 the audit report?

8 EXAMINER PARROT: And I am not precluding
9 a line of questioning here, but as to the question
10 that's pending, she did give a response, so the
11 objection is sustained as to the question that was
12 asked.

13 Mr. Finnigan, you may ask another.

14 MR. FINNIGAN: Okay. Your Honor, at this
15 time I would like to make a proffer of evidence, and
16 the proffer of evidence goes to the point of whether
17 she believed at the time this statement was written
18 it was true or not. The witness answered my question
19 by saying the statement in her view was too broad,
20 but she did not answer my question of whether it was
21 true or not. Whether it was true or not has a
22 material impact to this case because the purpose of
23 this case is to determine the prudence of the PPA
24 Rider costs. And if she made a statement at the time
25 of this draft audit report that the costs were not in

1 the best interests of consumers, then -- and if she
2 says that the statement was true, she honestly
3 believed that, then that would be very material
4 evidence to the prudence of these costs that are at
5 issue before the Commission in this case.

6 So the question of if she honestly
7 believed that statement to be true is an important
8 question that I have some follow-up questions on as
9 to why she believed it to be true and so on and so
10 forth. That I would just like to proffer into
11 evidence at this time. And with that -- with that I
12 will move on.

13 MR. McKENNEY: So are we doing a proffer?

14 MR. FINNIGAN: Yes.

15 Your Honor, just so I understand, I mean,
16 I was just trying to ask the witness what she truly
17 believed, whether she believed on September 9 that it
18 was in the best interest of consumers or not and, you
19 know, if she truly believed that, then why did she
20 take it out six days later. It's just that's, in our
21 view, an important line of questioning, but I
22 understand you have ruled on that.

23 EXAMINER PARROT: But I specific --
24 Mr. Finnigan, I specifically said I am not trying to
25 shut down your entire -- I am saying the specific

1 question you asked her, she gave you a response, so
2 you may ask a different question. I am not shutting
3 down your entire line of questioning here. So I
4 think we are getting a little ahead of ourselves, so.

5 MR. FINNIGAN: Well, your Honor, just if
6 you can give me some guidance. I think certain
7 questions require a yes or no answer, and one is, is
8 this statement truthful. And so that's what I am
9 trying to get at, so let me try to rephrase the
10 question.

11 EXAMINER PARROT: That's why I am
12 offering you the opportunity to do that.

13 MR. FINNIGAN: Okay. Thank you.

14 Q. (By Mr. Finnigan) Ms. Fagan, as we sit
15 here today, do you have any opinion as to whether the
16 OVEC costs that are flowed through the PPA Rider are
17 in the best interest of AEP Ohio ratepayers?

18 MS. KERN: Objection, your Honor. I
19 believe the audit report and Dr. Fagan's
20 recommendations therein speak for themselves. Her
21 opinion on issues at certain points of time are not
22 relevant to this case. And there is an Ohio Power
23 Siting Board decision that's on point with that, that
24 finds that drafts of audit reports are not relevant,
25 and I can provide that citation. It's 12-160-EL-BGN.

1 It's an Opinion and Order and Certificate issued on
2 May 28, 2013. So I -- that's my objection.

3 EXAMINER PARROT: And the objection is
4 overruled.

5 Dr. Fagan, to the extent you have an
6 opinion, you may offer it.

7 A. In our opinion, there was no imprudency.
8 There were areas that we would like to see examined
9 and improved and we list those specifically.

10 Q. Okay. I didn't ask you whether there was
11 any imprudency. I asked you whether you would agree
12 with me or -- I'm sorry. Strike that.

13 I asked you whether you had any opinion
14 as you sit here today whether the OVEC costs that are
15 flowed through the PPA Rider are in the best interest
16 of AEP Ohio ratepayers. Do you have an opinion on
17 that point?

18 MR. SCHULER: Two objections, your Honor.
19 One, asked and answered in the previous question. He
20 is asking the same question again. Two, the concept
21 of best interest of the customers, although it shows
22 up in the original entry, does not show up under the
23 actual scope of the auditor. It shows up in a
24 preamble, section 3 of the entry for the RFP for the
25 auditor, describes the scope of the investigation for

1 the auditor in this case. And determining the best
2 interests of customers is never once mentioned in
3 that section.

4 MR. FINNIGAN: Your Honor, the scope of
5 the audit as stated in the RFP is all costs that are
6 flowed through the PPA Rider. And if the auditor
7 believes that the costs are not in the best interests
8 of retail ratepayers, that would be relevant to
9 whether those costs are prudent. That's why I am
10 asking.

11 MS. WACHSPRESS: Your Honor, if I may
12 chime in for NRDC. We support the question, and I
13 also want to recall what Ms. Bojko said earlier. The
14 scope of the proceedings here and what the auditor
15 chose to include as part of the audit are two
16 separate issues. And the best interests of AEP Ohio
17 customers and whether the PPA Rider serves them is
18 certainly at issue in this proceeding, and it's fair
19 to ask the auditor who, of course, arguably has
20 enormous insight into that question as the person
21 conducting the audit to address that issue which is
22 well within the scope of the Commission's authority
23 and squarely what is being decided in this
24 proceeding.

25 MR. SCHULER: If I could just have a

1 brief response, your Honor.

2 EXAMINER PARROT: Go ahead.

3 MR. SCHULER: Dr. Fagan has testified
4 previously today that prudence and best interest of
5 customers are two separate analyses. The parties are
6 pointing out that the audit both may look at the best
7 interest of customers, but the entire scope of the
8 audit and what was in the scope of the auditor are
9 two different things. That is what Intervenor
10 testimony is for. In fact, Intervenor testimony
11 addressed these issues. To question Dr. Fagan on
12 something that is outside the scope of what she was
13 charged to do is inappropriate for an expert witness.

14 MR. McKENNEY: Your Honor, IEU-Ohio
15 supports the question. We would note that if the
16 auditor had given an opinion as to this matter which
17 we think can be documented and as she sits here today
18 has a different opinion, then that's right for
19 impeachment, so we certainly think this is an area of
20 question which OCC is allowed to pursue.

21 MS. KERN: If I may interject, where was
22 the opinion she gave? The audit report -- the draft
23 audit report is not part of the record of this case.

24 EXAMINER PARROT: I'm taking these
25 questions one by one, and as to the question that's

1 been asked, it's a repeat of the one prior that she's
2 already answered, so I am sustaining the objection on
3 the grounds that it's been asked and answered
4 already.

5 Mr. Finnigan, if you wish to ask a
6 different question or, you know, dive deeper into her
7 response, you can do that, but you have merely asked
8 the same question a second time.

9 MR. FINNIGAN: Okay. And, your Honor,
10 just for the record, I would like to make a proffer
11 of evidence and that is I was intending to ask the
12 witness whether she has an opinion as she sits here
13 today whether the OVEC costs are in the best
14 interests of AEP Ohio ratepayers because that would
15 be material to the issue of whether she changed her
16 opinion since the date of the September 9 report. In
17 our view, whether something is in the best interest
18 of AEP Ohio ratepayers equates with whether the costs
19 are prudent or not. And this is a -- an important
20 line of questioning for purposes of our examination
21 and it goes to the issue of whether the costs are
22 prudent.

23 So I just wanted to make that proffer, so
24 I will move on and ask another question.

25 Q. (By Mr. Finnigan) Did you have an opinion

1 on September 9 whether the AEP -- whether the OVEC
2 costs flowing through the AEP Ohio rider were in the
3 best interests of AEP Ohio ratepayers?

4 MS. KERN: Objection as to what her
5 opinion at a certain previous point in time in an
6 unfiled draft of a report might have been. It's
7 irrelevant to this proceeding.

8 EXAMINER PARROT: Overruled.

9 Dr. Fagan, you may answer.

10 A. It was too broad a statement. Where we
11 have views, they are more specific. So the pieces of
12 the findings and recommendations that are specific,
13 those are our views.

14 Q. So you put something in your draft report
15 that was not your view?

16 MS. KERN: Objection, mischaracterizes
17 the testimony.

18 EXAMINER PARROT: Sustained.

19 Go ahead and rephrase, Mr. Finnigan.

20 MR. FINNIGAN: Okay.

21 Q. (By Mr. Finnigan) I am trying to
22 understand what your views were as of the date of
23 this document, September 9. And as I read the
24 document, it says, "However, LEI's analysis shows
25 that the OVEC contract overall is not in the best

1 interest of the AEP Ohio ratepayers." I am just
2 trying to ask if that was your view on or before
3 September 9.

4 MS. KERN: I would renew my objection
5 about relevancy.

6 MR. SCHULER: AEP Ohio joins the
7 objection and once again objects. This is asked and
8 answered.

9 EXAMINER PARROT: Sustained on the
10 grounds that it's been asked and answered.

11 Q. (By Mr. Finnigan) Did you ever hold a
12 view that the OVEC contract overall is not in the
13 best interest of AEP Ohio ratepayers?

14 MS. KERN: At the risk of sounding like a
15 broken record, objection. Her views that are not in
16 the final audit report at certain points in time are
17 not relevant to this proceeding. The audit report
18 and her findings speak for themselves.

19 MS. BOJKO: Your Honor, may OMAEG be
20 heard?

21 EXAMINER PARROT: Go ahead.

22 MS. BOJKO: The views of an expert
23 witness and their opinion is very relevant to the
24 discussion and how the audit report was drafted and
25 how it was reviewed and who offered changes to it is

1 very relevant to the ultimate decision that the --
2 that the Commission has to make about whether the
3 costs that flow through were prudent and reasonable
4 and in the best interests of the customers. The RFP
5 clearly states the purpose of the audit on page 4,
6 and the purpose of the audit contains prudence,
7 reasonableness, and customers' best interests and
8 that's what the auditor was supposed to do. So her
9 views on those issues as directed by the Commission,
10 it's also in the Commission's entry, and it's also in
11 its order 14-1693-EL-RDR which the Commission
12 specifically directed the auditor to review and to
13 ensure that the audit report is contemplated and in
14 compliance with the Commission's order.

15 So this question and whether she did that
16 and came to a conclusion about the best interest of
17 customers is directly on point, relevant, and is
18 within the scope of this proceeding, and it should
19 have been within the scope of the audit.

20 MS. KERN: Your Honor, if I may, I would
21 suggest that the Commission will set forth -- the RFP
22 sets forth the scope of work and they can take in
23 their discretion and expertise the audit report and
24 the arguments of the parties in this case and they
25 can weigh those arguments and develop an Opinion and

1 Order that would coincide with the stated purpose of
2 this case. But characterizing it as the auditor's
3 responsibility to do that is a mischaracterization of
4 the RFP and her scope of work.

5 MR. FINNIGAN: And, your Honor, on a more
6 basic level, I am just trying to get at why this
7 language was removed from the report. That's the
8 real issue here. And, you know --

9 EXAMINER PARROT: I think she's addressed
10 that, right? So.

11 MR. FINNIGAN: Well, yes, she has, but
12 she said it was too broad. But at a more basic
13 level, I am trying to find out whether it was
14 truthful or not. And whether something is too broad
15 or not too broad or too narrow has no bearing on
16 whether something is truthful.

17 And so I just want to, for the record,
18 state that I have a line of questioning of this
19 witness that goes to whether the statement in the
20 record that the OVEC contract overall is not in the
21 best interest of the AEP Ohio ratepayers, my line of
22 questioning is -- is whether she believed that
23 statement to be true at any point in time, if she
24 ever changed her opinion on whether that was true, if
25 she believes it to be true now, and if so, if it's

1 not in the best interest of retail ratepayers, does
2 that have any bearing as to whether the costs are
3 prudent. And that's my line of questioning. But if
4 she is allowed to answer by saying it's too broad, I
5 will move on. I just want to make that proffer
6 that's the line of questioning I had intended to
7 pursue.

8 EXAMINER PARROT: And again, my intent is
9 to take the questions individually one by one. You
10 know, she has given you a response. The fact you may
11 not agree with it or like it doesn't mean she hasn't
12 answered the question, so I do think we've covered,
13 you know, the view at the time of the final report.
14 And as she sits here today, we've covered it as of
15 the time of this draft. I think the question that is
16 pending is did you ever. So, Dr. Fagan, if you have
17 an opinion on that specific question, go ahead and
18 answer. And then we will have covered the timing on
19 this, I think.

20 MS. WHITFIELD: Your Honor, this is Angie
21 for Kroger, if I can be heard on this. Could the
22 witness be instructed to answer the question that's
23 being asked yes or no, because whether she ever
24 believed it's truthful and her answering saying it's
25 too broad like everybody has said is not --

1 EXAMINER PARROT: I am fine with Counsel
2 asking. If it's a question she feels she can give a
3 yes or no, but if she feels it's more nuanced,
4 sometimes questions aren't yes or no questions, so.

5 MR. FINNIGAN: I will approach it that
6 way, your Honor.

7 MS. KERN: I'm sorry. Can I have the
8 entirety of the question repeated? I just wanted
9 to --

10 MR. FINNIGAN: I am going to withdraw the
11 question and ask a different one.

12 Q. (By Mr. Finnigan) So, Dr. Fagan, let me
13 present you with this question. Here is a
14 statement: The OVEC contract overall is not in the
15 best interests of AEP Ohio ratepayers. Do you agree
16 or disagree with that statement?

17 MS. KERN: Objection, your Honor. The
18 question is outside the scope of this proceeding.
19 The RFP on page 4 clearly states that it's to
20 demonstrate whether the Company's actions were in the
21 best interests of retail ratepayers. The Company's
22 actions. So without those words, the scope of this
23 proceeding is being shifted.

