

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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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 9:01 a.m. on Thursday,
January 13, 2022.

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VOLUME II

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1 Thursday Morning Session,
2 January 13, 2022.

3 - - -

4 EXAMINER PARROT: All right. Let's go
5 ahead and go on the record.

6 Good morning, everyone. This is day two
7 of the hearing in Case No. 18-1004-EL-RDR, et al. My
8 name is Sarah Parrot. With me today is Greta See.
9 We are the Attorney Examiners assigned by the
10 Commission to hear these cases.

11 Are there any -- well, before we do that,
12 let's take brief appearances of the parties. Just
13 give me your name so I know who is here today and on
14 whose behalf you are appearing, and we will start
15 with AEP Ohio.

16 MR. NOURSE: Thank you, your Honor. Good
17 morning. On behalf of AEP Ohio, Steven T. Nourse,
18 Michael J. Schuler. And then outside counsel, Eric
19 Gallon, with Porter, Wright; and Matthew McKenzie.
20 Thank you.

21 EXAMINER PARROT: Thank you.

22 On behalf of the Commission Staff.

23 MS. KERN: Thank you, your Honor. On
24 behalf of the Commission Staff, Kyle Kern and Thomas
25 Lindgren.

1 EXAMINER PARROT: Ohio Consumers'
2 Counsel.

3 MR. FINNIGAN: Good morning, your Honor.
4 John Finnigan, Angela O'Brien, and Brian Zets on
5 behalf of OCC.

6 EXAMINER PARROT: IEU-Ohio.

7 MR. MCKENNEY: Good morning, your Honor.
8 Bryce McKenney on behalf of IEU-Ohio.

9 EXAMINER PARROT: Ohio Energy Group.

10 MS. COHN: Good morning, your Honor. On
11 behalf Ohio Energy Group, Jody Cohn and Michael
12 Kurtz.

13 EXAMINER PARROT: OMAEG.

14 MS. BOJKO: Good morning, your Honors.
15 On behalf of OMAEG, Kimberly W. Bojko and Thomas
16 Donadio.

17 EXAMINER PARROT: Kroger.

18 MS. WHITFIELD: Good morning, your
19 Honors. On behalf of The Kroger Company, Angela Paul
20 Whitfield. Thank you.

21 EXAMINER PARROT: OPAE.

22 MR. DOVE: Good morning, your Honor. On
23 behalf of OPAE, Robert Dove. I am also representing
24 Natural Resources Defense Council, along with my
25 co-counsel, Kristin Henry, Megan Wachspress, and Tony

1 Mendoza.

2 EXAMINER PARROT: Thank you, everyone.

3 Before we get started, are there any
4 preliminary matters we need to discuss on the record?

5 MR. NOURSE: Your Honor, could I just
6 make a request?

7 EXAMINER PARROT: Sure.

8 MR. NOURSE: I think yesterday there are
9 some counsel that are representing multiple parties
10 and I know during cross-examination there were times
11 when multiple attorneys for one party were jumping
12 in. And I think the general ground rule that you
13 always use is to have one attorney representing one
14 party at any given time; is that correct?

15 EXAMINER PARROT: That's the general
16 practice, that's right.

17 MR. FINNIGAN: Your Honor, this is John
18 Finnigan. I would say what's good for the goose is
19 good for the gander. We would ask that the same
20 practice apply on behalf of AEP Ohio and that we hear
21 from either Mr. Nourse or Mr. Schuler but not both.

22 MR. NOURSE: Well, during -- obviously
23 what I am saying, your Honor, and this is the
24 practice, when we start a witness, it's one attorney.
25 That didn't happen yesterday. It certainly wasn't

1 violated by AEP Ohio.

2 EXAMINER PARROT: Again, that's the
3 general practice. Let's do our best to adhere -- we
4 should adhere to it. But I am going to ask that you
5 help me a little bit. With the Webex format it's a
6 lot harder for me to quickly identify who is
7 speaking. People are kind of jumping in there. So
8 it would be helpful if we can, you know, note it when
9 it happens, so. But, yes, you are right, Mr. Nourse.
10 General practice is to have one attorney handling one
11 witness.

12 MR. NOURSE: Thank you.

13 EXAMINER PARROT: Anything else?

14 All right. With that, Dr. Fagan, I would
15 just note you are still under oath, and I think
16 counsel for NRDC is next.

17 MS. WACHSPRESS: Yes, your Honor. This
18 is Megan Wachspress for NRDC. And I'll be conducting
19 cross-examination of Dr. Fagan this morning.

20 - - -

21 MARIE FAGAN

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

24 CROSS-EXAMINATION

25 By Ms. Wachspress:

1 Q. Good morning, Dr. Fagan.

2 A. Good morning.

3 Q. Okay. I'm just -- if you will give me a
4 moment. I am trying to find you so I can look at
5 you. Oh, there you are. Okay.

6 So, yesterday, you testified that you did
7 not identify any imprudency on the part of AEP Ohio,
8 but you did identify room for improvement; is that
9 correct?

10 A. That's correct.

11 Q. Okay. And you and LEI made
12 recommendations to address what you describe as areas
13 of improvement; is that correct?

14 A. That's correct.

15 Q. Okay. So I would like to start with one
16 of those recommendations. So if you could refer to
17 page 53 of the audit. And so, the audit states, "LEI
18 recommends that OVEC carefully consider when and
19 whether the must-run offer strategy is optimal, as it
20 appears that in some months, it may result in
21 negative energy earnings for the plants." Is that a
22 correct reading of what's in the audit?

23 A. Yes.

24 Q. Okay.

25 A. That's correct.

1 Q. What is OVEC's must-run offer strategy?

2 A. Let me find you the page where we
3 describe it.

4 Q. Okay.

5 A. I think actually -- so as we describe it
6 on page 9.

7 Q. Uh-huh.

8 A. "'Must-run' offer strategy," in parens it
9 has as an explanation, "offering energy irrespective
10 of the day ahead market price." In a nutshell that's
11 what it is. And we discuss it in more detail again
12 in section 5.

13 Q. So it's correct to say OVEC offers all of
14 its units, with the exception of Clifty Creek 6, as
15 must-run every day without respect to the PJM market
16 price; is that a correct characterization of the
17 must-run strategy?

18 A. In the audit period, 2018-2019?

19 Q. In the audit period --

20 A. Yes.

21 Q. Yes, okay. Thank you.

22 And what do you mean by "negative energy
23 earnings"?

24 A. So back at page 53?

25 Q. Yes.

1 A. In Figure 26 which is confidential.

2 Q. Yes.

3 A. I'm not sure how much detail to go into
4 but in some of the months that we selected if you
5 look at the energy charge per megawatt-hour which for
6 the OVEC plants is the fuel charge, it's greater than
7 the monthly average PJM energy price that we chose as
8 a benchmark. So it's -- it's indicative. We didn't
9 do an hour-by-hour comparison, but on a monthly
10 average basis, the energy component of the OVEC cost
11 was less in several of the months we chose than the
12 PJM energy price.

13 Q. And that means for AEP Ohio, it would
14 have been -- it would have cost less to buy that same
15 amount of electricity off the PJM market than pay the
16 energy charge to OVEC for that electricity during
17 that month; is that correct?

18 MR. SCHULER: Objection, assumes facts in
19 evidence -- not in evidence.

20 MS. WACHSPRESS: I'll try to lay a
21 foundation.

22 Q. So AEP Ohio pays the energy charge
23 associated with OVEC generation, correct?

24 A. They pay their proportional share.

25 Q. Okay. Of the -- and that's true of the

1 energy charge.

2 A. Yes.

3 Q. Okay.

4 A. Yes.

5 Q. And when that energy charge exceeds the
6 market price for electricity on the PJM market, that
7 means that AEP Ohio is paying more per megawatt-hour
8 for electricity to purchase it from OVEC than it
9 would to purchase it off the PJM market.

10 A. Generally, yes. There might be -- there
11 might be other payments from PJM that the plants are
12 earning that aren't necessarily considered energy.
13 There's some ancillary services that the plants
14 provide even though they are not in the market for
15 ancillary services because some ancillary services
16 aren't market based. So there's -- broadly that's a
17 benchmark. There's probably a few other bits and
18 pieces there.

19 Q. Do the ancillary service payments ever
20 cover the margin, so to speak, between the energy
21 charge and the PJM market prices for energy? Are
22 they so large that they would overcome the negative
23 energy margin that you identified in Figure 26?

24 A. We did not examine that.

25 Q. Okay. Typically how do ancillary market

1 charges compare to energy charges in the PJM market?