24 MS. BOJKO: Your Honor, that's simply not
25 true. There is a full sentence with an "and" in the

1 middle of it, and the "and" makes the first part of
2 the sentence subject to the second part of the
3 sentence, so we disagree with the interpretation of
4 Counsel. And the witness should be allowed to state
5 her opinion without Counsel's interpretation.

6 MR. MCKENNEY: We agree with that, your
7 Honor.

8 MR. SCHULER: Your Honor, AEP Ohio would
9 join Staff's objection. And OCC at this time is
10 clearly looking to force Ms. Fagan into -- or, excuse
11 me, Dr. Fagan into issuing an opinion that was beyond
12 the scope of what she was asked to do in this matter.
13 Also the framing of the question in the last two
14 questions have been is it true or do you agree or do
15 you disagree with. That is putting a quantifiable
16 yes or no which we just had a long discussion about
17 on a question that may or may not be -- you know,
18 truthfulness is a subjective -- subjective question.
19 They are trying to imply an objective question and
20 standard to it.

21 EXAMINER PARROT: The Commission will
22 figure out the scope and whether any of this line of
23 questioning is ultimately relevant, but I do believe
24 as to this particular question it's already been
25 asked and answered, so the objection is sustained on

1 that ground.

2 MR. FINNIGAN: And, your Honor, as to
3 this question, I'll make another proffer of evidence
4 that whether she agrees or disagrees with the
5 statement that the OVEC costs are in the best
6 interests of AEP Ohio ratepayers is relevant to the
7 issue of prudence in this case and that was the
8 purpose of my questioning; and that if she had been
9 permitted to answer that question, then I presume
10 that she would have answered that, yes, she did
11 believe at some point that the OVEC contract overall
12 was not in the best interests of AEP Ohio ratepayers
13 because she put it in her report. And so that would
14 be evidence of imprudence and that was the purpose
15 for my line of questioning, so I will move on. I
16 recognize we are kind of beating a dead horse at this
17 point, so let me go on to something else.

18 Q. (By Mr. Finnigan) Okay. I am going to
19 ask you, Ms. Fagan, I want you to please take a look
20 at a document that was filed in this case and this is
21 the e-mail exchange that went between you and Staff
22 about this topic. And this document is not among my
23 cross-examination exhibits. However, it is an
24 attachment to a witness's testimony.

25 MR. FINNIGAN: So, your Honor, for

1 purposes now, I have a document that we will mark for
2 identification and this is going to be the testimony
3 of Mike Haugh, H-A-U-G-H, an OCC witness, and it was
4 filed I believe on December 29, I think. And I
5 believe this would be OCC Cross-Exam Exhibit No. 21;
6 is that correct, Angela?

7 MS. O'BRIEN: Actually -- well, we're
8 marking Mike's testimony as our direct exhibit but --

9 MR. FINNIGAN: Okay.

10 MS. O'BRIEN: So if we could -- we could
11 probably just mark it and then, you know, after Mike
12 testifies, then admit it if that makes sense.

13 EXAMINER PARROT: Right. So I just need
14 the number you want to use.

15 MR. FINNIGAN: Is this going to be direct
16 Exhibit No. 1?

17 MS. O'BRIEN: No. What was -- would it
18 be 20 -- it would be 21. Where did we leave off with
19 our cross exhibits, 20?

20 MR. FINNIGAN: 20, yes.

21 MS. O'BRIEN: Okay. So this would be OCC
22 21.

23 MR. FINNIGAN: Okay.

24 EXAMINER PARROT: All right. Mr. Haugh's
25 testimony is marked as OCC Exhibit 21.

1 Q. (By Mr. Finnigan) Ms. Fagan, I am going
2 to ask you to take a look at the direct testimony of
3 Mike Haugh that's been marked as OCC Exhibit 21 for
4 identification purposes. Do you have that before
5 you?

6 A. My exhibits go up to 20.

7 MS. KERN: For the ease of the witness, I
8 believe NRDC circulated the same document that you
9 are referencing as exhibit -- NRDC Exhibit 2. I know
10 she has that. Correct me, Counsel, if I am wrong.
11 It -- I mean, I don't mind if you mark it as an OCC
12 exhibit. I am just trying to help her find it
13 faster.

14 MR. FINNIGAN: Could I make a suggestion
15 for a moment? Would it be possible for her to just
16 go to PUCO Docketing and pull it up that way right
17 from the Commission's docket?

18 THE WITNESS: I do have it as the NRDC
19 Exhibit. I opened it. It's in front of me if it
20 moves things along.

21 MS. O'BRIEN: Why don't we go ahead --
22 sorry to interject. Why don't we go ahead and just
23 mark it, if it's okay with NRDC, to go ahead and mark
24 it --

25 MR. FINNIGAN: That would be --

1 MS. O'BRIEN: -- as NRDC's exhibit. Does
2 that work?

3 MR. FINNIGAN: Yeah. That works for me.
4 Does that work -- well, yeah, that's fine. Robert.
5 What number would you like this to have?

6 EXAMINER PARROT: Premarked as NRDC
7 Exhibit 2.

8 MR. FINNIGAN: Okay. Mr. Dove, you are
9 on mute. Mr. Dove.

10 MR. DOVE: Sorry. I was still on mute.
11 Apologies. Whatever is easiest for the Bench. If
12 you would like it moved in as NRDC 2 or if you would
13 prefer to renumber it for an OCC number, it's fine
14 either way.

15 EXAMINER PARROT: NRDC Exhibit 2 is fine.
16 I just want to be sure you're onboard with this to
17 mark it now.

18 MR. DOVE: Yes, your Honor.

19 EXAMINER PARROT: So it's been marked as
20 NRDC Exhibit 2.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 EXAMINER PARROT: And, Mr. Finnigan, if
23 you could identify it now. Since we sort of
24 suspended with the plan to reference it through
25 Mr. Haugh's testimony, let's go ahead and identify

1 it.

2 MR. FINNIGAN: Okay. I will do that;
3 but, your Honor, could I just ask Mr. Dove for
4 myself, I have not had a chance to review the
5 document from NRDC. But, Robert, is this the same
6 thing as what is Attachment MPH-3 to Mike Haugh's
7 document, same document?

8 MR. DOVE: I'm not sure. I can tell you
9 that I got it from the OCC's testimony before the
10 legislature, so I believe it's likely the same, but I
11 haven't confirmed it.

12 MR. FINNIGAN: Okay. That's fine. Thank
13 you.

14 So, your Honor, could we go back on the
15 record and I'll have this marked for identification
16 as you directed?

17 EXAMINER PARROT: We are on the record.
18 Go ahead.

19 MR. FINNIGAN: Okay. So I would like to
20 have a document that's labeled NRDC 2 marked for
21 identification as NRDC 2. And I will say for the
22 record that this is a series of e-mails between
23 members of Commission Staff and Ms. Fagan about
24 making certain edits to her audit report.

25 Q. (By Mr. Finnigan) And with that I'll ask

1 that you review that, Ms. Fagan, and ask whether you
2 have seen any of these e-mails before that are shown
3 in this document.

4 EXAMINER PARROT: NRDC Exhibit 2 has been
5 marked for identification purposes.

6 A. And, yes, I have seen these e-mails.

7 Q. Okay. So the first one that begins
8 "Okay, thanks v much for the head start," that looks
9 like that's from you to the -- to the Staff, thanking
10 them for some preliminary inputs about your draft; is
11 that fair?

12 A. That's fair. That's correct.

13 Q. And then the one below that is an e-mail
14 from Mahila Christopher of the PUCO Staff, dated
15 Tuesday, September 8, 2020, at 2:59 p.m. to you, and
16 copied is Rodney Windle, correct?

17 A. That's correct.

18 Q. Okay. Now, this e-mail, was this
19 preceded by some phone call or did you just get this
20 e-mail out of the blue?

21 A. I don't recall.

22 Q. Do you recall any sense of surprise when
23 you first saw the e-mail?

24 A. We expected comments so -- so it would be
25 more surprising not to get comments, so no.

1 Q. Were you surprised that they were asking
2 you to change this language in the executive summary
3 of your entire report?

4 MS. KERN: Objection, mischaracterizes
5 the document. It clearly states that it's an
6 observation. There is no request for changes made in
7 this document.

8 EXAMINER PARROT: Rephrase, Mr. Finnigan.

9 Q. (By Mr. Finnigan) Okay. I am reading
10 this e-mail. The first line says at the end of the
11 first line, "The comments can be discussed further at
12 tomorrow's meeting." And then you reply "Okay.
13 Thanks very much for the head start." So that
14 suggests to me that you did get this e-mail out of
15 the blue, and you didn't talk about it with them
16 first. This was the first notice that they wanted
17 you to make these changes to your report; does that
18 refresh your memory?

19 A. No, no, it doesn't. And if we had a
20 meeting scheduled for the 9th which would be the next
21 day, right, I would have set it up, so I don't
22 remember exactly what happened. But if we had a
23 meeting scheduled on the 9th and I got this on the
24 8th and she is referring to a meeting we have
25 scheduled for the 9th, I -- like logistically I would

1 have had to set it up before she talked about it
2 here. Do you see what I mean?

3 Q. Well, I am not exactly following you but,
4 in any event, let's move on.

5 Now, the next line about three lines down
6 that same e-mail has two asterisks, and it says "If
7 you could please note that Staff still needs final
8 acquiescence from PUCO Admin. regarding the overall
9 tone of the draft report." Have I read that
10 correctly?

11 A. Yes.

12 Q. And there is an exclamation point at the
13 end, right?

14 A. There is.

15 Q. Okay. Now, I want you to focus on that
16 word "tone." Have you ever seen any use of the word
17 "tone" in terms of the auditing industry or the field
18 of economics or finance? Is "tone" a term of art in
19 the industry? "Tone"?

20 A. "Tone" is a term of art for writers.

21 Q. Okay. Writers of financial statements or
22 writers of audit reports? Like "tone" at the top is
23 the context that I want to ask about. Have you seen
24 the phrase "tone" at the top before?

25 A. I am not too familiar with that phrase.

1 Q. Okay. Are you familiar with the concept
2 of tone being one where it goes to -- well, strike
3 that.

4 What is your understanding of this term
5 "tone" as used in the industry?

6 A. In my view as a writer, a writer of
7 audits or whatever it might be, tone isn't content.
8 Tone isn't conclusions. Tone isn't analysis. It's
9 kind of ephemeral. It's hard to describe, but it's
10 clear what it isn't. It's not facts, analysis,
11 conclusions. It's like a tone of voice. Is a tone
12 of voice loud? Is a tone of voice soft? The same
13 thing could be said in a -- in a pleasant tone, in an
14 unpleasant tone, in a loud tone, in a soft tone. The
15 content is the same. So --

16 Q. Okay.

17 A. -- tone writing is -- in my mind it's
18 kind of like tone speaking, but it's -- it's writing.

19 Q. Okay. And you are giving me what I would
20 say is a layperson's definition of the word "tone."
21 But what I was asking was whether you are aware that
22 the word "tone" is used as a term of art in the
23 finance or economic or auditing industry.

24 A. If it is, I was not aware of that.

25 Q. You don't know whether it's part of the

1 Generally Accepted Auditing Standards published by
2 the American Institute of Certified Public
3 Accountants?

4 A. I do not know.

5 Q. If the word "tone" did appear as
6 something that is within the purview of an auditor to
7 comment on in an audit report under the AICPA's
8 Generally Accepted Auditing Standards and if the
9 Staff is directing you as to what tone to take, would
10 you view that as an interference with your
11 independence as an auditor to decide what the tone of
12 your report should be?

13 MS. KERN: Objection on several grounds.
14 It was a compound question. It again presumes that
15 Staff told the auditor what to do. The document
16 that's being referenced notes observations, one of
17 which was the mention of the word "tone." I'm not
18 even sure what the question is, quite frankly. I
19 think there were a few in there.

20 MS. BOJKO: Your Honor, OMAEG objects to
21 Counsel's interpretation of the e-mail. It's
22 incorrect. Using the word "milder tone" is not an
23 observation. It can't be an observation of the
24 document. It's an instruction to use a milder tone.
25 It can't be an observation. You have to read the

1 sentence completely and that's a mischaracterization
2 of the record.

3 MS. WHITFIELD: Your Honor, if I could
4 also be heard, that also is a mischaracterization
5 because if you look at the very first sentence, it
6 talks about Staff's editorial suggestions. So it's
7 not just an observation. It is a suggestion to edit
8 the report for -- for the issues listed below.

9 MR. MCKENNEY: Your Honor.

10 EXAMINER PARROT: We're done. The
11 objection is sustained as to the -- I mean,
12 Mr. Finnigan, if you could rephrase, that would be
13 helpful. You have couched your question in terms of
14 the use of the word "tone" in the auditing context.
15 She has already said she is not familiar with that,
16 so go ahead and rephrase.

17 MR. FINNIGAN: I'm sorry. I didn't hear
18 the last part of that, your Honor.

19 EXAMINER PARROT: I said go ahead and
20 rephrase.

21 MR. FINNIGAN: But I believe -- what was
22 the objectionable part of the prior question?

23 EXAMINER PARROT: She said she is not
24 aware of the use -- or aware of the meaning of "tone"
25 within the auditing context already, and you are

1 still trying to ask her to kind of get at that. She
2 said she doesn't know. So rephrase.

3 MR. FINNIGAN: I understand then. I
4 apologize.

5 Q. (By Mr. Finnigan) So let me ask it this
6 way --

7 EXAMINER PARROT: I'm sorry. I think --
8 sorry. Just to be clear, I think I said audit. I
9 mean accounting.

10 MR. FINNIGAN: Okay.

11 EXAMINER PARROT: Sorry.

12 MR. FINNIGAN: I think I understand what
13 you were saying, your Honor.

14 Q. (By Mr. Finnigan) So I am going to ask a
15 different question, Ms. Fagan. With regard to this
16 part of the e-mail that we are talking about where it
17 says "Staff still needs final acquiescence from PUCO
18 Admin. regarding the overall tone of the draft
19 report," do you have any opinion as to whether the
20 tone of the draft -- of the audit report was
21 something that was then within your purview to
22 determine as the auditor, or whether Staff should be
23 the one that directs you as to what tone to take in
24 the audit report?

25 A. In my view of this e-mail, these were not

1 directions. They are suggestions. We -- we
2 ultimately make the final decision about what goes in
3 or doesn't.

4 Q. Okay. Take a look at the last line and
5 let me ask you if I am reading this correctly. Do
6 you see where it begins "I am attaching"?

7 A. Yes.

8 Q. I am going to read that. "I am attaching
9 a redlined Word version of the draft for your
10 perusal/review. If you could, please take a look and
11 incorporate Staff's comments as far as possible?
12 Please let me know of any questions, comments, or
13 concerns." Have I read that correctly?

14 A. "Questions, comments, and concerns."

15 Q. And with that change, have I read that
16 correctly?

17 A. Yes.

18 Q. So did you view this statement where it
19 said "Please incorporate Staff's comments as far as
20 possible" as any sort of direction from the PUCO
21 Staff about what to include in the audit report?

22 A. It's not direction. In my mind it's not
23 direction as to what to include in the report. It's
24 their comments. And the ultimate decision is ours.

25 Q. You testified a few moments ago that this

1 statement about being "not in the best interest of
2 retail ratepayers" when describing the OVEC costs was
3 too broad. What do you mean "too broad"? I didn't
4 understand what you meant by that.

5 A. So what we mean is what we said in the
6 final which is that at this time the OVEC plants cost
7 customers more than the cost of energy and capacity
8 that could be bought on the PJM wholesale markets.
9 And that's a key conclusion and finding. And it's
10 concrete and well defined. It's not overly broad.

11 Q. Let's focus on that statement that did
12 end up in the report and I am looking at the final
13 version of the audit report, page 9, Section 1.3,
14 second full paragraph, beginning "However, LEI's
15 analysis shows" and that's what you were reading from
16 is the statement that's not overly broad. That's
17 what you left in the report.

18 A. That's correct.

19 Q. Okay. Let's focus on that. "LEI's
20 analysis shows that at this time" -- by "this time"
21 do you mean 2018 and '19?

22 A. Yes, the audit period.

23 Q. So "LEI's analysis shows at this time
24 that the OVEC plants cost customers more than the
25 cost of energy and capacity that could be bought on

1 the PJM wholesale markets." Have I read that
2 correctly?

3 A. That's correct.

4 Q. Okay. Now, does the fact that the OVEC
5 plants cost customers 74.5 million more than the cost
6 of energy and capacity that could be bought on the
7 PJM wholesale markets provide any indication as to
8 whether that's in the best interest of retail
9 ratepayers?

10 MR. SCHULER: Objection, mischaracterizes
11 testimony in the same way that has been done before.
12 The 74.5 million was subject to check. It has not
13 been established in this record as an accurate
14 number. This also goes to a previous line of
15 questioning that I believe your Honor has sustained
16 about the PJM wholesale market being beyond the scope
17 of what Dr. Fagan reviewed in this case. Excuse me,
18 specifically the best interest of retail ratepayers,
19 we have had quite a bit of discussion over the last
20 hour.

21 EXAMINER PARROT: Mr. Finnigan, do you
22 want to rephrase your question?

23 MR. FINNIGAN: Your Honor, I am just
24 asking her opinion. And I will withdraw it, and I
25 will try to rephrase it. I am just trying to get an

1 opinion answer from her. I think we were hung up and
2 I didn't understand her comment before about the
3 statement being too broad or too narrow, but she has
4 indicated that what's in the final report is
5 something that is, you know, neither too broad nor
6 too narrow but just right. So that's why I was
7 trying to focus on this in my question.

8 Q. (By Mr. Finnigan) And what I was simply
9 asking was an opinion as to whether given the fact
10 that LEI's analysis shows at this time that the OVEC
11 plants cost customers more than the cost of capacity
12 that could be bought in the PJM wholesale markets,
13 does that indicate whether the OVEC costs are in the
14 best interest of retail ratepayers?

15 MR. SCHULER: Same objection. It's the
16 exact same question, your Honor.

17 EXAMINER PARROT: I think the issue
18 Mr. Schuler is raising, Mr. Finnigan, you are saying
19 "given the fact." And before this you said, "does
20 the fact that." I think that's what he is saying,
21 that, you know, line of questioning before was a
22 little more nuanced and subject to check, that he
23 also noted. So that's kind of what I was asking you
24 to rephrase.

25 MR. FINNIGAN: Okay. Well, let me -- I'm

1 trying to, you know, address the objection, your
2 Honor. So let me try a different approach here.

3 Q. (By Mr. Finnigan) Let's focus on that
4 same statement, Ms. Fagan. It's the one that begins
5 "However, LEI's analysis shows at this time that the
6 OVEC plants cost customers more than the cost of
7 energy and capacity that could be bought on the PJM
8 wholesale markets." Is that a true statement?

9 A. Yes.

10 Q. Does the fact that the OVEC plants cost
11 customers more than the cost of energy and capacity
12 that could be bought on the PJM wholesale markets
13 provide any sort of indication as to whether those
14 costs are prudent?

15 A. Well, as we said in the paragraph if you
16 read to the next, there are other considerations,
17 providing employment at the plants, the plants'
18 contributions to fuel diversity in the State, that
19 out -- it's a weighing of costs and benefits that say
20 the Commission or the State would do, maybe the
21 legislature that's -- it's outside LEI's purview.
22 The cost of energy and capacity is higher, but to
23 speak of benefits, there is other things, fuel
24 diversity, whatever it might be.

25 Q. Okay. So let's talk about what's in your

1 purview, what's outside your purview. What is in
2 your purview is to determine the prudence of all
3 costs that flow through the PPA Rider. Yes?

4 A. Yes.

5 Q. And then what we are talking about here
6 in your prior answer is a sort of balancing and there
7 would -- let's say that we've got like the scales of
8 justice with a pan on each side or weighing different
9 factors. And so on one side of the pan we've got the
10 costs, and then on the other side of the pan we've
11 got things like fuel diversity and jobs and, you
12 know, that sort of thing.

13 So is that a fair characterization of
14 what you are talking about in this paragraph is you
15 are talking about the balancing of different things
16 and the comment about the cost would be a -- a con
17 point that would tend to indicate that the plants
18 are -- or the costs are imprudent, but it might be
19 balanced out by these other factors like fuel
20 diversity; is that what you are getting at in this
21 paragraph?

22 MR. SCHULER: Objection. I am not
23 even -- there was about a 45-second preamble to that
24 question. I am not even sure what exactly the
25 question is at this point.

1 MR. FINNIGAN: You know, I don't mind,
2 you know, your Honor, these kinds of objections. If
3 Counsel wants to object to form, I think that's
4 proper. I don't think these kind of speaking
5 objections are proper. And I think it's more
6 important whether the witness understands the
7 question. So I think the proper way to proceed here
8 would be Counsel could note an objection to form.
9 That would be on the record. And then leave it up to
10 the witness if she understands the question or not.
11 She's the one that has to answer it.

12 EXAMINER PARROT: And I am going to
13 direct you, Dr. Fagan, to the extent you follow the
14 question, go ahead and answer.

15 MS. KERN: Could the court reporter
16 please repeat that, the question? I don't know.
17 Maybe, Dr. Fagan, I don't know if you need it
18 repeated, but I do.

19 MR. FINNIGAN: I will withdraw the
20 question and reask it to make it simpler.

21 Q. (By Mr. Finnigan) Dr. Fagan, referring to
22 Section 1.3 of the audit report, LEI's findings and
23 recommendations, the second full paragraph, in that
24 paragraph what you are doing is you are balancing
25 different factors, some of which would tend to

1 indicate that the OVEC costs are imprudent, other
2 factors of which would tend to indicate that the OVEC
3 costs might be prudent; is that fair to say?

4 A. I don't think that's quite the
5 characterization. We didn't make any findings of
6 imprudence. We made findings of, you know, ways to
7 improve things.

8 Q. Okay. I am not asking you whether you
9 made a finding of imprudence. That's not my
10 question. I am just asking you whether -- what you
11 describe in this paragraph is a balancing of
12 different factors that could tend to indicate
13 imprudence or prudence.

14 A. That wasn't our intent. Our intent was
15 just to step back and look at the context of, you
16 know, Ohio's intent or whatever, that, taking the
17 perspective outside of the auditor, there is other
18 considerations. But we didn't do a cost/benefit
19 balance, anything like that.

20 Q. So other considerations, why did you
21 bring up these other considerations?

22 A. To provide some context.

23 Q. Of what? Whether the costs were prudent?

24 A. Well, no. We didn't make a finding of
25 imprudence.

1 Q. Okay. But you -- you didn't make a
2 finding of imprudence, so I take it that you did make
3 a finding of prudence.

4 A. The findings that we made are in the
5 report, and they are recommendations for improvement.

6 Q. Okay. Well, I guess, you know, we have
7 already talked about the scope of the audit was to
8 determine the prudence of all costs. Did you make
9 any finding in the audit report as to whether all
10 costs under the PPA Rider were prudent or not?

11 MS. KERN: Objection, your Honor. The
12 question mischaracterizes the scope of work for
13 Dr. Fagan and what she was to do for this audit.

14 EXAMINER PARROT: Overruled.

15 Go ahead, Dr. Fagan.

16 THE WITNESS: Would you repeat the
17 question?

18 MR. FINNIGAN: Could the court reporter
19 reread the question, please.

20 MR. SCHULER: Your Honor, while the court
21 reporter is doing that, we have been going for almost
22 three hours now. Would it be a good time to take a
23 break? I think my legs are about numb at this point.
24 Or at least be thinking about it in the near term?

25 EXAMINER PARROT: Let's go off the

1 record.

2 (Recess taken.)

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

5 Go ahead, Mr. Finnigan.

6 MR. FINNIGAN: Thank you, your Honor.
7 Your Honor, would it be okay if we could go back and
8 just have the last Q and A read?

9 EXAMINER PARROT: Thank you. It does
10 look like we have got a pending question. So, Karen,
11 if you could reread that, please.

12 (Record read.)

13 THE WITNESS: That's the question to
14 answer now? Okay.

15 EXAMINER PARROT: Yes.

16 A. We didn't find any imprudence, but as I
17 mentioned, we found places for improvement.

18 Q. If you found places for improvement, does
19 that mean the actions that needed improvement were
20 imprudent?

21 A. I would not say that. There's -- we went
22 back to that definition of prudence, reasonable
23 people can disagree on what exactly is prudent, so I
24 wouldn't say imprudent but places where processes
25 and, you know, the must-run versus economic

1 commitment, that kind of thing could be improved.

2 Q. Okay. Now, the fact that they had these
3 areas that needed improvement --

4 MR. FINNIGAN: I apologize, your Honor.
5 I didn't realize I had my phone on. I am just trying
6 to get that off. Okay. I apologize.

7 Q. (By Mr. Finnigan) So the fact that you
8 found these areas needing improvement, and going back
9 to the definition of the Vantage audit report about
10 prudence being a decision that's unfettered with
11 bias, did the fact that you found these areas that
12 needed improvement in this situation where there was
13 a conflict of interest between the AEP ratepayers and
14 the AEP shareholders cause you any concern?

15 MR. SCHULER: Objection. Assumes facts
16 not in evidence.

17 EXAMINER PARROT: Go ahead and try to
18 rephrase, Mr. Finnigan.

19 MR. FINNIGAN: Sure.

20 Q. (By Mr. Finnigan) Just going to the
21 definition of prudence. We discussed earlier from
22 the Vantage report, it talked about prudence --
23 prudent actions being ones that are characterized by,
24 among other things, unfettered with bias. And I am
25 asking you whether you had any concern as an auditor

1 that AEP's conflict of interest as between its
2 shareholders versus ratepayers regarding these OVEC
3 costs and the fact that they had areas that needed
4 improvement caused you any concern as an auditor.

5 MR. SCHULER: Objection. Still assuming
6 many facts not in evidence. Also compound.

7 EXAMINER PARROT: To the extent you can,
8 Dr. Fagan, go ahead and answer.

9 A. So there is different pieces of the
10 question, so I will try to deal with the different
11 pieces.

12 So we didn't particularly use Vantage's
13 definitions. We didn't examine drivers of bias or
14 outcomes in that manner. So I can't comment on those
15 things.

16 And I guess you asked also about conflict
17 of interest. We didn't -- that's -- we didn't
18 examine -- we didn't go down that road.

19 Q. Is this a question that you could answer
20 with a yes or no answer? The question is, can you
21 make a finding in this audit report as to whether all
22 the costs through the PPA Rider were prudent? Yes or
23 no.

24 A. They are generally prudent. There were
25 parts that could be improved upon.

1 Q. Okay. And then areas needing
2 improvement, why would they not be classified as
3 imprudent?

4 A. So we kind of talked about this when you
5 brought up the Vantage report. There's -- reasonable
6 people disagree. There's decision making. Nobody
7 knows the future so people make the best decisions
8 they can with the information they have. And then
9 you go and audit. The future might have unfolded
10 differently than people thought. Certainly, you
11 know, COVID and things like that have unfolded in
12 ways that probably none of us imagined two and a half
13 years ago. So that doesn't make the decision you
14 made two years ago imprudent. The world might not
15 have unfolded in a way that benefits you. It doesn't
16 mean you are imprudent though.