2 A. Generally?

3 Q. I mean, are they of the same order of
4 magnitude?

5 A. It's kind of a broad question. It
6 depends. In some energy markets, they -- energy --
7 so you have to understand ancillary services are
8 payments that are perhaps paid to like a spinning
9 resource, like a plant is on line but maybe it's not
10 running at its max so it's in reserve, and that's
11 considered an ancillary service and that's valuable
12 to a power system because maybe a plant goes down or
13 load goes up and you want people to be able to ramp.
14 You want to be able to use those reserves.

15 So in many markets the price of an
16 ancillary service and the price of energy are what
17 they call co-optimized. So on a megawatt-hour basis
18 they can be very comparable, not necessarily one more
19 valuable on a megawatt-hour basis than another. So
20 it's just -- I'm just -- to give you a broad
21 understanding. It's tricky to answer that
22 specifically.

23 Q. During the months that you identified
24 OVEC as having energy -- excuse me.

25 During the months you identified OVEC as

1 having negative energy margins, did the ancillary
2 earnings associated with OVEC exceed the total amount
3 of negative energy earnings?

4 A. I don't know. We didn't look at it from
5 that perspective.

6 Q. Okay. Are the energy charges to sponsor
7 companies reduced proportionally by the ancillary
8 energy charges -- I'm sorry -- the ancillary earnings
9 in the market?

10 A. "Proportionally" meaning if your share is
11 19 percent, then you get 19 percent?

12 Q. No. You know what, scratch that. I am
13 just going to move on.

14 So -- so you offered -- so you identify
15 certain months where the OVEC plants had negative
16 energy earnings, correct?

17 A. That's correct.

18 Q. And so if the plant had shut off on the
19 first day of that month and restarted at the end of
20 that month, the energy charge to OVEC sponsors would
21 have been lower, correct?

22 A. Lower than the PJM price?

23 Q. No. Lower than what was actually charged
24 during the audit period.

25 A. If you don't run a plant, you're not

1 burning energy so, by definition, the -- and the way
2 the ICPA works, as I understand it, is all the
3 charges are -- they are billed each month, et cetera.
4 So if you didn't run, you would still -- OVEC would
5 still be billing demand charges but they wouldn't be
6 billing fuel charges which are the energy charges.

7 Q. Okay. And so the sponsors could have
8 purchased an equivalent amount of electricity off the
9 PJM market during that month for less money than they
10 were actually charged by the energy charge during
11 those months you identify?

12 MR. SCHULER: Objection. Assumes facts
13 not in evidence and mischaracterizes the entire
14 proceeding actually.

15 MS. WACHSPRESS: Your Honor, I am trying
16 to figure out what the implications of a net
17 energy -- negative energy earning is here. And I am
18 keeping very close to what is in the audit and just
19 trying to spell out what the implications are for AEP
20 Ohio specifically of the discrepancy between the PJM
21 market price and -- and the energy charge during
22 those periods.

23 A. We put together this analysis on a
24 monthly average basis. Different hours have
25 different value in energy markets. High demand

1 hours, summertime, you know, sometimes the dead of
2 winter would pay more. So to know exactly the impact
3 on OVEC earnings as they flowed through to AEP Ohio,
4 you would want to -- you would want to do an
5 hour-by-hour analysis. There's costs if you didn't
6 run the plant. It's just -- it's -- this is
7 indicative -- our purpose was to identify broadly,
8 you know, what is the operation, the choice of must
9 run, what does it mean broadly, does it flag anything
10 that could be improved. That was the purpose of
11 this, but we didn't go at the level of detail to say,
12 you know, this or that shouldn't have happened this
13 month or that month.

14 Q. When you say that there are costs
15 associated with the plants when they don't run, none
16 of those costs are billed through the energy charge,
17 correct?

18 A. My understanding is the energy charge is
19 just fuel.

20 Q. So the energy charge -- I'm sorry. Go
21 ahead.

22 A. I was going to say, if you are not
23 burning fuel, you just have demand charge and other
24 transmission, whatever else there might be.

25 Q. So sponsors, such as AEP Ohio, are only

1 billed on the energy charge when fuel is actually
2 burned, correct?

3 A. I think when the plant is operating and I
4 think that's how it's defined but that's when you are
5 burning fuel.

6 Q. Okay.

7 A. I suppose you could just be operating to
8 maybe test the plant or something like that. But you
9 would still be paying that fuel charge if you're a
10 sponsor.

11 Q. Okay. So let's -- let's go back to
12 page 53. And if I understand the statement that I
13 started off by reading, you are saying that the
14 negative energy earnings you identify for those
15 months in Figure 26 are the result of OVEC's must-run
16 strategy; is that correct?

17 A. Ultimately they are the results of a lot
18 of things, right? You have demand and supply issues,
19 moving energy prices in PJM, but in the context of
20 the must-run strategy, that's the outcome of
21 comparing those PJM benchmark prices to the fuel cost
22 of the plant.

23 Q. So when you say the must-run strategy may
24 result in negative energy earnings for the plants, is
25 that not an accurate statement of -- is that -- your

1 statement in the audit, the must-run offer strategy,
2 quote, may result in negative energy earnings for the
3 plants, is that an accurate characterization of your
4 findings in the audit?

5 A. Yes.

6 Q. So the must-run offer strategy is a cause
7 of negative energy earnings; is that correct?

8 A. It's a contributing factor.

9 Q. Okay. What are the other contributing
10 factors?

11 A. There could be unexpected glitches in the
12 market. Anything that would impact supply and
13 demand, let's say, in a surprising manner, you can't
14 predict energy prices directly -- you know,
15 perfectly.

16 Q. But when we began, you said the must-run
17 strategy means that OVEC is committing its units in
18 the day-ahead market without regard to any of those
19 prices or surprises or changes that you had just
20 identified, correct?

21 A. Correct.

22 Q. Okay. So the amount that OVEC may incur
23 in negative energy margins may depend on all of those
24 other factors, but the fact that it's setting itself
25 up to incur negative energy margins as a result of

1 that is a product of the must-run strategy, correct?

2 A. I would say the must-run strategy
3 contributes to those outcomes.

4 Q. Okay. What is the impact of negative
5 energy earnings on AEP Ohio ratepayers?

6 A. Well, as we said in the front of the
7 report, it's -- well, the plants cost more than they
8 earn so that's the bottom line of that impact.

9 Q. So the PPA Rider is higher than it would
10 otherwise be as a result of these negative --
11 negative energy earnings.

12 A. So you're saying if energy earnings were
13 always positive, would the net impact of the rider be
14 cheaper for customers?

15 Q. No. I am saying if the negative earnings
16 were less, right, so they don't have to go away
17 completely but if they were less, the PPA Rider would
18 be less expensive for AEP Ohio ratepayers.

19 A. That makes sense.

20 Q. Okay. So if OVEC were able to reduce or
21 eliminate negative energy earnings, it would result
22 in lower costs for AEP Ohio ratepayers.

23 A. We didn't examine that in detail.
24 Mathematically it makes sense. I think it would
25 depend how you did it. But, yeah, okay.

1 Q. Okay. So is it fair to say the decision
2 of OVEC to operate as must run during periods of
3 negative energy earnings, during the months you
4 identified, led to an increased PPA Rider amount for
5 AEP Ohio ratepayers?

6 A. Based on these monthly average numbers,
7 it looks like -- that's why we said "appears." We
8 didn't do an hour-by-hour analysis. But using these
9 benchmark numbers, it -- in some of those months the
10 plants were well in the money, in some of the months
11 they were somewhat out of the money. If you could
12 maybe predict ahead of time, then you wouldn't have
13 run, maybe. But did I answer your question?

14 Q. Not -- not really. I'm asking if it's
15 fair to say that the decision of OVEC to operate at
16 must run during the periods of negative energy
17 earnings you have identified as an actual matter
18 during the audit period, led to an increased PPA
19 Rider.

20 A. Increased compared to?

21 Q. Increased compared to not operating as
22 must run during the months you identified as having
23 net negative energy margins.

24 MR. SCHULER: Objection. This is an
25 incomplete hypothetical. This is only focusing on

1 the energy market. She also mentioned she didn't do
2 an hour-by-hour comparison.

3 MS. WACHSPRESS: Your Honor, I think it's
4 a fair question. I've laid the groundwork right up
5 to it. And if the witness wants to bring up those
6 issues, I ask that she do it and not be coached by
7 her counsel.

8 EXAMINER PARROT: The objection is
9 overruled.

10 Dr. Fagan, if you need clarification, of
11 course ask for it, but please answer the question.

12 THE WITNESS: Just -- I'm sorry. What
13 was the question again?

14 Q. (By Ms. Wachspress) Is it fair to say
15 that the decision of OVEC to operate as must run
16 during those periods of negative energy earnings,
17 those four months you identified, lead to an
18 increased PPA Rider amount?