17 Q. Okay. COVID doesn't have anything to do
18 with this case, does it?

19 A. No. COVID really struck in early 2020
20 which is after the audit period.

21 Q. All right. Let's go back to this audit
22 report. And now, Ms. Fagan, I would like you to
23 please direct your attention back to this NRDC
24 Exhibit 2 which is the e-mails that we were talking
25 about earlier. Let me jump back to the audit report

1 but I would like to jump back to those e-mails for a
2 moment. Do you have those in front of you?

3 A. Yes, I do.

4 Q. All right. So where we left off we were
5 talking about the one dated September 8, 2020, about
6 the tone of the draft audit report. Now, I see from
7 this report -- or, I'm sorry, from this e-mail on the
8 one that Ms. Christopher sent that we are discussing
9 here, it was sent to you and copied Mr. Windle and
10 then there was some other entity mentioned, "PUCO
11 Admin." What did that mean?

12 A. I do not know.

13 MS. KERN: Objection.

14 THE WITNESS: Oh, sorry.

15 MS. KERN: Sorry. She answered it.

16 Q. You didn't know when you got the e-mail,
17 but when you met the next day, was there any
18 discussion of that?

19 A. I don't recall the specifics of our
20 discussion, so I don't know.

21 Q. Okay. And without regard to what "PUCO
22 Admin" meant, was there any discussion about whether
23 other people, besides Ms. Christopher and Mr. Windle,
24 were weighing in on the tone of the audit report?

25 A. I don't remember the details of our

1 conversation.

2 Q. Now, if you look at the next line items
3 below that where it says "Staff's main observation,"
4 do you see that?

5 A. Yes, I do.

6 Q. Now, the first one they say "Milder tone
7 and intensity of language." By, you know, taking
8 direction from Staff about the tone and intensity of
9 your language in your audit report, do you feel that
10 you were really acting independently if you allowed
11 them to direct you as to the tone and intensity of
12 the report?

13 MS. KERN: Objection, your Honor. This
14 similar question has been asked, and the auditor has
15 expressed that she was ultimately in charge of the
16 final audit report and its contents.

17 EXAMINER PARROT: I agree, Ms. Kern.

18 To the extent you can, Mr. Finnigan, go
19 ahead and rephrase.

20 Q. (By Mr. Finnigan) As an auditor, do you
21 feel it is up to you to determine the tone and
22 intensity of your audit report, or other people?

23 A. It's up to me.

24 Q. Okay. And here they asked you to adopt a
25 milder tone and intensity. What was it about your

1 original draft report that made you decide that it
2 was not mild enough and too intense?

3 MS. KERN: Objection, your Honor.
4 Mischaracterizes the document. And he used the word
5 "adopt." It's not in -- in the document.
6 "Observation" is in the document.

7 MR. FINNIGAN: Your Honor, I am just
8 referencing the last line of the e-mail where it says
9 please incorporate Staff's comments as far as
10 possible. So that's more than an observation. It's
11 a direction. But, in any event, I -- again, I think
12 that, you know, I would object to Counsel giving
13 these speaking objections or coaching objections. I
14 think the proper approach is to say "I object to the
15 form of the question" and leave it at that, but
16 that's just my view.

17 MS. KERN: Well, Counsel, I have objected
18 on the same grounds to the same form of question
19 several times now, and I was just pointing out that
20 my objection is redundant. I am not coaching the
21 witness. I am explaining my point again.

22 EXAMINER PARROT: Go ahead and rephrase,
23 Mr. Finnigan.

24 Q. (By Mr. Finnigan) Okay. What was it
25 about your original report that in your view was not

1 mild enough and not -- and too intense?

2 A. It was not in my view. It was in the
3 reader's view, the Staff, and it was the material
4 that they are pointing out here.

5 Q. Well, you must have agreed with their
6 view because you adopted those suggestions.

7 A. That's right. I didn't disagree with it.
8 Adopting the suggestion, again, it's at our
9 discretion. So that sentence down in the bottom
10 where it says, you know, "please take a look and
11 incorporate Staff's comments as far as possible." So
12 if -- if it had been comments that I couldn't live
13 with, I wouldn't adopt them. But the material that
14 they pointed out here, I said, fine, the audit report
15 still says what we need it to say. It still says the
16 analysis shows that the plants cost the customers
17 more than the cost of energy and capacity that could
18 be bought on the PJM wholesale markets. That's the
19 bottom line.

20 And our require -- recommendations and
21 findings, none of that changed. So to adjust the
22 tone I had, I didn't have a problem with that.

23 Q. And you don't feel that that interferes
24 with your independence as an auditor for the Staff to
25 ask you insofar as possible to change the tone and

1 intensity of your report.

2 MS. KERN: Objection, your Honor.

3 Again -- again, this is mischaracterizing what is on
4 the document, and the witness has never testified
5 that Staff asked her to change the audit report.
6 Asked and answered.

7 MR. SCHULER: AEP Ohio joins the
8 objection. We have spent the better part of a couple
9 hours now on similar concepts about the auditor's
10 independence and what she looked at and what she
11 didn't look at and what was in her discretion as an
12 auditor. She's answered it numerous times throughout
13 the day.

14 EXAMINER PARROT: I agree we may be
15 getting to that point but go ahead and rephrase,
16 Mr. Finnigan.

17 Q. (By Mr. Finnigan) Ms. Fagan, did you feel
18 that the Staff's comment about using a milder tone
19 and intensity of language was interfering with your
20 independence as an auditor?

21 A. No, it was not.

22 Q. Now, the next line says "reduced
23 subjectivity and level of detail." What was wrong
24 about the comments that are highlighted after that
25 that you felt had to be taken out of the report?

1 A. I did not feel these had to be taken out.
2 But taking them out to accommodate this request from
3 Staff was acceptable to me because it didn't change
4 our results.

5 Q. Okay. So you didn't feel that it had to
6 be taken out. And would that be true of these other
7 comments we've been talking about too, that you put
8 them in there in the draft report because you thought
9 they belonged there but -- and you took them out at
10 the request of the Staff?

11 MR. SCHULER: Objection. This is a line
12 of questioning that Dr. Fagan has already answered
13 numerous times earlier today. Mr. Finnigan is
14 circling back around after having her discuss a
15 separate piece of the e-mail.

16 MS. KERN: Staff would object. It
17 mischaracterizes her previous testimony.

18 EXAMINER PARROT: Sustained. If you want
19 to attempt to rephrase, Mr. Finnigan, go ahead.

20 MR. FINNIGAN: I will just make a proffer
21 of evidence at this time. I would like to proffer
22 for the record the -- that I had a number of
23 questions of this witness regarding the reason why
24 she took certain comments out of her draft report
25 that did not appear in the final report. The reasons

1 are as laid out in this e-mail that these were given
2 to her as suggestions of Staff -- by staff. It's my
3 belief that if permitted to question the witness on
4 these items, she would say that she took them out at
5 the request of Staff. I would then ask follow-up
6 questions about whether that interfered with her
7 independence as an auditor where the Staff is making
8 substantive suggestions regarding the language and
9 opinions of the report and -- and that's the line of
10 questioning I would pursue if permitted to do so, so
11 I just want to make that proffer for the record.

12 MS. KERN: Your Honor, if I may.

13 EXAMINER PARROT: Go ahead.

14 MS. KERN: I -- I would object to
15 Counsel's representation if he was permitted to ask
16 those questions. Counsel has asked those questions.
17 The witness has answered those. I think if we look
18 at my objection record and what's been sustained and
19 overruled, I am not -- I haven't been 100 percent or
20 anywhere near. So those questions have been asked.
21 The record is -- is complete in that regard. In
22 fact, they have been asked multiple times, and I just
23 want to note that for the record.

24 EXAMINER PARROT: Thank you, Ms. Kern.

25 Q. (By Mr. Finnigan) Ms. Fagan, did AEP ask

1 you to take out the same language from your report
2 that the Staff asked you to take out about the OVEC
3 costs not being in the best interests of retail
4 ratepayers?

5 A. I don't recall.

6 Q. Don't you recall a draft of an e-mail
7 from Ed Locigno at AEP talking about how a draft of
8 the audit report didn't match a near final version
9 because of this language?

10 A. I need to see that. The Staff gets a
11 draft to review before the Company, so I -- I need to
12 see Ed's e-mail because that might have been taken
13 out before Ed saw it. I just -- I need to see it.

14 MR. FINNIGAN: Then, you know, again,
15 your Honor, I renew my request for the auditor to
16 bring all of her records to the deposition today
17 which I understand you sustained but that's the
18 reason I made the request just for the record, just
19 to allow for full cross-examination.

20 MR. SCHULER: Your Honor, I am not sure
21 that's an objection that can be made here, but today
22 is not a deposition.

23 EXAMINER PARROT: The request to require
24 the auditor to bring documents has already been
25 addressed in an earlier entry, Mr. Finnigan.

1 MR. FINNIGAN: Okay, your Honor. I just
2 want --

3 EXAMINER PARROT: If you have a document
4 and wish to ask a question, go ahead.

5 MR. FINNIGAN: All right.

6 Q. (By Mr. Finnigan) All right. I would
7 like to direct your attention to -- well, strike
8 that.

9 Okay. I would like to direct your
10 attention to your audit report and in the section of
11 page 23 under levelized cost of energy.

12 A. Okay. I am there.

13 Q. Now, I believe we were discussing this
14 earlier, and you made a redaction on the first
15 sentence of that paragraph and part of the second
16 sentence. Do you recall that?

17 A. I did, and I think grammatically we have
18 maybe something hanging there that isn't quite
19 smooth, but the intent is that 41.25, I'm not
20 entirely happy with that number.

21 Q. Okay. Now, is the fact -- strike that.
22 What is levelized cost of energy? What
23 does that mean?

24 A. Well, it's a way to compare -- it looks
25 at all the costs of a power plant, so you have

1 capital costs, you have operating costs, you need to
2 make assumptions about what kind of plant it is. In
3 this case, for a couple of reasons I can go into, we
4 used combined cycle gas turbines. You make
5 assumptions about typically how much the plant runs,
6 what's its cost of fuel, et cetera.

7 And then you do a financial calculation
8 that says, well, if -- what would you have to earn in
9 the energy market on a levelized basis in the same
10 dollars per hour for 20 years or whatever for the
11 plant to pay back its costs, its operating costs and
12 its capital time. And you do that. You convert
13 everything based on your assumptions about how often
14 the plant runs. You convert all that to the dollars
15 per megawatt-hour, and then you can compare it. It's
16 just a comparison tool. You would compare it to
17 energy prices.

18 So let's say the energy prices in a
19 region are like \$60 a megawatt-hour on average and
20 they've been that level for a year or so, right? A
21 year or two maybe. That's an investment signal,
22 right? So an investor looks at that and says can I
23 build a plant and make money? If things stay at
24 60 bucks a megawatt-hour, maybe it will fall to 40,
25 whatever it might be, they will have some kind of

1 forecast cost.

2 So it's an investment signal. If a
3 going-forward full cycle cost of a plant is low,
4 let's say it was \$30 and power prices were 50, it's a
5 signal to build a power plant. So that's what LCOE
6 is used for.

7 Q. It's like a benchmark of price, and you
8 decide whether you can build a plant that's going to
9 operate at more or less than that price and whether
10 you can make money.

11 A. Sort of, yeah. It's a benchmark number.
12 If you see a market where energy prices are -- let's
13 say energy plus capacity you have audit markets with
14 capacity markets is higher than LCOE but by a
15 reasonable amount for a few years because these
16 projects take a while, then you are likely to see
17 people building these plants. But if it's the other
18 way, you wouldn't expect a lot of build-out in a
19 market where prices are low and people couldn't
20 expect to recoup their costs. So -- so benchmark,
21 that's probably fair.

22 Q. Okay. And so from an economic theory
23 perspective, would the economic theory be that let's
24 take these numbers that you have in your report of
25 levelized cost of energy at 42.40, 47.50 a

1 megawatt-hour, that's what you give as the levelized
2 cost of energy at PJM as stated in your report; is
3 that right?

4 A. Right, for a combined cycle gas turbine,
5 a new combined cycle gas turbine plant.

6 Q. And would the economic theory dictate
7 that in the long run, at least from a theoretical
8 perspective, you would expect the market price to
9 revert at or near that number because theoretically,
10 you know, under economic principles somebody would
11 build a plant and sell it, all the output, until it
12 reaches marginal cost, and the market price would
13 revert at or near this number.

14 A. In theory that's kind of the definition
15 of the long run in economics when everybody has a
16 chance to respond to price signals including capital
17 expenditures. So, in theory, yes. Does it ever
18 happen that way in power markets? Not always but in
19 theory, sure.

20 Q. Okay. And so in theory the LCOE could be
21 used as a proxy for market price in the long run.

22 A. I don't -- I am not sure I would do that
23 even for -- even for longer-term market prices. I
24 think I would start with demand projections, supply.
25 If supply was short and you expected a new build to

1 come in, yeah, maybe that price would be a ceiling.
2 It's -- I wouldn't just -- I wouldn't hang my hat on
3 it, hey, that's the long-term price. There is more
4 to it.

5 Q. At least from a theoretical standpoint,
6 if OVEC is operating at a higher cost than the
7 levelized cost of entry, would that be an indicator
8 that OVEC is not going to earn positive revenues from
9 selling its energy and capacity into the PJM market?

10 A. Well, what we said was, since the cost of
11 the OVEC plants is at over \$50 a megawatt-hour and
12 remember that includes the demand charge which is the
13 -- the capital cost is higher than the levelized cost
14 of building new CCGT, so it implies in a competitive
15 context the OVEC plants wouldn't be viable on a
16 going-forward basis. If you knew it was going to
17 cost you \$50 a megawatt-hour, would you build
18 whatever it is, a coal plant, gas, whatever, would
19 you build it given the prices in PJM over the last
20 few years. You wouldn't.

21 Q. Okay. Now, let me ask you to turn your
22 attention to the FirstEnergy Solution's bankruptcy
23 filing. You discuss that in your audit report, do
24 you not? I think it's at page 16.

25 A. Yes, I'm there.

1 Q. So I want you to take a moment to review
2 that section and let me know when you have had a
3 chance to refresh your memory about that. I just
4 have a couple questions.

5 A. Okay.

6 Q. Okay. So this dispute about FirstEnergy
7 Solutions began in August 2018, a period covered by
8 your audit report; is that right?

9 A. That's correct.

10 Q. And during the 2018 to 2019 period,
11 FirstEnergy Solutions refused to pay its share of the
12 ICPA; is that what it -- is that your understanding?

13 A. It refused to pay that PPR share, yes.

14 Q. Now, why did they refuse to pay it?

15 A. Well, they said we are in bankruptcy and
16 therefore -- I mean, this is a layman's term. We are
17 in bankruptcy and then we were allowed to abrogate
18 the contract and we don't have to pay. But that's
19 what was under dispute was whether that was really
20 true, or whether, rather than the bankruptcy court
21 having jurisdiction, FERC had jurisdiction, and
22 that's as far into the legal side as I am able to go.

23 Q. Why -- why do you think they would want
24 to abrogate the contract?

25 MR. SCHULER: Objection. This is asking

1 for speculation about what FirstEnergy Solutions was
2 thinking at the time.

3 MR. FINNIGAN: Well, your Honor, the
4 scope of her opinion in this case goes to whether the
5 costs are prudent. If there is evidence that she
6 reviewed in other audit reports that FirstEnergy had
7 experts indicating that they wanted to abrogate the
8 contract because the costs are too high, that would
9 be relevant to this case.

10 A. We don't know if that was the reason
11 though. They might have plain been broke. We don't
12 know.

13 Q. Okay. But if they had been broke, that
14 means they had to pay something. And that they
15 weren't earning positive revenue under the contract,
16 right?

17 A. I haven't looked at FirstEnergy.

18 Q. Okay. Just from a commonsense
19 standpoint, a company in bankruptcy would not seek to
20 abrogate the contracts where they are earning
21 positive revenue, would they?

22 MS. KERN: Objection, your Honor. She's
23 answered. She has not looked at this. She didn't
24 look at FirstEnergy. She has answered this question
25 in a different form.

1 EXAMINER PARROT: Sustained.

2 MR. FINNIGAN: Your Honor, I would like
3 to make a proffer of evidence at this time. If
4 permitted to ask the question, I have a line of
5 questioning about the FirstEnergy Solutions
6 bankruptcy, and I believe the witness would answer
7 that a company would only want to abrogate a contract
8 if it was losing money under the contract. And this
9 would be an indication that FirstEnergy projected it
10 would lose money under the OVEC contract which would
11 be an indicator that the OVEC costs are not prudent.
12 And it would also be an indicator that FirstEnergy
13 was trying to at least take some steps to escape the
14 OVEC contract, unlike AEP, which would be another
15 indication that AEP did not act prudently. So I just
16 wanted to proffer that line of questioning for the
17 record. I'll move on to another topic.

18 Q. (By Mr. Finnigan) Now I want to direct
19 your attention back to the audit report at page 12.

20 A. Okay. I'm there.

21 Q. Okay. Now, if you could just take a
22 moment to review the first full paragraphs, the two
23 first full paragraphs at the top of the page.

24 A. Okay.

25 Q. Now, in these paragraphs you give the

1 date that these plants went into operation so, let's
2 see, that's in the second full paragraph, so by 1956
3 both of the OVEC plants went into operation; is that
4 correct?

5 A. That's our understanding, yes.

6 Q. So just doing a little quick math here,
7 that makes them about 65 or 66 years old as we sit
8 here today?

9 A. That's correct.

10 Q. Is there any concern on your part about
11 these plants spending money on capital improvements
12 for environmental compliance that might take 30 or
13 40 years to recover when the plants are already
14 66 years old?

15 MR. SCHULER: Objection. The question is
16 not limited in scope of time. The Attorney Examiners
17 have been pretty clear about the scope of this audit
18 when it comes to timing of being 2018 and 2019.

19 Q. (By Mr. Finnigan) I will reframe the
20 question to ask with respect to environmental
21 compliance expenditures during the audit period.

22 A. So we looked at compliance and we looked
23 at capital expenditures. And our comment, our
24 observation on capital expenditures is that there
25 isn't a cap. So, not so much that the process wasn't

1 managed prudently but just when you stand back from
2 it, there is no -- there is no sort of annual cap on
3 CAPEX. So that was our comment on CAPEX. When -- we
4 didn't tie it to the age of the plant.

5 Q. Okay. But it wouldn't be prudent to
6 spend money for environmental compliance for a plant
7 that is at retirement age, would it?

8 MR. SCHULER: Objection, hypothetical.

9 EXAMINER PARROT: Overruled.

10 Go ahead and answer, Dr. Fagan.

11 A. I don't know that these plants are
12 scheduled for retirement, so I don't know what their
13 retirement date/age would be.

14 Q. I'm not asking you whether these plants
15 are scheduled for retirement, but let me ask it this
16 way: Are you aware of any industry data that
17 discusses the average age of coal plants at
18 retirement?

19 A. I don't have it at my fingertips but
20 there's plenty of -- I am sure EIA has some data.

21 Q. Okay. And where do the OVEC plants stand
22 now that we have established they are 66 years old?
23 Where does that stand in relationship to the average
24 age of other plants, other coal plants that are being
25 retired industry-wide?

1 A. I don't know the answer offhand. And
2 plants get retired for many reasons, not only age.
3 You know, they may be in a market where, you know,
4 they are not covering costs for one reason or
5 another. So there is a lot -- there is a lot of
6 pieces to your question but they were outside the
7 scope of the audit. We didn't look at all the
8 detailed drivers of retirements.

9 Q. Okay. So let's assume that the OVEC
10 plants are costing consumers \$74.5 million in excess
11 of the market price, and let's assume that the OVEC
12 plants are 66 years old, and let's assume that that
13 is older than the average age of coal plants at
14 retirement across the industry by about 10 years.
15 Would that be one indication to you that there might
16 be any possible imprudence in continuing to run the
17 plants and continuing to spend money for
18 environmental compliance?

19 MS. KERN: Objection, compound question.

20 EXAMINER PARROT: To the extent you are
21 able to answer, Dr. Fagan, go ahead.

22 A. We didn't find imprudence in the capital
23 expenditures. We -- our concern was the lack of an
24 annual cap on those.

25 Q. What was that concern about, lack of an

1 annual cap?

2 A. Well, it -- I mean, you could spend any
3 amount of -- I don't know if I would spend any amount
4 of money, but you would want to invest in a resource,
5 a power plant, a home even, but not overinvest
6 relative to its value, whether or not you were going
7 to retire it or move out or whatever.

8 Q. How do you know if you are overinvesting
9 in the value? What's the analysis you to do to
10 figure that out?

11 A. You -- we didn't do this for the audit
12 report. I guess you would have some kind of
13 projection of energy market earnings, capacity market
14 earnings, costs, et cetera. You know, your house,
15 you would have some, you know, forecasted idea of
16 what you could sell the house for eventually when you
17 wanted to and not invest more than it was worth. So
18 you would do forward-looking analysis.

19 Q. Okay. And so the OVEC plants, if they
20 are operating at a cost that is \$74 million above
21 market prices, would they have any value?

22 A. So that -- we used dollars per
23 megawatt-hour so that we could get, in my mind,
24 useful comparisons. But that total dollar amount
25 that we have been talking about, subject to check, is

1 over two years. So I would prefer our analysis where
2 we are looking at dollars per megawatt-hour cost
3 compared to dollars per megawatt-hour earned.
4 That -- that to me is a -- is a more intuitive and
5 helpful analysis.

6 Q. Now, are you meaning look at it on a unit
7 cost basis like X dollars per megawatt-hour versus Y
8 dollars per megawatt-hour?

9 A. Correct.

10 Q. Okay. Let's look at it on that basis.
11 If you have got a plant like the OVEC plants that are
12 operating at a cost that is above the PJM market
13 price, wouldn't that be one indication that it has
14 zero value?

15 A. We did not find that.

16 Q. Okay. But I am just asking if that's --
17 I am going to something that you talk about in your
18 -- that's in your audit report for a concern as an
19 auditor about overinvesting for environmental
20 compliance relative to value.

21 A. I don't think -- I don't think we said
22 overinvesting on environmental compliance. Can you
23 show me?

24 Q. No, I'm sorry. I may have misunderstood
25 your answer, but I thought you said that one of your

1 recommendations was that there should be an annual
2 cap for environmental compliance spending. I thought
3 you brought that up.

4 A. Capital spending.

5 Q. Capital spending, okay.

6 A. Capital spending.

7 Q. Okay. And so and then I asked, you know,
8 how do you establish the cap, and then you said you
9 have to make a determination of whether you are
10 overinvesting in the plant relative to its value. Do
11 you recall that?

12 A. You would do a forward -- forward-looking
13 analysis, yes, you would.

14 Q. Okay. So and you say that you prefer to
15 do this forward-looking analysis on the basis of a
16 unit cost where you compare the OVEC costs and then
17 the market price forecast on a unit basis.

18 A. I didn't say that. When I was talking
19 about unit costs, I was taking exception to your sort
20 of two-year lump sum.

21 Q. Okay. But, in any event, can we agree on
22 this, that what you described is a good utility
23 practice for a utility to do an analysis to discern
24 whether it is overinvesting in capital improvements
25 relative to the value of plant?

1 A. We didn't conduct this in the audit. Our
2 recommendation was broader, just to -- actually the
3 recommendation wasn't to the Company. Our -- it was
4 an observation. There is a couple of pieces of the
5 audit that are just observations of things we are
6 pointing out to our -- to our client, the Commission
7 and Commission Staff. So we didn't recommend the
8 Company do this, the forward-looking analysis. But
9 we pointed out that if there is no cap on annual
10 expenditures, then, you know, you're just not sure if
11 it's, you know, cost effective or -- I am not sure
12 the phrase we used but that was our concern. But it
13 wasn't a recommendation from the Company's actions.

14 Q. Was it more of a recommendation as to
15 OVEC?

16 A. It was more of an observation that we
17 thought we should bring to the attention of the
18 Commission.

19 Q. Did you think you should bring it to the
20 attention of the Commission because it would affect
21 the cost flowing through the PPA Rider?

22 A. It might. It might. I don't know if it
23 would or it wouldn't. We didn't mind.

24 Q. You would have to do the analysis to
25 figure it out, right?

1 A. Yeah. We didn't do anything like that,
2 but.

3 Q. All right. Now, I know you didn't do the
4 analysis but would you agree with me that a prudent
5 utility would do a regular analysis of whether they
6 are overinvesting in capital improvements relative to
7 the value of the plants?

8 MR. SCHULER: Objection. It's an
9 incomplete hypothetical and not relevant to this
10 scenario where we actually have a contract with AEP
11 Ohio who is a party to, and it's been approved by the
12 Commission.

13 EXAMINER PARROT: Overruled.

14 Go ahead and answer, Dr. Fagan.

15 A. So you are asking would a utility do such
16 a study?

17 MR. FINNIGAN: Would the court reporter
18 please read back the question.

19 (Record read.)

20 A. They might.

21 Q. Did -- I mean, it would be prudent to do
22 so, wouldn't it?

23 A. It might be.

24 Q. Okay. And did you ever see any evidence
25 that AEP Ohio or OVEC did such an analysis in 2018 or

1 2019?

2 A. The analysis that they did for CAPEX was
3 described for the projects we reviewed that are on
4 page 53. Our information from the audit was that
5 these projects, we talk about it on page 93, went
6 through a cost/benefit analysis with an average
7 payback timeline of around four years.

8 Q. I'm sorry, how many years?

9 A. Four.

10 Q. Okay. So setting aside those projects
11 that were recovered over four years, later in your
12 report you discuss costs of compliance with the new
13 Coal Combustion Residuals rule and the Effluent
14 Limitations Guidelines rule. Do you recall that
15 discussion in your report, or would you like to refer
16 to it?

17 A. Yeah. That's a pretty technical chapter.
18 Let me get to the right page. What page are you on?

19 Q. I apologize. I am not at a page. I'll
20 just go to the table of contents.

21 A. Okay. I am at the environmental
22 compliance section.

23 Q. Okay. And so, just at a general level,
24 is it your expectation that compliance with the --
25 these new Effluent Limitations Guidelines rules and

1 CCR rules will involve a significant amount of
2 capital expenditures?

3 MR. SCHULER: Objection. The question
4 goes to future capital, to expenditures into the
5 future. It's outside the scope of this audit as the
6 Attorney Examiners have ruled.

7 MR. FINNIGAN: Well, your Honor, I would
8 suggest that if it's too costly to make these
9 environmental improvements and they are going to shut
10 the plant down, it doesn't make any sense to be
11 running them now and that was the reason for the
12 question.

13 Also, with respect to any sort of audit
14 of this nature, it's been the Commission's practice
15 for the auditor to discuss future improvements as she
16 does here in her audit report. She discusses
17 recommendations for future improvements and this
18 would be one area of future improvement to do this
19 kind of economic analysis that she brought up that
20 the operator should compare the cost of the capital
21 improvements against the expected value of the plant.

22 A. I think I said "might," not "should."

23 MR. FINNIGAN: Okay. Well, I'm just --
24 that's all I have to say.

25 EXAMINER PARROT: The objection is

1 overruled as to the question that's pending.