19 A. Compared to not running at all or --

20 Q. Yes. Compared to not running during
21 those months, during those periods of negative energy
22 earnings.

23 A. Without an hourly analysis, I can't make
24 that determination which is why we wrote the report
25 the way we did saying it's indicative. It's

1 something that we think the management of AEP Ohio,
2 in its role as part of the management of OVEC, should
3 carefully examine.

4 Q. Okay. So you can't conclude on the basis
5 of the analysis that you did that OVEC minimized
6 electricity costs for ratepayers during those four
7 months you identified.

8 A. When we didn't -- we didn't do that kind
9 of analysis.

10 Q. You didn't assess whether OVEC's bidding
11 strategy minimized ratepayer costs.

12 A. We did not do that.

13 MS. KERN: Objection, your Honor. Asked
14 and answered.

15 Q. Okay. All right. I would like to direct
16 your attention to the next recommendation. "LEI
17 recommends that OVEC OC meetings should be held more
18 frequently to deal with updates on each plant's
19 operating performance, cost of serve or profit/loss
20 statements for market-based revenues derived from the
21 PJM markets in a timelier manner. This may help
22 prevent plants running when energy prices are too low
23 to cover variable costs." Is that an accurate
24 reading of what's on page 53 of the audit?

25 A. Oh, we do have a typo of cost -- it

1 should be "cost of service," yes.

2 Q. Okay. So "serve" should be "service."

3 A. "Service," right.

4 Q. I had assumed, but thank you for your
5 confirmation.

6 A. Yeah.

7 Q. What is a profit/loss statement?

8 A. You have -- you would -- it's forward
9 looking -- well, in this context it's forward looking
10 and you project costs, you know, all the costs of
11 making your decision and the revenues that you
12 expect. If you're -- perhaps you use more than one
13 scenario because -- costs are sometimes a lot easier
14 to know than revenues. So if you are going to do a
15 profit/loss, you might want to do more than one
16 potential scenario of revenues. And this is just
17 generally. But if -- you usually have a pretty good
18 idea of the costs. It's sometimes the revenues that
19 are tricky but you want to look at cost and revenues.

20 Q. Okay. And a profit/loss statement can be
21 done, say, for the subsequent week of PJM day-ahead
22 market prices; is that correct?

23 A. Yeah, you could do it for a week, yeah.
24 It -- there's no -- I don't think there is any
25 particular limit. It's just whatever level of

1 analysis is chosen by whoever is doing the analysis.
2 The further out you go in the future, sometimes the
3 harder it is to know what might happen. But you can
4 choose whatever period you want.

5 Q. And you would say that if these kinds of
6 profit/loss statements are put together on a weekly
7 basis for the subsequent week, that it's -- that the
8 day-ahead market prices for PJM are reasonably
9 foreseeable at that granularity in timing.

10 A. We didn't look at that.

11 Q. So as -- as a matter of your experience
12 and expertise in energy markets, that kind of weekly,
13 forward-looking, energy-market-prices forecast
14 reasonably predicts the day-ahead market prices
15 within the RTO; is that correct?

16 A. I can't agree or disagree. I would want
17 to study that.

18 Q. So you have not studied or looked at
19 profit and loss statements compiled by other
20 utilities in your -- in your experience and time
21 working in this field?

22 A. Weekly?

23 Q. I'm just asking about what your -- what
24 your experience and expertise is with respect to
25 profit and loss statements created by other

1 utilities.

2 A. I haven't looked at any in particular.

3 Q. So your recommendation with respect to
4 profit and loss statements is based on general
5 knowledge. What is it based on?

6 A. Well, commonsense, right? If you want to
7 decide how to bid -- excuse me, offer a plant, then
8 you want some idea going forward of what your cost
9 you would incur and what you might earn. I haven't
10 specifically seen a weekly profit and loss statement
11 by a utility, but it -- I mean, it doesn't obviate
12 the fact that, you know, it can be done.

13 Q. So it's commonsense to use these weekly
14 P&L statements to try and anticipate energy market
15 prices.

16 A. It depends.

17 Q. Well, I'm just repeating your testimony
18 back at you. You said it was commonsense that using
19 these weekly profit and loss statements would be
20 helpful and so I'm -- I'm confirming that that is --
21 that is the case.

22 A. In some cases, sure. In other cases,
23 you, let's say, you've got, I don't know, a gas
24 plant. You just offer into the market at your
25 variable cost meaning you might want to do P&Ls going

1 forward but, you know, you might not do that on a
2 weekly basis, so I don't want to leave the impression
3 that everybody does this.

4 Q. How about for coal plants specifically?

5 A. I would say it depends on the plant,
6 where it is, its circumstances, the other plants that
7 are on the grid, what the supply curve looks like.
8 There's many factors.

9 Q. But your recommendation for the PJM --
10 excuse me. Your recommendation for the OVEC coal
11 plants specifically is that it would be commonsense
12 to use these kinds of profit and loss statements to
13 anticipate energy margins.

14 A. It was our recommendation that they do
15 this.

16 Q. Okay. Give me just one moment.

17 And you referred to -- to the
18 considerations with gas plants may be different from
19 the considerations with coal plants, correct?

20 A. That's correct.

21 Q. And that's because the cycling time for
22 coal plants is considerably greater, correct?

23 A. That would be part of it.

24 Q. And the use of these types of profit and
25 loss statements allow operators to choose when to

1 cycle the plants strategically based on energy market
2 prices; is that correct?

3 A. So with coal plants you don't ramp them
4 up, ramp them down fast, turn them off, turn them on
5 quickly, so you do want to get a sense of how often
6 you would have to do that because that puts -- the
7 plants aren't designed to do that. It puts, at a
8 minimum, you know, cost and risk of damage to
9 equipment.

10 So that would be part of this like
11 frequency -- I think you are talking about kind of
12 frequency of cycling, do we turn it on this week, if
13 not this week, do we turn it on next week.

14 You know, on the average for the month
15 that we showed, you know, some monthly prices were
16 low, but, you know, maybe there was low prices one
17 week and higher another, so you have to try to figure
18 out if you are going to catch that within the period
19 of turning the plant on, ramping it up, et cetera.

20 So it's -- when you are saying a decision
21 about cycling, those are -- those are all the
22 factors. Price -- I should say expected price is one
23 of them. There's the other costs and then also sort
24 of a technical risk by doing that with a coal plant.

25 Q. But if you have, based on the P&L

1 statement, an estimate of that net margin associated
2 with sales, you can compare that to the cycling costs
3 and the risks and make a reasonable judgment as to
4 what's in the best interest of ratepayers based on
5 that information, correct?

6 A. You can make a judgment about whether or
7 not to run the plant.

8 Q. Correct. You can make a judgment about
9 whether or not to run the plant. And what ultimate
10 metric would you use in making that decision about
11 whether to operate it or not?

12 A. It would be -- well, again, costs are
13 known, revenues aren't known, but it would be whether
14 you expect to make money in that time period above
15 and beyond your cost and risk.

16 Q. Okay. And so to sum up or attempt to sum
17 up our discussion this far, is it correct to say that
18 a profit/loss statement can help a reasonable utility
19 determine when to use an economic commitment status
20 to avoid incurring negative energy earnings by
21 operating the plant?

22 A. Yes, that's what's implied by our
23 recommendation, yes.

24 Q. Okay. So if AEP Ohio looked at this
25 recommendation but in the future failed to adopt it

1 and did not incorporate profit and loss statements in
2 their commitment decision-making, would that be
3 evidence of imprudence going forward now that they
4 have this recommendation?

5 MR. SCHULER: Objection to the references
6 to AEP Ohio. The audit report here is speaking about
7 OVEC. The question also asks about future actions
8 that are, by definition, outside the scope of this
9 audit in 2018 and 2019.

10 MS. KERN: Staff would object to the
11 extent that the question calls for a legal
12 conclusion. She's not to weigh the evidence and make
13 the ultimate conclusion.

14 MS. WACHSPRESS: Your Honor, the witness
15 has already testified as to prudence or imprudence so
16 I think it's fair to ask follow-up questions about
17 prudence and imprudence. And I'm trying to drill
18 down on what the weight and significance of these
19 recommendations are as those are the normative
20 assessment coming out of this audit report.

21 MS. KERN: Quickly, I -- Dr. Fagan is not
22 giving the weight to her report. That would be the
23 role of the Commission. So that was the basis for my
24 objection.

25 MS. BOJKO: Your Honor, may I be heard?

1 EXAMINER PARROT: Go ahead.

2 MS. BOJKO: Two issues, briefly.

3 One is, this auditor is an independent
4 auditor that does actually have the role of
5 determining prudence when they conduct an audit.
6 This is her recommendation.

7 As to Mr. Schuler's objection about out
8 of time. The auditor's report makes recommendations
9 about what to do going forward. Those are fair game.
10 We are not asking about costs out of time. It's
11 about the recommendations in the audit report and
12 that's the distinction I believe that was in your
13 Honor's entry last week that had -- or two weeks ago
14 that had to do with discovery. This is completely
15 different. This is a recommendation by the auditor.