2 Dr. Fagan, go ahead and feel free to kind
3 of clarify what you said previously if you need to.

4 THE WITNESS: Previously I just wanted to
5 make sure that -- there is lots of different
6 emissions rules and different kinds of equipment for
7 the different things that come out of coal plants.
8 And I think Mr. Finnigan's question combined about
9 three of them all together, so I am looking now to
10 see what we have about them separately.

11 EXAMINER PARROT: Okay.

12 A. Okay. The CCR rule went into effect
13 October. Okay. Guidelines. So the Effluent
14 Limitations Guidelines. This one is for bottom ash.
15 They have until no later than December 31, 2025, to
16 modify how they manage the wastewater from the
17 flue-gas desulfurization. So we talk about that on
18 page 83.

19 They confirmed, when we asked, that
20 they've engaged a third-party engineering firm to
21 develop the strategy based on the draft rules and
22 then they'll develop their compliance strategy. But
23 we didn't have a dollar amount for the cost of what
24 that would be.

25 And then separately there's EPA rules for

1 cooling water intake, so let me see where they are
2 with that. So they had to develop a comprehensive
3 estimate for Clifty. And they will get a
4 site-specific determination of best available
5 technology. They get that after it's submitted to
6 the -- to the State. And then once they get that,
7 they move to the next steps of cost and schedule.
8 They don't have a number for that one yet.

9 Q. I was just asking if you had a sense of
10 whether these costs that will need to be incurred to
11 comply with these rules would be significant, a
12 significant amount of costs.

13 A. I don't know.

14 Q. Have you seen any reports in the industry
15 about large numbers of coal plants are accelerating
16 their retirement dates because of the amount of costs
17 needed to comply with the new CCR and ELG rules?

18 A. I think that would have -- you would have
19 to look at that on a plant-by-plant basis.

20 Q. Well, I am just asking you across the
21 industry as a whole, have you seen any reports where
22 nationwide a large number or a large proportion of
23 coal plants are accelerating their retirement date
24 because of the cost of compliance with these rules?

25 A. I haven't seen those in detail.

1 Q. Okay. And you said you have to look at
2 that on a plant-by-plant basis, and I guess what do
3 you mean by that?

4 A. Well, it looks like every plant has to
5 provide a plan about how to tackle these things, and
6 I imagine the cost depends on things that are -- that
7 might be site specific to the plant, so I wouldn't
8 want to comment further than that.

9 Q. Okay. And would another factor be what
10 the age of the plant is and the cost of the
11 improvements and whether you could recoup the cost of
12 the improvements over the remaining life of the
13 plant?

14 A. I'm sure there is many factors that go
15 into those decisions.

16 Q. Is that something that a reasonable
17 operator would do is to do that kind of analysis?

18 MR. SCHULER: Objection. And it's not
19 clear what -- objection based on vagueness. What is
20 the analysis referring to? Basing operations at a
21 plant?

22 EXAMINER PARROT: To the extent you
23 followed the question, Dr. Fagan, go ahead and
24 answer.

25 A. I just think that would be a lot of input

1 variables to consider.

2 Q. Okay. But would a prudent operator do an
3 analysis to consider all the relevant inputs and
4 weigh through a cost/benefit analysis whether they
5 should make these compliance investments before just
6 doing the spending?

7 A. I haven't looked at that in detail.

8 Q. I am just asking what's good utility
9 practice. And this goes back to what you had
10 mentioned earlier, that, you know, with respect to
11 the point you made about having a cap on annual
12 capital investments, you brought up this point about
13 overinvesting in capital investments relative to the
14 value of the plant. Do you recall what you said
15 about that?

16 A. Right.

17 Q. Okay. And then you said it might be good
18 utility practice to do such an analysis?

19 A. Right.

20 Q. Okay. How could it not be good utility
21 practice to do such an analysis? You said it might
22 be. It seems like -- I am wondering it seems like it
23 would be in all cases, but you only said it might be.

24 A. I just -- I can't know all cases.

25 Q. I mean, isn't that what a prudent

1 operator should do is to do an analysis to look at
2 whether they are overinvesting in capital
3 improvements relative to the value of the plant and
4 then they look at all of the plants?

5 MR. SCHULER: Your Honor.

6 THE WITNESS: Could I have that question
7 read back, please.

8 (Record read.)

9 MR. SCHULER: I'll object. Asked and
10 answered.

11 EXAMINER PARROT: Overruled.

12 Go ahead, Dr. Fagan, if you are able to
13 answer.

14 A. It's kind of a broad question. Maybe in
15 some cases a utility does it. Maybe in some cases a
16 Commission has something -- someone independent do
17 it. Maybe in some cases it's deemed not to be
18 necessary. It's broader than I can answer.

19 Q. Okay. So let me explore that a little
20 bit. In what cases would it not be necessary to
21 determine whether you are overinvesting in capital
22 investments relative to the value of the plant?

23 A. These are just hypotheticals. Maybe the
24 plant's needed for reliability purposes, something
25 like that on the grid. There's just so many

1 variables.

2 Q. Well, that's one. What are any others
3 you can think of?

4 A. I -- I can't think of anything different
5 offhand.

6 Q. Do you think -- can you think of any that
7 would apply to the OVEC plants?

8 A. I don't know.

9 Q. Okay. Do you have an opinion as to
10 whether the OVEC plants should do some
11 forward-looking analysis to determine whether they
12 are overinvesting in capital investments relative to
13 the value of the plants?

14 MR. SCHULER: Objection. The question
15 calls for information outside and beyond the scope of
16 this audit into the future.

17 EXAMINER PARROT: Overruled.

18 To the extent you looked at this issue
19 within this audit, Dr. Fagan, go ahead and answer the
20 question.

21 THE WITNESS: We didn't look at the exact
22 issue in the audit, your Honor, but -- so our broader
23 recommendation was some kind of cap to be developed
24 and then, you know, probably within that people would
25 do various kinds of analysis, but we didn't go down

1 that road in the -- in the discussion analysis of the
2 audit.

3 MR. FINNIGAN: Your Honor, the purpose of
4 my question was not to ask whether they did an
5 analysis. I was asking whether OVEC should do an
6 analysis and that would be an indicator whether
7 they're operating the plants prudently. So that was
8 the purpose for my question.

9 THE WITNESS: I can't really answer.

10 MR. FINNIGAN: I'm sorry, your Honor.

11 EXAMINER PARROT: She said she cannot
12 really answer, and I wasn't waiting for her to do so
13 anyway. So next question, Mr. Finnigan.

14 Q. (By Mr. Finnigan) Could you please turn
15 to pages 21 to 22 of your audit report about coal
16 self-commitment.

17 A. Okay. I'm there.

18 Q. Okay. So you make a remark in your
19 report that some utilities are moving to seasonal
20 operation. Do you recall that?

21 A. Yes. We put together a paragraph about
22 that, citing several sources.

23 Q. That's kind of at the very last line on
24 page 21 and the top of page 22; is that right?

25 A. That's right.

1 Q. And could you just explain what seasonal
2 operation is.

3 A. Well, for example, in ERCOT in Texas, for
4 a while the coal plants -- they don't have a capacity
5 market so things are different. You don't have -- if
6 you are operating only seasonally and you are
7 mothballed in other seasons, you are not giving up
8 potential capacity market earnings because they don't
9 have a capacity market. But so when demand is low,
10 generally in the spring and fall, the plants -- the
11 energy of a few coal plants in ERCOT a while back
12 would seasonally mothball, so they were not available
13 to run. And then they would run in the summer and in
14 the winter let's say -- or maybe -- probably, yeah,
15 somewhere summer and winter.

16 Q. That's what seasonal operation is?

17 A. That's my understanding of it. That's
18 how I've seen it in the markets I have looked at.

19 Q. Why would the plants mothball?

20 A. If they weren't -- again, this is ERCOT
21 that I can talk about in detail, and ERCOT Texas
22 doesn't have a capacity market. So if your capacity
23 is not there, you are not giving up earnings because
24 you wouldn't have got them anyway. So you might
25 mothball if the plant can be operated in the summer

1 or winter profitably, again they have to earn all
2 their money in capacity -- in the energy markets.
3 But if it can't -- if the seasons of the year when
4 demand -- when load tends to be low, which tends to
5 be in the spring and fall, the shoulder months, maybe
6 energy prices in ERCOT aren't high enough, they have
7 got a ton of wind, very low cost resource, they have
8 low prices, you know, periodically very low, and
9 periodically very high, but -- so you maybe -- maybe
10 you know for months and months on end or you project
11 for months and months on end that energy prices are
12 going to be too low. So you have to do an analysis,
13 right, it costs money to mothball and get the plant
14 started again, but that's what they did for a while
15 for a few plants.

16 Q. Okay. And do you know whether the
17 difference between the PJM market prices and the OVEC
18 costs was levelized throughout the course of the year
19 in 2018 and 2019, or whether there was a greater
20 difference during the shoulder months?

21 MR. SCHULER: Objection. What do you
22 mean by "levelized"?

23 EXAMINER PARROT: To the extent you
24 followed the question, Dr. Fagan.

25 A. Well, I think the question has to do with

1 energy. Do you mean energy prices are higher at some
2 time in the year and lower at other times of the
3 year?

4 Q. Yes, that's -- yeah, that's my point. I
5 mean, I am going back to what you said about ERCOT
6 and some plants are mothballed during periods of low
7 demand. I understood you to say that the reason that
8 they are mothballed is that they are not earning
9 enough revenue relative to their -- to their costs to
10 be profitable.

11 A. Generally, yeah, I mean.

12 Q. Okay. So I'm just asking you.

13 A. PJM energy prices for AEP. We have a
14 chart in here, PJM energy prices. I don't think they
15 are hourly. They might be monthly. Generally in
16 markets, prices are higher in the summer. Generally
17 in markets, prices are higher, you know, in the
18 afternoon during the week. We have energy prices --
19 we have annual energy prices in PJM, so we don't have
20 those breakdowns offhand.

21 Q. Okay. Would it be reasonable to do an
22 analysis like that for the OVEC plants to determine
23 whether their prices are even more above market
24 prices in shoulder months than they are during peak
25 months?

1 A. I don't want -- because I think about
2 that. I know we have it.

3 Q. I'm sorry. Did you --

4 A. I am going to answer. I am going to
5 answer. I apologize.

6 Q. I thought you answered, and I didn't hear
7 it.

8 A. No. I'm looking for the chart which I --
9 okay. So we chose several months in Figure 26 -- and
10 this is just these two years, right? So in any given
11 year, energy prices can vary quite widely depending
12 on something as fundamental and unpredictable as
13 weather. Obviously we saw that in Texas about a year
14 ago and Louisiana. Those folks were hit by, you
15 know, horrific winter weather and unbelievable energy
16 prices.

17 So -- so in Figure 26 -- oh, yeah, we did
18 have a cold winter up here in the northeast in 2018.
19 So you can see like January 2018, you have
20 day-ahead -- this is monthly average around the
21 clock. If it's not weighted by -- it's not like a
22 demand weighted average where if you've had a high
23 demand, then that price counts for more. It's just a
24 straight-up monthly average in column 1, 2, 3, 4, 5,
25 in the fifth column, so January 2018, \$49.37 a

1 megawatt-hour. Again, just around-the-clock,
2 straight-up average.

3 And then we have like the shoulder
4 months. That's April 2019. Shoulder months being --
5 it depends on demand. So \$25.90 a megawatt-hour.
6 And then actually that summer or that August we
7 picked, that month didn't have terribly high energy
8 prices. So, you know, generally, they vary across
9 the year.

10 But predicting power prices is, you know,
11 it's not a simple matter and there is a lot of
12 variability in the weather and also in natural gas
13 prices which tend to determine energy prices on a lot
14 of hours on the market.

15 Q. What were the factors one should consider
16 in determining whether to do a study of whether it
17 would be prudent to change to seasonal operation?

18 A. So there are -- there are factors on the
19 cost side, mothballing and un-mothballing. I am not
20 sure if that's the right word. You would be giving
21 up -- if you are in a market like with capacity
22 payments, you have to be around to get -- in PJM, if
23 you have a capacity award and they call on you, you
24 have to be there or you get penalized. And if the
25 plant is not going to be there, you wouldn't get

1 capacity market revenues. You know, fuel prices,
2 operating costs, all -- you know, anything that would
3 impact the costs and revenues from operating a plant.

4 Q. Okay. Given the fact that the OVEC
5 plants are 65 or 66 years old and that in the years
6 covered by this audit your costs were 74.5 million
7 above market, would that be some indication that it
8 would be reasonable to conduct a study of going to
9 seasonal operation?

10 MR. SCHULER: Objection, assumes facts in
11 evidence -- or, objection, assumes facts not in
12 evidence.

13 EXAMINER PARROT: Go ahead and rephrase,
14 Mr. Finnigan.

15 Q. (By Mr. Finnigan) We've agreed, subject
16 to check, that the OVEC plants' costs are
17 74.5 million above PJM market prices per the audit
18 period; isn't that correct?

19 A. For the two-year period, subject to
20 checking.

21 MR. FINNIGAN: Her answer is yes?

22 A. Subject to verification.

23 Q. But subject to verification, your answer
24 would be yes.

25 A. Yes.

1 Q. And we agree that the OVEC plants are
2 65 or 66 years old.

3 A. They are.

4 Q. Okay. So with those two factors,
5 would -- would it be reasonable to conduct a study to
6 determine whether it would be better to shift to
7 seasonal operation for the OVEC plants?