16 MR. SCHULER: Your Honor, just to clarify
17 in case my objection was misinterpreted. The
18 question was would that be evidence of imprudence
19 going forward. So that is asking a question about
20 prudence that would be presumably the context of a
21 future audit.

22 EXAMINER PARROT: Dr. Fagan, to the
23 extent you are able to answer the question, go ahead.

24 A. We didn't look at future impacts or model
25 those.

1 Q. My question -- excuse me.

2 A. So -- that was outside the scope of what
3 we looked at.

4 Q. My question isn't about future results.
5 My question is about if AEP Ohio declines to adopt
6 your recommendations as to profit and loss
7 statements, would you consider that to be evidence of
8 imprudence on their part?

9 MR. SCHULER: I will renew my objection
10 that the question mischaracterizes AEP Ohio. Again,
11 this paragraph that Ms. Wachspress is asking about
12 refers to OVEC.

13 MS. WACHSPRESS: I will just point out --
14 go ahead.

15 EXAMINER PARROT: Overruled. She can
16 note that if she wishes.

17 A. I think to determine whether something is
18 prudent or imprudent, it's -- it's another audit,
19 right? It's a second audit. The Company, AEP Ohio,
20 may or may not direct -- or, they can't direct OVEC,
21 but in their role of management, you know, perhaps
22 suggest this, perhaps not, but I can't determine
23 sitting here whether that's imprudent. We didn't
24 find imprudence in this audit. We found things that
25 we think should be improved. So I am going to leave

1 it at that.

2 Q. So I understand that, that you say you
3 did not find imprudence. You found things that
4 needed to be improved. But if you were brought back
5 to conduct an audit two years from now and you were
6 to find that neither AEP Ohio nor Ohio -- excuse me,
7 neither AEP Ohio, nor OVEC, were utilizing profit and
8 loss statements despite this recommendation, would
9 you consider that to be evidence of imprudence?

10 MR. SCHULER: Objection. The question
11 calls for the witness to opine about a future audit
12 that does not currently exist, let alone the terms
13 around that audit.

14 MS. WACHSPRESS: I think it's a
15 hypothetical, your Honor.

16 MS. KERN: Objection from Staff to the
17 extent the question was asked and answered.

18 EXAMINER PARROT: To the extent you are
19 able to offer an opinion, Dr. Fagan, go ahead.

20 A. I am actually not comfortable offering an
21 opinion because London Economics has a following
22 audit underway that isn't, you know, in this process.
23 It's just -- I am not a lawyer. That just -- it
24 doesn't seem like something I should be discussing
25 here.

1 Q. (By Ms. Wachspress) So it's correct to
2 say you don't feel comfortable discussing certain
3 contents of this audit because of your continuing
4 role as auditor of AEP Ohio; is that correct?

5 A. No.

6 Q. How is that -- how is that not a fair
7 statement of -- of what you just stated?

8 A. Happy to discuss the contents of this
9 audit but not your specific question about what does
10 it mean for future, et cetera.

11 Q. So you're not willing to discuss the
12 strength of your recommendations because of your
13 continuing role as -- of auditor -- continuing role
14 as auditor of AEP Ohio; is that correct?

15 A. No.

16 Q. No. But you're not willing to answer
17 whether or not you feel a failure to follow your
18 recommendations would be evidence of imprudence
19 because of your continuing role as auditor of AEP
20 Ohio.

21 A. I feel like there's two questions there.

22 MS. KERN: Can we have the court reporter
23 repeat the question, please.

24 (Record read.)

25 MS. KERN: Objection on two grounds, your

1 Honor. First, the question has been asked and
2 answered. Second, it's argumentative. I think
3 Dr. Fagan has explained that there is an ongoing
4 audit and the question pertains to future actions.
5 So to the extent that the -- her answer could affect
6 a future proceeding that we're not looking at today,
7 she has responded to the best of her ability.

8 EXAMINER PARROT: And I agree she's
9 answered the question. The objection is sustained on
10 that -- on that basis.

11 MS. WACHSPRESS: Okay. I'll move on.

12 Q. (By Ms. Wachspress) Dr. Fagan, during the
13 audit period, did OVEC prepare profit and loss
14 statements?

15 A. We didn't ask for those.

16 Q. Did you ask for any forecasts conducted
17 by OVEC of energy market prices?

18 A. We did not.

19 Q. Okay. Did the Operating Committee
20 prepare profit and loss statements?

21 A. Let me check my notes. Description of
22 the --

23 MS. BOJKO: Your Honor, I can't hear
24 anything the witness is saying.

25 THE WITNESS: I'm sorry. I just said I

1 am checking the report.

2 MS. BOJKO: Thank you.

3 A. In our report, in Section 5.3.3, starting
4 on page 44, we talk about generation offers and the
5 activities of the Operating Committee. We don't
6 specifically talk about forecasts but, of course,
7 they do offer that Clifty Creek Unit 6 under economic
8 commitment. So they may do, you know, P&L or revenue
9 forecasts to know how they want to offer, you know,
10 when to do that for Unit 6.

11 And on page 45, they talk about
12 procedures for power and energy accounting.

13 I am trying to think of anything
14 else that might -- it doesn't mean just because we
15 didn't ask that specific thing that they are not
16 doing it and it's -- the point I want to make is it
17 could come under some of these categories that we
18 mentioned in the 5.3.4, "AEP Ohio's engagement in
19 OVEC Operating Committee."

20 Q. You requested all the notes from the
21 Operating Committee meetings, correct?

22 A. We requested -- I would have to look at
23 that. We requested an agenda which we have. I don't
24 know that we requested all the notes from all the
25 meetings. I am not saying we didn't. I would have

1 to refresh my memory on our Data Requests.

2 Q. But in all the documents you reviewed,
3 everything you received from OVEC and AEP Ohio in the
4 course of your audits, you did not affirmatively
5 determine that they are using energy market forecasts
6 as part of any of their commitment decision-making
7 process.

8 A. Neither affirmed nor -- nor non-affirmed;
9 neither way.

10 Q. But you did not see any documentation to
11 suggest that they did have market forecasts.

12 A. We didn't ask specifically. And I find,
13 you know, generally in an audit you don't get
14 information you don't ask for. The Company -- the
15 Company doesn't try to second guess. So if we didn't
16 ask for something and we didn't get it, I wouldn't
17 say that it means they don't have it. It's just it's
18 not a conclusion I can draw.

19 Q. Okay. So according to your audit, during
20 the audit period, day-to-day commitment decisions of
21 the OVEC units are made by OVEC's Energy Scheduling
22 department; is that correct?

23 A. That's correct. Let me -- you're on
24 page 43, are you?

25 Q. I don't -- I don't have a page -- page

1 reference.

2 A. Okay. Well, I would say on page 42,
3 we understand -- "LEI understands that OVEC's
4 Scheduling Department has an internal daily call,"
5 et cetera, et cetera, "to review unit status and
6 availability," et cetera. And they use the
7 information to formulate the unit offer in the
8 market.

9 Q. And so you did speak to the OVEC -- the
10 OVEC Energy Scheduling department about those daily
11 meetings, correct?

12 A. We obtained information in a Data
13 Request. I don't -- I don't recall if we spoke to
14 any of the managers in the department particularly,
15 you know, verbally. I would say this was all
16 provided in written form.

17 Q. Okay. And as part of that Data Request,
18 you sought out information about what was discussed
19 in those daily meetings, correct?

20 A. Let me -- I can read the DR to you.

21 Q. Okay.

22 A. What we have in the report is the
23 scheduling -- this is confidential, the scheduling
24 timeline.

25 Q. Yeah, I know, and I don't want to go

1 there if we can avoid it.

2 A. Okay.

3 Q. But I am looking at the paragraph at the
4 bottom of page 42 and there you identify certain
5 things that are discussed in this internal daily
6 call, which include applicable unit derates,
7 potential unit liabilities, outage status, and
8 expected return-to-service dates; is that correct?

9 A. Correct.

10 Q. Expected energy margin is not among the
11 topics that you listed as being discussed on this
12 daily call, correct?

13 A. We didn't list it in the report. I could
14 go back and check if the Company provided it in the
15 Data Request and we just inadvertently didn't include
16 it.

17 Q. Okay. But's there no evidence of it in
18 the report itself, in the audit report.

19 A. I am just looking through some more of
20 the material. We don't mention it specifically in
21 the report.

22 Q. Okay. So I'm going to switch gears a bit
23 and talk a little more generally now. When a unit is
24 committed as must run, there's no upper limit on the
25 negative energy earnings that that plant can accrue

1 while operating on must run, correct?

2 A. You can't lose more than your cost, so
3 probably the cost -- I mean, theoretically, the cost
4 would have to be the upper limit.