8 A. We didn't look at that in the audit. I
9 mean, for -- you know, for example, if you weren't
10 operating in the fall, again, it's not easy to
11 predict energy prices, but if they hadn't been
12 operating in October 2018, so that was a month where
13 the PJM prices were almost \$10 higher than the energy
14 charge. So in January 2018, also a month with a lot
15 higher charges, again, if you are not operating, you
16 are not earning capacity payments. So it's just
17 beyond what we looked at.

18 Q. Okay. But isn't that something that a
19 reasonable operator should study?

20 A. They might. They might.

21 Q. Well, when you say "might," why wouldn't
22 they study that?

23 A. Well, I think it goes back to some of the
24 things we talked about before like, you know, where
25 you are on the grid, being a plant required for

1 reliability, for example, and numerous other factors
2 that affect different plants and different utilities.

3 Q. Okay. I'm sorry. Are you finished with
4 your answer?

5 A. I am. Sorry. I trailed off. Numerous
6 facts.

7 Q. Okay. And these other fact -- are there
8 any factors that would apply to the OVEC plants that
9 you can think of that would indicate that it would
10 not be reasonable for them to do a seasonability
11 study or seasonal operations study?

12 A. It's not something we were asked about or
13 looked into in the audit.

14 Q. Okay. But I am asking you apart from the
15 audit, based on your 30 years of experience as an
16 expert in the expert -- in the utility industry,
17 knowing that the plants were 66 years old, knowing
18 that they lost 74 million during these two years, as
19 an expert, aside from whether you addressed it in
20 your audit, would it be reasonable for OVEC to do a
21 study about going to seasonal operations?

22 MR. SCHULER: Objection, asked and
23 answered. She stated she did not look at this.
24 Mr. Finnigan seems to want her to opine on it
25 nevertheless.

1 EXAMINER PARROT: To the extent you are
2 able to address the question, Dr. Fagan, go ahead.
3 If you have an opinion, you may offer it.

4 A. I don't have an opinion.

5 Q. Okay. When would it be reasonable for
6 any operator to do a study about going into seasonal
7 operation?

8 A. Well, again, a lot of different factors;
9 and, you know, I can't say.

10 Q. Can you think of any such factors that
11 would dictate that it wouldn't be reasonable for OVEC
12 to do a study of going into the seasonal operation?

13 A. I think that's your same question only
14 with negatives instead of positives from two
15 questions ago.

16 MR. SCHULER: I agree. I'll object.
17 Asked and answered.

18 EXAMINER PARROT: Sustained.

19 MR. FINNIGAN: Your Honor, I would like
20 to make a proffer of evidence for the record. For
21 the record I had a question, and if Ms. Fagan were
22 permitted to answer, I believe she would testify that
23 she can't identify any reasons why OVEC would not do
24 a study about shifting to seasonal operations. That
25 goes to the prudence of the costs for the 2018-2019

1 period. So I would like to make that proffer of
2 evidence for the record.

3 Q. (By Mr. Finnigan) Next, Ms. Fagan, I
4 would like to move to the area of self-commitment.
5 And this was an area where you made some
6 recommendations in your report; is that correct?

7 A. That's correct. What page should I be
8 looking at?

9 Q. Well, just the executive summary at the
10 beginning. So, you know, I mean, you could probably
11 find it more easily than I could. I think you also
12 address it in the body of your audit around page 50,
13 but I will ask if you can find where you discuss
14 that.

15 A. I guess we can start with the exec
16 summary. We can move back from there if you want to
17 do that.

18 Q. I apologize. I didn't -- I did not hear
19 what you said.

20 A. I'm sorry. I am losing my voice. Let's
21 start with the exec summary and then we can move
22 backwards from there if we need to. I am going to
23 see if I can crank up my microphone a little bit.

24 Q. All right. So let me know when you have
25 had a chance to do that.

1 A. You sound louder. Do I sound louder?

2 Q. You sound much louder, and I can hear you
3 better, so I appreciate you doing that.

4 A. Okay. Good.

5 Q. Thank you. My hearing is not the
6 greatest anyway, but.

7 So I am on the executive summary at
8 page 9 and the topic about disposition of energy and
9 capacity near the bottom of that page. If you could
10 take a few moments to review that section.

11 A. Okay. Yeah.

12 Q. Okay. So you say in the second full
13 paragraph from the bottom of the page, "However,
14 LEI's analysis showed that some of the time, the PJM
15 energy price did not cover fuel and variable cost,
16 though LEI's analysis did not fully evaluate a
17 re-dispatching of the OVEC units." Have I read that
18 correctly?

19 A. That's correct.

20 Q. What would be the purpose of doing an
21 evaluation of the re-dispatching? What does that
22 mean?

23 A. So we didn't look at an hour to hour what
24 they call dispatch model, production simulation
25 model. It's kind of complex. We used average

1 monthly prices. So, yeah, that indicated, you know,
2 in the months we looked at, that, on average, PJM
3 energy prices didn't cover fuel costs, fuel -- yeah,
4 the fuel cost. So we didn't evaluate an hour-by-hour
5 dispatch. We probably didn't phrase it that well
6 there. So it's just a caveat, you know. You could
7 look at all 8,760 hours in a year, two years,
8 et cetera, but because the months that we chose
9 showed that energy prices were too low to cover fuel
10 and variable costs -- actually fuel is the variable
11 cost the way this works, so that's why we recommended
12 a reconsideration of the must-run offer strategy.

13 Q. Okay. Now let me try to understand what
14 you are saying here. So this re-dispatching of the
15 OVEC units, are you saying that that's a more
16 granular study than the month-by-month study you did,
17 and that that study looks like an hourly --
18 hour-by-hour study throughout the course of the year?

19 A. Yeah. A dispatch model is an hourly
20 model, yes.

21 Q. Okay. And so would that be a more
22 precise way of analyzing whether the OVEC plants are
23 being committed into the day-ahead energy market at a
24 time where they are expected to lose money as opposed
25 to doing the monthly analysis?

1 A. It's just a more precise analysis of the
2 revenues from an hour of operations at a given time.
3 I think your question was a little more elaborate
4 than that, but I just want to focus on what a
5 dispatch model does, and it was more granular and
6 more detailed, that's correct.

7 Q. And then you state in this sentence
8 "LEI's analysis showed that some of the time, the PJM
9 energy price did not cover fuel and variable cost."
10 Now, if you are a competitive operator and were not a
11 utility, you would be losing money. If you did that
12 all the time, you would eventually go out of
13 business, wouldn't you?

14 MR. SCHULER: Objection, calls for
15 speculation, and a complete hypothetical. The
16 question got -- quite frankly toward the end of the
17 question it got pretty irrelevant too.

18 EXAMINER PARROT: To the extent you are
19 able to offer an opinion, Dr. Fagan, please do so.

20 A. It's -- there is not enough information
21 to answer it. You might not cover fuel and variable
22 costs sometimes, but you might be getting capacity
23 payments. It just isn't enough. I can't answer.

24 Q. Did you do any analysis to make a
25 judgment as to whether OVEC acted prudently by using

1 must-run commitment during times when the PJM energy
2 price did not cover fuel and variable costs?

3 A. We did not find that it was imprudent.
4 There's many factors to consider in running coal
5 plants and they are not easy to turn off and turn on,
6 et cetera. So we didn't find that it was imprudent
7 but what we found is that there could be room for
8 improvement in perhaps, you know, not just sort of
9 defaulting to the must-run strategy all the time.
10 And it gave some careful thought as to how they might
11 do economic commitment, that we didn't insist on that
12 all the time. But there's many, many factors and
13 some of it is just the technical, you know, I am an
14 economist, not an engineer, but wear and tear on coal
15 plants when they are operated in a way they weren't
16 quite designed to do.

17 Q. Okay. Now, is that something that a
18 prudent operator should do, that type of analysis on
19 a regular basis when they are making these commitment
20 decisions?

21 A. Some may, some may not. I can't answer
22 for the whole league.

23 Q. Can you think of any reason why OVEC
24 should not have done a financial analysis of the cost
25 and benefits of doing must-run commitment during 2018

1 and 2019?

2 MR. SCHULER: Objection, assumes facts
3 not in evidence.

4 EXAMINER PARROT: Go ahead and rephrase,
5 Mr. Finnigan.

6 Q. (By Mr. Finnigan) Can you think of any
7 reason why OVEC should not have done a financial
8 analysis to review the costs and benefits of making
9 the must-run commitment decisions on a daily basis?

10 A. I don't think you make them on a daily
11 basis. You would want to look at -- I don't know. I
12 think I would want to look at the bigger picture but
13 I'm just speculating actually. I don't know.

14 Q. Okay. Let me ask you what the industry
15 practice is, and do you recall that you did an audit
16 report of Duke Energy and their OVEC costs for 2019?
17 Do you recall that?

18 A. I did that report. It's a separate
19 docket that's still open and haven't given testimony
20 on, so I don't -- I'm not -- this is -- it seems
21 strange to be talking about it here.

22 Q. Okay. And do you recall that you
23 interviewed a Mr. John Swez in connection with that
24 audit report? He was your point of contact for that
25 audit.

1 A. I don't -- I am very uncomfortable
2 answering questions about a different audit that
3 isn't complete in this -- in this matter.

4 MS. KERN: Your Honor, there could be
5 conflicts that arise with having Dr. Fagan answer
6 questions of this nature, so we would object.

7 EXAMINER PARROT: As to the question
8 that's pending, Dr. Fagan, go ahead and answer, and
9 we will see where it goes.

10 A. So we talked to a bunch of folks. You
11 know, I would have to look back to see who exactly it
12 was and when.

13 Q. Okay. So in your experience in the
14 electric utility industry, have you ever learned
15 whether some utilities base their commitment
16 decisions into the day-ahead energy market based on
17 an analysis of the economics of doing so that takes
18 into account the projected revenues for some period
19 of time, and also the cost of shutting down and
20 starting up, and maintenance, and so forth?

21 A. So I'm sure utilities do it, and
22 utilities can provide that information to system
23 operators like PJM, and PJM can do it.

24 Q. Okay. Well, the PJM doesn't make a
25 commitment decision for a utility. That's up to the

1 utility to decide whether to use must-run versus
2 economic commitment, right?

3 A. That's correct.

4 Q. Okay. So what I was getting at is, as to
5 the utility's decision whether to use must-run
6 commitment, would it -- wouldn't it be reasonable for
7 the utility to do an analysis of the projected
8 revenues that they would get from operating in the
9 wholesale market against the startup costs and
10 shutdown costs and maintenance costs associated with
11 shutting down?

12 A. And I would argue they would also want to
13 account for like risk of wear and tear on the plant
14 so there would be a number of factors; but, sure,
15 they could do it, but accounting for all the pluses
16 and minuses.

17 Q. Sure. And so that's -- that would be
18 good utility practice to do that, wouldn't it?

19 MR. SCHULER: Objection, asked and
20 answered.

21 EXAMINER PARROT: Overruled.

22 EXAMINER SEE: Ms. Parrot, I am getting
23 an indication that Ms. Kern's internet signal is
24 weak.

25 EXAMINER PARROT: Yes, thank you.

1 Ms. Kern, are you able to hear us?

2 All right. Let's go off the record.

3 (Discussion off the record.)

4 EXAMINER PARROT: Go ahead and go back on
5 the record.

6 And I believe we had -- I had overruled
7 an objection. Dr. Fagan, if you need us to reread
8 the last question, we can do that.

9 THE WITNESS: Yes.

10 EXAMINER PARROT: Or if Mr. Finnigan
11 would like to restate it again.

12 MR. FINNIGAN: Your Honor, I apologize.
13 I lost my place. I would ask that the court reporter
14 could read it.

15 EXAMINER PARROT: Sure.

16 (Record read.)

17 A. It would.

18 Q. Okay. Did you see any evidence during
19 2018 to 2019 where OVEC ever did any kind of
20 financial analysis of things like project revenues
21 from the PJM market, startup costs, shutdown costs,
22 to use in making its unit commitment decisions?

23 A. We didn't ask for that information, so
24 they may have or may not have.

25 Q. Wouldn't that be one indicator of whether

1 they were acting prudently?

2 A. So going back to our -- the definition
3 and what we were talking about from the Vantage
4 report, there's -- you know, reasonable people
5 disagree; so they might have done, they might not
6 have done. I wouldn't say that was imprudent if they
7 didn't. You know, there's concerns over impact on
8 like, you know, the physical plant when you are
9 cycling, et cetera. So we didn't ask. And even if
10 they didn't do it that year or during the audit
11 period, you know, we -- I don't know that we would
12 have found that imprudent.

13 Q. Okay. Can you think of any reasons why
14 they should not have done that kind of financial
15 analysis to use in making their must-run commitment
16 decisions?

17 A. Well, if you are going to commit must
18 run, you -- you think it's good to know those things,
19 but you're offering the plant -- to meet the minimum
20 dispatch level so you wouldn't necessarily need to
21 for must-run offers.

22 Q. Wouldn't whether they used that kind of
23 financial analysis for their must-run commitment
24 decisions, wouldn't that go to the prudence or
25 imprudence of the costs that were flowed through the

1 PPA Rider?

2 A. Like we talked about before, reasonable
3 people have varying definitions. Let me look back at
4 something I had.

5 Q. I am just trying to understand -- I'm
6 sorry. Were you finished?

7 A. So when we -- page 26, we randomly -- I
8 don't want to say randomly sampled months. We made
9 sure we sampled months at various times of the year
10 and there were times in which the plants, like
11 January 2018, July, October 2018, where the plants --

12 MR. SCHULER: Your Honor, I hate to -- I
13 hate to interject.

14 EXAMINER PARROT: This is confidential?

15 MR. SCHULER: Yes, that's confidential.

16 THE WITNESS: Oh, I'm sorry. You are
17 absolutely right.

18 MR. SCHULER: Don't worry.

19 EXAMINER PARROT: Yeah. If you are able
20 to continue your train of thought without getting
21 into the specifics here, go ahead. Otherwise
22 let's --

23 THE WITNESS: I highlighted this and I --
24 I overlooked my own highlighting.

25 A. So during 2018, at least for monthly

1 samples, the plants were in the money more than they
2 were out of the money. So we saw more
3 out-of-the-money months in 2019 and that might have
4 been a surprise. That might have been something the
5 plant operators didn't expect. So given the
6 experience one year before, not out of the money very
7 much or very often, that may have been, you know, a
8 red flag for them to say, oh, it's -- we have to do
9 this differently to be prudent. So I didn't -- we
10 didn't find that it was imprudent.