5 Q. But hypothetically if a plant costs \$200
6 per megawatt-hour to run, you could lose hundreds of
7 dollars per megawatt-hour operating on a must-run
8 basis.

9 A. That's very hypothetical because a
10 \$200-a-megawatt-hour plant like a peaker, they
11 don't -- they don't run a must run. They are not
12 baseload.

13 Q. Okay. So when -- when those -- returning
14 to the OVEC units. When that plant operates on -- on
15 must run, sponsors are responsible for those negative
16 energy margins, correct?

17 A. That's correct. Sponsors are billed the
18 cost of the plant, and they are netted out the
19 revenues that are earned so the difference goes back
20 to all the sponsors, yes.

21 Q. Okay. And then on to ratepayers,
22 correct?

23 A. In this case that we've audited, in this
24 rider, yes. I don't know about all -- some of the
25 sponsors are in different states. I don't know how

1 it works in different states.

2 Q. Fair. For AEP Ohio ratepayers.

3 A. Correct.

4 Q. Correct? Okay. And so I'm going to go
5 back to Figure 26. You found that during certain
6 months the PJM energy price on average fell below the
7 price per megawatt-hour for the energy charge,
8 correct?

9 A. That's correct.

10 Q. Okay. But you only investigated seven
11 months selected at random; is that correct?

12 A. That's partly correct. We investigated
13 seven months. It wasn't totally random. We wanted
14 to make sure we had some shoulder months. We wanted
15 to make sure we had some summer months. So we picked
16 a few months off of two years. So I wouldn't call
17 that random. You know, it was a strategy. We wanted
18 to see, you know, over the course what it would look
19 like.

20 Q. Right. But not the full two-year period
21 of the audit.

22 A. No.

23 Q. Okay. And of those seven months, in four
24 of those months the OVEC plants were out of the
25 money, correct?

1 A. So this table is confidential. I just
2 don't know if we are now wading in --

3 Q. Yeah. I didn't want to get into dollar
4 amounts. I apologize for that. I am not going into
5 any more detail than that. So if -- if it's fair to
6 ask that question without a confidential session, I
7 am going to move on from that table. I don't know if
8 AEP Ohio has a --

9 MS. BOJKO: She already testified to it
10 this morning. We talked about it before.

11 MR. SCHULER: Yeah. I think we have
12 had -- sorry. Yeah, I do agree with Ms. Bojko. I
13 think at least yesterday I think we also had a line
14 of questioning that was, you know, in the money, out
15 of the money. We are comfortable with that being on
16 the public record, just not any specific dollar.

17 MS. WACHSPRESS: Okay. And I am not
18 going into the dollar amount or any more detail, so.

19 Q. (By Ms. Wachspress) Okay. So of those
20 seven months, in four of those months the OVEC units
21 were out of the money, correct?

22 A. In four of the months they were a little
23 out of the money, and then three of the months they
24 were a lot in the money, so it was not -- our
25 conclusion wasn't unequivocal, right? It's some

1 months they were well in the money. Other months
2 they were a little out of the money. So, hence, our
3 recommendation to, you know, we didn't come down and
4 say you must offer the plants in a different manner
5 because the results of our analysis were, you know,
6 they weren't unequivocal so, hence, our
7 recommendation is, you know, to take a careful look.

8 Q. And by taking that careful look, a
9 utility company could continue to be in the money in
10 those months in which it's in the money but avoid the
11 losses associated with those months where it's out of
12 the money, correct?

13 A. In theory, right? That's -- I don't know
14 what would happen but, sure, in theory that would be
15 the -- that would be the goal, right?

16 Q. That's your recommendation. That's how
17 you recommend that they approach commitment in the
18 future.

19 A. Correct. Have a careful look at when you
20 are offering must run versus economic commitment.

21 Q. So in the course of your audit, did you
22 request records regarding PJM market -- scratch that.

23 Okay. I am actually just going to move
24 on.

25 Okay. So I would like to refer you to

1 page 9 of the audit.

2 A. I'm there.

3 Q. Okay. And the paragraph with the heading
4 "Disposition of energy and capacity." It's near the
5 bottom of the page.

6 A. Got it.

7 Q. Okay. And the audit states that "LEI's
8 analysis showed that some of the time, the PJM energy
9 price did not cover fuel and variable cost." Is that
10 a correct reading of the audit?

11 A. That's correct.

12 Q. Okay. And when you say the PJM energy
13 price did not cover fuel and variable cost, this
14 means that PJM's sponsors earned less in revenue for
15 their entitlement to OVEC energy than the marginal
16 cost to generate that energy; is that correct?

17 A. I would -- it's not a marginal cost
18 analysis so, no, I would not put it that way.

19 Q. Okay. So you -- so when you say the PJM
20 energy price did not cover fuel and variable cost, is
21 it correct to say that during those times it cost the
22 plants more to generate electricity than they were
23 earning from the PJM market for energy sales?

24 A. Based on our monthly averages, what we
25 showed in Figure 26, that's correct.

1 Q. Okay. And I believe you've already
2 testified that it's the sponsors who are ultimately
3 responsible for that difference.

4 A. You mean did they create the difference
5 or do they --

6 Q. Responsible as in they pay the
7 difference. That the difference -- that the economic
8 payment associated with that difference eventually
9 flows to the sponsors.

10 A. It does, yes, it flows to the sponsors.

11 Q. And what did you mean by "some of the
12 time" here?

13 A. In the analysis that we showed in
14 Figure 26, it was some of the time.

15 Q. Okay. So on that monthly-average basis.

16 A. Yes.

17 Q. Okay. What did LEI include as a variable
18 cost when you -- when you performed this analysis?

19 A. We only looked at fuel cost, but if you
20 are not covering fuel cost, then by definition you
21 are not covering fuel and variable cost.

22 Q. Okay. So you found that the units were
23 not covering their fuel costs and presumptively that
24 meant that they were also not covering any additional
25 variable cost associated with operation.

1 A. Right. You use the word "presumptively."
2 I would say it's just a logical -- it's just logical.
3 The way OVEC bills its costs, it's -- you can't --
4 some -- some of what are variable costs are actually
5 included in the demand charge because the energy
6 charge only covers fuel, but it doesn't matter to
7 this conclusion. If you are not covering a subset of
8 costs, then if you make that subset bigger, you are
9 still not covering it.

10 Q. Got it. So let me -- you stated that
11 some of the variable costs are actually part of the
12 demand charge, correct?

13 A. Every power plant is going to have
14 variable costs, and in the case of the OVEC bill, the
15 bills that they send the Company, the way it's split
16 out is there is an energy charge, there is a demand
17 charge. The only thing in the energy charge is fuel.
18 So, again, it's just logical, whatever other variable
19 costs there might be, they are not in -- they are not
20 just fuel, right? So they are in that other
21 category.

22 Q. Okay. So then is it fair to say that the
23 energy charge does not reflect the full marginal cost
24 of energy generation at the OVEC units if these
25 variable costs are billed as part of the demand

1 charge?

2 A. We didn't do a marginal cost analysis.
3 These are all average costs. So I can't -- I can't
4 answer one way or the other. We did not do a
5 marginal cost analysis.

6 Q. But by "variable costs" you mean costs
7 that vary with the amount of generation, correct?

8 A. Correct.

9 Q. And those are billed as part of the
10 demand charge, correct?

11 A. Correct.

12 MS. WACHSPRESS: Okay. Okay. I actually
13 have some questions that go into a confidential
14 document and I know -- I am happy to continue with
15 the -- I don't know if we should go off the record
16 but I am happy to continue with the non-confidential
17 line of questioning and we can discuss confidential
18 questioning at a later time. Your Honor, I don't
19 know what your preference is.

20 EXAMINER PARROT: So are you saying you
21 definitely need to go into a confidential session or
22 you are not real sure? You're looking for guidance?

23 MS. WACHSPRESS: I am saying I'd like to
24 go into a confidential session. I can do it now
25 because it's in this line of questions, or I can

1 postpone it and deal with it at a later point in
2 time.

3 EXAMINER PARROT: We cannot go quickly
4 into a confidential session. That takes quite a bit
5 of work on our part which is why we were encouraging
6 you all yesterday to do your best, if you can avoid
7 it, that would be our preference, but we recognize it
8 may be necessary. So, if so, we are going to have to
9 table all that and figure out when that will occur
10 and --

11 MS. WACHSPRESS: Okay.

12 EXAMINER PARROT: So continue with your
13 public questions.

14 MS. WACHSPRESS: I will continue with my
15 public questions and perhaps reach out to AEP Ohio
16 and see if we can get this publicly.

17 EXAMINER PARROT: Okay.

18 Q. (By Ms. Wachspress) Okay. So I would
19 like to direct you back to page 9 of the audit.

20 A. Okay.

21 Q. And on page 9 you state, this is still
22 the same paragraph we were looking at before, "LEI's
23 analysis did not fully evaluate a re-dispatching of
24 the OVEC units." Is that correct?

25 A. Correct.

1 Q. And when you say "re-dispatching," you
2 mean the decision to commit as must run, economic, or
3 some other commitment status; is that correct?

4 A. What we meant is looking at an
5 hour-by-hour dispatch model and in retrospect, right,
6 because once dispatch happens, you see energy prices,
7 and then looking at, as you say, here is what you
8 earned must run, here is what you earned every hour,
9 here's economic dispatch, what you would have earned
10 every hour. So we are qualifying, saying, you know,
11 given the analysis we did, looking at those monthly
12 averages, you know, you didn't cover costs. We
13 didn't say, all right, let's look at an hour-by-hour
14 analysis of each of the units, et cetera, to come to
15 that conclusion. So we wanted to qualify that.

16 Q. Okay. You mentioned economic dispatch,
17 and I just want to make sure we understand each
18 other. Commitment refers to whether or not --

19 A. Commitment.

20 Q. Yeah. Commitment refers to whether or
21 not to operate the plant at its economic minimum or
22 to defer that decision to the grid operator, correct?

23 A. So if we just step back. Dispatch is
24 what's done when the plant is run in a given hour.
25 Commitment is how you offer the plant into the

1 market. And I probably misspoke and said dispatch
2 when I meant commitment, economic commitment, versus
3 must-run commitment. Okay.

4 Q. So -- so you did not -- LEI did not go
5 back and look at what the market results would have
6 been if the OVEC units were committed as something
7 other than must run during some periods of the audit
8 period; is that correct?

9 A. That's correct.

10 Q. Okay. And if you were to run that
11 analysis, would you include fuel as a cost to
12 determine whether the unit was incurring negative
13 energy margins during the period?

14 A. We would include fuel, yep.

15 Q. Would you include variable O&M?

16 A. You would -- yes, you would include
17 variable O&M, yes.

18 Q. Would you include SCR scrubber catalysts?

19 A. Is that a capital cost or?

20 Q. So SCR scrubber --

21 A. I think I know what you mean. You have
22 to put catalysts in your SVR to make it work so you
23 are using it up hour by hour. If it's a variable
24 cost, you would probably include it. That's a level
25 of detail I honestly have not thought through.

1 Q. And the same is true for waste handling,
2 that's a variable cost.

3 A. I don't -- I don't know. Maybe part of
4 it's fixed, part of it's variable. I don't know. I
5 can't answer.

6 Q. What about water usage, is that a
7 variable cost?

8 A. Again, maybe some of it is. Maybe some
9 of it isn't. I just don't know.

10 Q. Okay. So I would like to ask you some --
11 some questions just to follow up from some of your
12 testimony yesterday. So, yesterday, Mr. Finnigan
13 asked you a number of questions about a statement
14 that was included as part of the draft -- of a draft
15 version of the audit but was cut from the final
16 version; is that a correct recounting of yesterday's
17 testimony?

18 A. Correct but limited.

19 Q. Partial, partial, partial summary. And
20 this statement was that running the OVEC units was
21 not in the best interest of ratepayers, correct?
22 That's the statement you were discussing with
23 Mr. Finnigan.

24 A. That's correct.

25 Q. Okay. And yesterday you stated that you

1 removed the sentence about the best interest of
2 ratepayers because it was too broad; is that correct?

3 A. That's correct.

4 Q. What other information would you need to
5 reach this broader conclusion?

6 A. I think that would be outside the audit
7 which is why ultimately it's too broad. We wanted a
8 statement that stuck with what we found in the audit
9 which was that the plants cost consumers more than
10 the cost of energy and capacity that could be bought
11 on the PJM markets.

12 Q. So I'm not asking about the audit
13 specifically. I am asking about you as an expert,
14 what additional information you would need to be able
15 to reach this conclusion.

16 MS. KERN: Objection, your Honor. The
17 witness has testified that the conclusion that was in
18 a draft audit, not in the final audit, was outside
19 the scope of this proceeding, so it's -- I object on
20 grounds of relevancy of what she would need to draw a
21 conclusion that's outside the scope of this
22 proceeding.

23 MS. WACHSPRESS: What's in the best
24 interest of AEP Ohio ratepayers is the subject of
25 this proceeding, your Honor. It's not outside the

1 scope.

2 MS. KERN: If I may respond. The
3 purpose, stated purpose, is whether the Company's
4 actions were in the best interest of -- of ratepayers
5 during this audit period.

6 MS. BOJKO: Your Honor, OMAEG would like
7 to note for the record that we completely disagree
8 with Staff counsel's interpretation of one portion of
9 the RFP. And I think I would request that the
10 auditor be able to answer the question and the
11 Commission can then decide whether it is or is not in
12 the scope of the audit.

13 MS. KERN: Briefly, your Honor. The
14 Intervenors have their witnesses. They filed
15 prefiled testimony. They obviously can argue -- we
16 can all argue these arguments on brief, but
17 consistent with some of the rulings yesterday, I'm
18 making a similar objection as I did about the
19 relevancy of this line of questioning.

20 MS. WACHSPRESS: Your Honor, just to
21 clarify, I am not asking her opinion at this moment.
22 I am asking her what information she would need to
23 inform that opinion. And I think it would be quite
24 useful to the Commission to hear what an expert
25 thinks would be necessary information to gather to

1 assess what is in the best interest of AEP Ohio
2 ratepayers with respect to the OVEC units.

3 EXAMINER PARROT: I understand that, but
4 I think she's answered your question. She just
5 testified she believes that's beyond the scope of the
6 audit. And I agree we will have the opportunity on
7 briefs to talk about what the scope of the audit is,
8 but she's already provided her response.

9 MS. WACHSPRESS: Okay. Thank you, your
10 Honor.

11 Q. (By Ms. Wachspress) All right. So if we
12 go to page 10, paragraph 3 of the audit, which is the
13 paragraph from which this statement was deleted,
14 correct?

15 A. Page 9?

16 Q. I'm sorry. I -- it was -- I apologize.
17 Yes. In the e-mail referred to in testimony
18 yesterday it was referred to as page 10, but it is in
19 page 9 of the audit, you are correct. You identify
20 in this paragraph other consider -- other
21 considerations that "outweigh the impact on
22 ratepayers." Correct?

23 A. Well, we have to read the whole sentence
24 because that's just a piece.

25 Q. Yeah.

1 A. So we are talking about -- and we, I
2 think, talked about it yesterday. We wanted to
3 provide context. It's not up to us. It's outside
4 the scope to decide the values of -- you know, that's
5 the Commission's role.

6 So we pointed out, yes, the plants cost
7 more than they earn in energy and capacity in PJM.
8 There's perhaps other considerations that the
9 legislature, Commission, whatever, takes into
10 consideration when they make their broader decisions.
11 And that's all that is, is context. We are not
12 saying the other considerations are examples. It's
13 not exhaustive. It's just context.

14 Q. But I want to focus on the phrase
15 "outweigh the impact on ratepayers." So is it a fair
16 inference from that statement that the other
17 considerations such as providing employment at the
18 plants or the plants' contributions to fuel diversity
19 in the State, weigh in favor of operating the OVEC
20 units?

21 A. They are just other considerations.

22 Q. But specifically you say that those
23 considerations may "outweigh the impact on
24 ratepayers"; and the ordinary meaning of "outweigh"
25 is that those fall on the other side of the scale, so

1 to speak.

2 A. In the State's view, that's perhaps true.
3 That's why we wanted to put that context in. It's
4 not -- you know, this is not an analysis we have
5 done.

6 Q. Okay. But if those considerations
7 outweigh the impact on ratepayers, the logical
8 implication of that is that the impact on ratepayers
9 weighs on the other side; is that just a fair literal
10 meaning of the sentence?

11 A. Logically, yeah.

12 Q. Okay. So is it, therefore, fair to say
13 that the impact on ratepayers weighs against
14 considering to operate the OVEC plants?

15 A. It weighs against them operating in the
16 way they have been which is why we have
17 recommendations.

18 MS. WACHSPRESS: Okay. Your Honor, I may
19 actually be finished here. If I may have just a very
20 short recess to confer with co-counsel?

21 EXAMINER PARROT: You may.

22 MS. WACHSPRESS: Okay. Thank you. I am
23 going to stop video and put myself on mute. I will
24 be right back.

25 MS. BOJKO: Your Honor, may we take a

1 5-minute break to go use the restroom and come back?

2 EXAMINER PARROT: We can take a 5-minute
3 break. We are off the record.

4 (Recess taken.)