11 Q. So whether they are in the money, out of
12 the money, that's kind of an after-the-fact analysis,
13 isn't it?

14 A. Well, an audit, yes, an audit is an
15 after -- absolutely, audit, history, after the fact,
16 yes.

17 Q. Okay. And what I am talking about is a
18 practice that's good utility practice that a utility
19 would use on a forward-looking basis and I thought
20 you said that it's good utility practice to do this
21 kind of financial analysis when making must-run
22 commitment decisions. And if it's prudent to do
23 it --

24 A. I think I said for economic commitment,
25 no?

1 Q. Well, I thought we were talking about
2 must-run commitment. Must-run commitment -- well,
3 let me set the record straight here, if I can, with a
4 couple of questions. So isn't it true that for 2018
5 and 2019, OVEC continuously ran the plants as must
6 run in the PJM day-ahead energy market except for
7 times when there was scheduled maintenance or there
8 was a forced outage?

9 A. That's true for all the units except
10 Clifty Creek No. 6.

11 Q. Okay. And there was some ozone
12 considerations that led to different treatment of
13 that unit.

14 A. That's correct, as it doesn't have the
15 same pollution-control equipment.

16 Q. Okay. That's all the questions I have on
17 that topic.

18 Now, let me move to one other topic and
19 this is the last area I want to question you on. And
20 I appreciate all your patience throughout the day. I
21 know it's been a long day. So could you please turn
22 to OCC Cross-Examination Exhibit 13.

23 A. Okay. I'm there.

24 MR. FINNIGAN: Your Honor, for the record
25 I would like to have the documents labeled OCC

1 Cross-Examination Exhibit 13 marked for
2 identification purposes as OCC Cross-Examination
3 Exhibit 13. I will represent that that's an AEP
4 investor study that is available on their website. I
5 said investor study. I meant investor report.

6 EXAMINER PARROT: It's called "Advancing
7 Towards a Clean Energy Future"; is that correct,
8 Mr. Finnigan?

9 MR. FINNIGAN: Yes, your Honor.

10 EXAMINER PARROT: Okay.

11 MR. FINNIGAN: I apologize. Can you hear
12 me okay?

13 EXAMINER PARROT: Yes.

14 It's so marked. Thank you.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. FINNIGAN: Thank you.

17 Q. (By Mr. Finnigan) So, Ms. Fagan, could
18 you please turn to the page and using the numbering
19 system in the upper right-hand corner of the document
20 where it says page 14 of 83.

21 A. Okay.

22 Q. Okay? Now I am reading that document
23 from the top. It says, "EPA Notice of New Coal
24 Retirements. The EPA recently revised requirements
25 of both the Coal Combustion Residual Rule and

1 Effluent Limitation Guidelines requiring significant
2 dollar investment to utilities' coal-fired generation
3 fleets." Have I read that correctly?

4 A. Yeah, yes.

5 Q. Does that refresh your memory as to
6 whether, for plants like OVEC, they would need to
7 incur significant costs to comply with these rules?

8 A. We didn't ask them -- there was no cost
9 information.

10 Q. Okay. But a reasonable operator,
11 wouldn't it be prudent for them to do a study of the
12 expected compliance investment costs versus the
13 remaining value left on the plant?

14 A. Did we already cover this?

15 Q. Well, I'm just -- I think -- yes, we did
16 before, and you said you didn't have any information
17 about the compliance costs that you could point to.
18 Now that I've pointed you to this information that
19 it's significant compliance costs, I am re-asking you
20 the question.

21 A. Significant? It's not quantitative.

22 Q. Okay. So, in your view, there's no need
23 for operators to quantify the cost of compliance with
24 these ELG and CCR rules as against the expected value
25 of the plant. It's not anything that's really

1 important to do. That would be your testimony?

2 A. I do not think that I said that.

3 Q. I am just trying to get out what your
4 opinion would be in this regard. I mean, my question
5 really is, would it be prudent for an operator to
6 analyze the compliance costs with the CCR and ELG
7 rules as against the value of the plant.

8 A. Okay. I think I answered this.

9 Q. Well, if you did, I missed it. What was
10 your answer?

11 A. Well, it would -- it would be prudent
12 under some circumstances, but again, our definition
13 of "prudent" doesn't mean one thing and not another
14 thing. It's we are going back to that Vantage
15 definition, reasonable people, you know, can have a
16 range of views.

17 Q. Can you give me any reasons why it would
18 not be prudent for OVEC to do a study of the
19 compliance costs of -- for complying with these rules
20 as against the value of the plants?

21 MR. SCHULER: Objection. These questions
22 go to information -- or events that will take place
23 long after the audit period. I think Dr. Fagan has
24 testified earlier today that these rules don't go
25 into effect until 2023 and 2025 respectively.

1 EXAMINER PARROT: I think we have already
2 covered this question, so I am going to direct you to
3 pose a different question, Mr. Finnigan.

4 MR. FINNIGAN: Okay, your Honor. I would
5 like to make another proffer, and my proffer here
6 would be that it's the industry practice for
7 operators to do a study and, if allowed to testify, I
8 would expect the witness to acknowledge that, and the
9 industry practice is to weigh the cost of the
10 expected investments to comply with these CCR and ELG
11 rules which are significant as shown in this report
12 as against the remaining value of the plant which I
13 believe the witness would acknowledge is very low
14 with these above-market costs and that that would
15 tend to establish that any further investment in
16 these plants would be imprudent and that they have
17 had continuing investment to comply with these rules
18 during the audit period that should be disallowed.
19 So I just wanted to make that proffer for the record.

20 MS. KERN: Your Honor, if I may, I just
21 would object on the record to the characterization
22 that if the witness was allowed to answer. I believe
23 that your ruling was that the question was asked and
24 answered, so she was -- she has testified and there
25 is testimony in response to Mr. Finnigan's questions

1 in this regard.

2 EXAMINER PARROT: Thank you, Ms. Kern.

3 MR. FINNIGAN: Your Honor, she didn't
4 answer the question that I have pending. I don't
5 want to make a point --

6 EXAMINER PARROT: The transcript will
7 reflect what's been covered already, Mr. Finnigan.

8 MR. FINNIGAN: Okay. And then I just
9 wanted to make the proffer because I hadn't
10 answered -- she hadn't answered this line of
11 questioning in light of this new information that
12 these are significant compliance costs, so that's why
13 I made the proffer. But I understand your ruling,
14 and I am ready to move on.

15 Q. (By Mr. Finnigan) So if you could look at
16 the next line of that report and let me ask you if I
17 am reading this correctly, "AEP continues to evaluate
18 its fleet on a plant-by-plant basis to determine the
19 economic value to both the customer and the company."
20 Have I read that correctly?

21 A. That's what it says.

22 MR. SCHULER: Objection. Two bases. The
23 first being this document is a document that was
24 issued after the audit report was completed, filed in
25 this matter. The second one is this is talking about

1 AEP's fleet. OVEC is not a part of its fleet of
2 generation. OVEC is a corporation that AEP Ohio has
3 a percentage PPR ratio in.

4 MR. FINNIGAN: Your Honor, if I could
5 respond to that. The audit covers costs that were
6 being made to comply with these rules during the 2018
7 and the 2019 period as I understood her audit report.
8 Plus, you know, consistent with longstanding
9 Commission practice in these kinds of audits, if an
10 auditor discerns a recommendation that the subject of
11 the audit should be following, then that is fair game
12 for -- for the auditor to discuss and for parties to
13 inquire into.

14 Also, in the orders approving this PPA
15 Rider, the Commission specifically said that an
16 important factor would be what the circumstances are
17 regarding the OVEC plants' compliance with future
18 environmental regulations. So, for all those
19 reasons, we think this is important evidence to ask
20 about.

21 EXAMINER PARROT: She's already answered
22 the question that's pending so let's go ahead and see
23 where it goes from here, Mr. Finnigan. Go ahead.

24 MR. FINNIGAN: Okay. Thank you, your
25 Honor.

1 Q. (By Mr. Finnigan) So, you know, we read
2 what AEP does. And would that be some indication --
3 well, strike that.

4 Isn't AEP one of the biggest holding
5 companies of electric distribution utilities in the
6 country?

7 A. I don't have that specific information.
8 I know they have a number of utility subsidiaries.

9 Q. Don't they have electric distribution
10 utility subsidiaries in 13 different states?

11 A. Do I have that in the report in the
12 intro?

13 Q. I am just asking your opinion as an
14 expert.

15 A. I don't know how many distribution
16 utilities they have. I thought we were talking about
17 generation though.

18 Q. Okay. Well, what I was really getting at
19 is just what a large utility -- would you agree with
20 me that AEP is a large utility holding company?

21 A. They --

22 MR. SCHULER: Object to the term "large";
23 vague.

24 EXAMINER PARROT: To the extent you can
25 answer, Dr. Fagan, go ahead.

1 A. They are a company that owns a number of
2 subsidiaries.

3 Q. Okay. So wouldn't a company that owns a
4 number of subsidiaries like AEP, wouldn't what their
5 practices are be one indicator of what a good utility
6 practice might be?

7 A. I haven't found any kind of benchmarking
8 study on looking across utilities and looking at
9 these specific issues. I can't answer.

10 Q. Okay. Now, where it says here that AEP
11 is evaluating its fleet on a plant-by-plant basis to
12 determine the economic value to both the customer and
13 the company, I guess my question is, if it's good for
14 AEP to do, would it be good for OVEC to do?

15 MR. SCHULER: Objection. I will renew my
16 objection from earlier. I would also add there is an
17 improper foundation here. Mr. Finnigan has not
18 established that Dr. Fagan has ever seen this
19 document before. Again, it was created after the
20 filing of the audit report.

21 EXAMINER PARROT: Mr. Finnigan, response?

22 MR. FINNIGAN: Yes, your Honor. I am
23 simply asking about this as a good utility practice.
24 So when the document created has no bearing whether a
25 principle that's articulated in the document

1 describes a good utility practice or not, so I don't
2 think, you know, the date of the document is really
3 relevant to my question. I was simply asking the
4 witness whether, if a large utility holding company
5 like AEP is taking the steps to do an analysis of the
6 economic value to the customer and the company, if
7 that's good for AEP to do, isn't it good for OVEC to
8 do.

9 EXAMINER PARROT: Mr. Finnigan, you
10 haven't asked her whether she has even seen the
11 document. To the extent you are asking her to base
12 her response to your question on a document, I think
13 we do need to lay some foundation first. If you are
14 asking as a general, you know, matter, that's another
15 thing, so.

16 MR. FINNIGAN: Okay.

17 Q. (By Mr. Finnigan) Let me ask this as a
18 general matter. So, Ms. Fagan, do you have any
19 opinion as to whether it is considered good utility
20 practice to do a study of the economic value both to
21 customers and the Company regarding compliance with
22 ELG and CCR rules?

23 A. We didn't look at this in the context of
24 the audit. It was out of scope for the audit.

25 Q. Okay. Well, that wasn't my question. My

1 question was whether it's a good utility practice.

2 A. It probably wouldn't be a bad practice,
3 you know, analysis of options and, you know, usually
4 what companies do.

5 Q. Okay. I am going to interpret your
6 answer. If it's not a bad practice, I'm taking that
7 you mean it's a good practice; would that be fair?

8 A. Sure.

9 Q. Okay. So do you know whether OVEC ever
10 did such a study?

11 A. We did not ask that in the audit.

12 MR. FINNIGAN: Okay. That's all the
13 questions I have. Ms. Fagan, thank you very much for
14 your patience.

15 And, your Honor, with that, I conclude my
16 cross-examination of Ms. Fagan. I do have some
17 exhibits I would like to move into evidence after the
18 rest of the cross-examination is completed.

19 EXAMINER PARROT: Thank you,
20 Mr. Finnigan.

21 I think at this point if there is nothing
22 we need to discuss on the record before we adjourn
23 for the evening -- I guess I should ask. Give you a
24 moment. Is there anything to discuss?

25 All right. Hearing nothing, we will pick

1 it up again tomorrow at 9:00 a.m.

2 THE WITNESS: Same information for
3 dialing in?

4 EXAMINER PARROT: Micah?

5 MR. SCHMIDT: As soon as we conclude
6 here, I will update the date and time on the event,
7 and it will send you a new connection e-mail. It's
8 all the same information. It will just have the new
9 date and time.

10 EXAMINER PARROT: All right. Any other
11 questions?

12 All right. Thank you. We will see you
13 tomorrow at 9:00 a.m.

14 (Thereupon, at 6:54 p.m., the hearing was
15 adjourned.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Wednesday, January 12,
5 2022, and carefully compared with my original
6 stenographic notes.

7
8
9 Karen Sue Gibson, Registered
10 Merit Reporter.

11
12 (KSG-7212)

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Case No(s). 18-1004-EL-RDR, 18-1759-EL-RDR

Summary: Transcript in the matter of Ohio Power Company hearing held on
01/12/22 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong
& Okey, Inc. and Gibson, Karen Sue Mrs.