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

7 Ms. Wachspress.

8 MS. WACHSPRESS: Thank you, your Honor.
9 So I think NRDC is -- is done. And I think everyone
10 will be pleased and relieved to hear we don't need to
11 go into a confidential session at some later date.
12 So we are -- we thank the witness for her time and
13 are prepared to cede to the next party.

14 EXAMINER PARROT: Okay. Thank you.
15 Counsel for OPAE.

16 MR. DOVE: Good morning, your Honor.
17 OPAE has no questions for this witness.

18 EXAMINER PARROT: Okay. Counsel for
19 Kroger.

20 MS. WHITFIELD: Good morning, your Honor.
21 Just a few follow-up questions for Dr. Fagan.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Whitfield:

25 Q. Good morning, Dr. Fagan. As you may have

1 heard, my name is Angie Paul Whitfield. I represent
2 The Kroger Company in this matter. I just have a few
3 questions for you.

4 During the audit period, did OVEC incur
5 capital costs to comply with any environmental, EPA,
6 or state environmental regulations?

7 A. Let me look at our capital cost analysis.
8 A lot of capital costs do have to do with that but I
9 want to see if I can be more specific. When in
10 doubt, go to the table of contents, right?

11 Q. Yeah.

12 A. So the budgeted and actual capital costs
13 for 2018 and 2019 that -- I want to tell you where
14 they are. They are marked confidential. They are on
15 page 92 and 93.

16 Q. Yes. And then you also have -- also
17 confidential, so I don't want to get into the details
18 of those, but you also have in Figure 53, on 94 and
19 95, the selected capital projects for OVEC, correct?

20 A. That's correct.

21 Q. And I am not getting into the specific
22 details. What I am just foundationally wanting to
23 get is that OVEC would have incurred, during the
24 audit period, some capital costs to comply with
25 environmental rules and regulations.

1 A. What we saw in this two-year period were
2 generally -- I want -- I don't want to get into too
3 much specifics -- generally repairs. I just want to
4 check if I can determine by reading the project if it
5 was environmentally specific. Some were controls for
6 the flue-gas desulfurization unit. I would say
7 generally in the two-year period they were not
8 particularly for environmental; some were. And from
9 a technical perspective, I think when you are
10 operating a plant better, you probably have a better
11 environmental footprint. But they were I would say
12 not -- it's hard to talk about it in detail because
13 it's confidential but I would say more general for
14 the plant operations in this two-year period.

15 Q. But you would agree that some of those
16 projects in -- in those tables, the confidential
17 tables, would have improved the operations and the
18 emissions and the environmental impact of the plants
19 which would then be complying -- making sure that the
20 OVEC was complying with the rule regulations from an
21 environmental standpoint.

22 A. I can't make that determination from what
23 we have here.

24 Q. Okay. If you look at your findings and
25 conclusions in Section 7.3.1. I'm sorry. Let's look

1 at 7.3.3. You indicate that -- "7.3.3.1 OVEC's
2 compliance with air, water, and solids regulations."
3 You indicate, "During the audit period, with the
4 adoption of EPA's CSAPR Update Rule, in both 2018 and
5 2019, OVEC managed its operations to comply with the
6 more stringent NOx constraints effective during the
7 2017 ozone season." Do you see that?

8 A. Yes.

9 Q. Okay. And did I read that correctly?

10 A. Yes.

11 Q. Okay. And would you agree with me that
12 at least with the reference to "OVEC managed its
13 operations" that some of the capital expenditures
14 defined or explained on paragraphs -- or pages 92 to
15 95 would impact or relate to OVEC's management to
16 comply with that updated rule?

17 A. I don't think you can draw that -- we
18 didn't draw that conclusion. You can comply with
19 more stringent NOx constraints using equipment you
20 already have. It doesn't necessary -- I wouldn't --
21 I don't say -- I don't think you can say from this
22 whether it required more capital spending in order to
23 do that.

24 Q. Okay. Well, let me ask this, are you
25 aware that AEP Ohio had to seek prior approval from

1 the PUCO before OVEC could make any capital cost
2 investments?

3 A. My understanding is that -- I could be
4 wrong. I don't think that that is the case, and we
5 have something in CAPEX section -- right, okay. So
6 if you look at Section 8.3.2 on page 92. So as we
7 understand it, the review and approval of the
8 Commission is not needed for OVEC to engage in
9 capital expenditure projects. That's our
10 understanding. I think it's the opposite of what you
11 said.

12 Q. Okay. And if I could have you turn to
13 OCC Cross-Exam Exhibit 15. Can you find that?

14 A. Okay. I'm here.

15 Q. Okay. And before you turn to that
16 specifically, I want to clarify my last question. I
17 think I perhaps misspoke. The -- are you aware that
18 AEP has to seek pre-approval for those capital
19 expenditures before it can recover for them, not
20 before OVEC can spend them but before AEP can recover
21 them?

22 A. I haven't looked at any of that, so I
23 can't comment.

24 Q. Okay. Let me have you then turn to
25 Exhibit 15. And if you could --

1 MS. WHITFIELD: For the record, I'll
2 identify it as the initial brief in support of the
3 Joint Stipulation and Recommendation on behalf of the
4 Ohio Power Company in Case No. 14-1693-EL-RDR.

5 Q. And if you could turn to -- this was
6 filed on February 1, 2016. If you could turn to
7 page 2 in this brief submitted by AEP Ohio. At the
8 top of the page do you see the first full sentence
9 that says "The generating units included within the
10 Affiliate PPA and the OVEC PPA may be collectively
11 referred to as the 'PPA Units'"? Do you see that on
12 page 2?

13 A. I see it, yes. I haven't seen this
14 before, but I see the sentence that you are pointing
15 out.

16 Q. And I expected that you hadn't seen it.
17 I am just doing it a little bit for foundation so
18 just bear with me for a minute. And if you could
19 turn to page 65 in the AEP Ohio brief. I am going by
20 65 at the bottom of the page.

21 A. Okay. Let me get there. Okay. So now I
22 am on page 65.

23 Q. Okay. It says, "Critically, moreover,
24 AEP Ohio," it is at the last paragraph of the page,
25 "has committed that we'll" -- "that it will obtain

1 prudence 'pre-approval' from the Commission for
2 substantial capital expenditures at a PPA Unit." And
3 the sentence goes on. Do you see that?

4 A. I see that.

5 Q. So does that change your conclusion that
6 you have in your audit report at Section 8.3.2 that
7 there's no ceiling on capital spending -- spending?

8 MR. SCHULER: Objection. This is a
9 document that Dr. Fagan just said she has not seen.
10 This also pertains to the PPA Rider as it existed
11 under the original Opinion and Order, not as it
12 exists under the Second Entry on Rehearing which is
13 what was audited in this matter. And it is not
14 applicable to OVEC.

15 MS. WHITFIELD: Well, I recognize she has
16 not seen this document, your Honor, but I -- she has
17 seen now where AEP has committed in the record,
18 albeit another case, that it would seek prudence
19 pre-approval from the Commission for expenditures,
20 capital expenditures for the PPA unit at OVEC, and I
21 am just wondering if that changes her comments at all
22 in any way.

23 MR. SCHULER: Your Honor, that's why I
24 believe this is a relevance objection that this would
25 be prejudicial in this case because it is asking the

1 auditor to apply legal principles and factual
2 principles under facts and legal analysis that do not
3 exist in this case.

4 MS. WHITFIELD: Well, with all due
5 respect, I am not asking for a legal analysis. She
6 is an expert auditor, and I am asking if she was
7 aware that AEP Ohio had to seek pre-approval for
8 cap -- before it could recover capital expenditures.
9 She said she wasn't aware of that, so I showed her
10 where they communicated that they, in fact, did make
11 that commitment. And I am wondering if that changes
12 her conclusion at all. It is not a legal conclusion.
13 It's her auditor conclusion.

14 EXAMINER PARROT: Overruled.

15 To the extent you are able to provide a
16 response, Dr. Fagan, go ahead.

17 A. Well, I have an issue with the word
18 "substantial." I actually think this came up
19 yesterday too. There's no -- it's not -- it's not a
20 dollar amount. It's not a quantity. So it may be
21 someplace else in this document that I am just now
22 seeing, "substantial" is equated to maybe a percent
23 of the value of the plant or maybe there is a dollar
24 cutoff, but I don't know that. Maybe it's defined a
25 certain way. Capital expenditures in the OVEC plants

1 are actually -- I mean, capital expenditures here
2 could be defined as something that goes into rate
3 base, right, or return? I don't know. The CAPEX at
4 OVEC isn't, so I just can't answer.

5 Q. Okay. So based on your experience as an
6 auditor in the electric utility industry, if a
7 utility has an obligation to seek pre-approval before
8 incurring costs, I'll say substantial costs for your
9 benefit, and it failed to do so, would it be
10 reasonable that those costs incurred prior to that
11 approval is obtained are disallowed?

12 A. I can't answer it. It's hypothetical,
13 and as I mentioned before, I don't know the
14 definitions of the terms. I don't know if there is a
15 cutoff. I mean, are OVEC's CAPEXes included? I
16 am -- not answerable, I'm sorry.

17 Q. So as an auditor, if you are auditing a
18 utility and they have an obligation, the utility has
19 an obligation to seek pre-approval of capital
20 expenditures and that utility failed to do so, would
21 you as the auditor consider that those incurred costs
22 incurred prior to the approval would be disallowed?
23 That's what I am asking.

24 A. I --

25 MS. KERN: Objection, your Honor.

1 Dr. Fagan --

2 EXAMINER PARROT: Dr. Fagan, hold on a
3 second.

4 MS. KERN: Objection to the extent this
5 question was asked and answered. I think she said
6 she would need more information. It was not
7 something she looked at.

8 MS. WHITFIELD: I am asking not so much,
9 your Honor, in the context of AEP but just in general
10 as she is an expert in the energy utility, if she is
11 auditing a utility company, I am not speaking
12 specifically to AEP but just in general, if she is
13 auditing the utility company and they had an
14 obligation to seek pre-approval before -- before
15 incurring costs or requesting recovery of those costs
16 from -- from the Commission and they failed to do so,
17 would you as the auditor in the audit report flag
18 those costs as disallowed.

19 EXAMINER PARROT: Go ahead and respond,
20 Dr. Fagan.

21 A. Well, the audit is about prudence, so
22 I'm -- I don't want to come to conclusions about
23 allowance and disallowance. That's like a broader,
24 different category of decision-making.

25 Q. Okay. Would you consider if a utility

1 had an obligation to seek pre-approval before
2 incurring certain costs and seeking recovery of those
3 costs and they failed to do so, that those costs --
4 incurring those costs was prudent?

5 MR. SCHULER: I'll renew my objection.
6 There is no foundation for the basis of this
7 question.

8 EXAMINER PARROT: Overruled.

9 A. Could I hear the question again?

10 Q. I can restate it, if you want, or repeat
11 it, I guess.

12 EXAMINER PARROT: Go ahead.

13 Q. If a utility has an obligation to seek
14 pre-approval before incurring certain capital costs
15 and seeking recovery of those capital costs and they
16 failed to do so, wouldn't you, as the auditor, deem
17 that to be imprudent?

18 A. You would need more information to make a
19 decision. It's just -- it's just too broad.

20 Q. So are you -- well, what other
21 information would you need? If a utility company has
22 an obligation to seek pre-approval and they failed to
23 do so, how would that activity be a prudent action by
24 the Company?

25 A. I'm sorry. It's just too broad a

1 question.

2 MS. KERN: Objection to the last question
3 as a compound question. I think if you could, you
4 know, I think you had two questions. If we could
5 take the first one first.

6 MS. WHITFIELD: Sure.

7 Q. (By Ms. Whitfield) Dr. Fagan, you --
8 throughout your experience you determine prudence
9 almost on a daily basis, I would say, correct?

10 A. Not a daily basis but, you know --

11 Q. Regularly.

12 A. From time to time as part of our work.

13 Q. Okay. And just in general, in general,
14 if a company that you are auditing has an obligation
15 to seek pre-approval for certain costs and they don't
16 do that, that would not be prudent; is that fair to
17 say?

18 MR. SCHULER: Objection, asked and
19 answered. She said she didn't know. It's too broad.

20 EXAMINER PARROT: Ms. Whitfield, I think
21 we've answered that already. I thought we were
22 focused on what additional information she might
23 need. Maybe get back to that, Ms. Whitfield.

24 MS. WHITFIELD: Sure.

25 Q. (By Ms. Whitfield) If you are in a

1 situation where a company has not obtained the
2 pre-approval and you -- in order to determine whether
3 that is a prudent action or those incurred costs were
4 prudent, what additional information would you need,
5 Dr. Fagan?

6 A. You would need a lot of information
7 about -- about the context and -- it's a whole
8 project, right? It's not something I can say -- you
9 know, it's not something you can answer
10 theoretically. It's what you would look at on a
11 case-by-case basis.

12 Q. Okay. One second. My other laptop just
13 decided to -- hold on one second.

14 Okay. If I could have you turn to what's
15 been marked as OCC Cross-Exam Exhibit 10.

16 A. Okay. I'm there.

17 MS. O'BRIEN: I'm sorry to interject
18 here. Are we marking that now? Because I don't have
19 it in my list of items that has actually been marked.

20 MS. WHITFIELD: I can mark it. I wasn't
21 necessarily because I suspect I am going to hear from
22 this witness she hasn't seen it before.

23 MS. O'BRIEN: Okay.

24 MS. WHITFIELD: I was just using it.

25 MS. O'BRIEN: I apologize. I was just

1 unclear whether it has been marked or not. That's
2 fine, whatever you want to do.

3 MS. WHITFIELD: Okay. And for the record
4 I identify it as OCC Cross-Exam Exhibit 10 which is
5 the Joint Stipulation and Recommendation in Case
6 No. 14-1693-EL-RDR.

7 Q. Are you there, Dr. Fagan?

8 A. I am.

9 Q. And have you seen this document before?

10 A. No.

11 Q. Well, if I could just have you turn to
12 page 5 specifically, where it says paragraph 3,
13 "Additional PPA Rider Credit Commitment of AEP Ohio."
14 Do you see that?

15 A. Yes.

16 Q. If you could take a moment to read that,
17 at least the introductory paragraph there.

18 A. I've read it.

19 Q. Okay. And do you see where it says, I
20 don't want to focus so much on the amounts that are
21 listed there in the planning years because I will
22 note for the record that those amounts subsequently
23 changed, but I am more focused on timing issues. And
24 the timing in this paragraph of these rate credits,
25 additional PPA Rider credits, is reflected in two

1 ways. If you look three lines down, it says, "If, in
2 any of the last four years of the PPA Rider...." Do
3 you see that language?

4 A. Yes.

5 Q. Okay. So it's talking about the timing
6 in the context of any of the last four years of the
7 PPA Rider. Do you see that?

8 A. Right. We audited -- we didn't audit
9 these particular years.

10 Q. Correct. I am not asking --

11 A. Okay. All right.

12 Q. I am talking about the last four years of
13 the PPA Rider just in general. Last four years of
14 the PPA Rider. Do you see that language?

15 A. Okay. Yes.

16 Q. Okay.

17 A. Yes, yes, I'm sorry.

18 Q. And you are -- are you aware that the
19 Rider PPA was originally contemplated to run through
20 2023-2024?

21 A. I think we do mention that in the report.
22 I usually just pull this up electronically and do
23 word searches but somehow, looking through paper, is
24 just -- it's my default. We do mention, I think it
25 was May -- is it May 2024? I can look that up. We

1 could probably go on without me finding that exact
2 reference, but I could if you give me a moment.

3 Q. Yeah. I mean, you would at least agree
4 the originally -- the PPA Rider was originally
5 supposed to extend beyond.

6 A. I don't know about "originally" because I
7 know there is a long history of this. But I think it
8 was sort of the next -- the next marker in time. Let
9 me -- let me find my file because I have got it in
10 there. It's just going to be easier to search
11 electronically.

12 Q. I did not see, just for reference, where
13 you referenced this time period in your audit report.
14 Maybe I can short circuit this and say --

15 A. I am trying to search for 2024 in my
16 electronic version and it's giving me 2010, 2019,
17 2018. It's somehow only seeing the first two digits.
18 I am trying to -- okay. Let me try one more time.

19 MR. SCHULER: Page 26.

20 THE WITNESS: Yeah. Yes.

21 MR. SCHULER: Keep this moving.

22 A. Okay. Exactly. So -- so in section
23 4.1.2 and that is -- I think it is page 26 or 27.

24 Q. It says that the PPA Rider was to be
25 extended through May 31 -- or, the ESP that contained

1 the PPA Rider was extended through May 31, 2024. Do
2 you see that?

3 A. Yes. That was what I was recalling. So
4 amended application that it goes through May 2024.
5 And it's -- the Commission Opinion and Order,
6 generally authorized to continue through May 31,
7 2024. That's it. I'm sorry it took so long.

8 Q. Okay. No problem.

9 And are you aware that under House Bill 6
10 that the Rider PPA ended earlier than May 31, 2024
11 and was replaced by the latest generation rider
12 beginning in 2020.

13 A. Yes, I am aware.

14 Q. And so could we agree that the last two
15 years of the PPA Rider would have been this audit
16 period, 2018 and 2019?

17 MS. BOJKO: Your Honor, I am not sure if
18 I am the only one. I think Ms. Whitfield froze and I
19 didn't hear the whole question.

20 MS. WHITFIELD: Sorry. I will repeat it.
21 Can people hear me now?

22 MS. BOJKO: Yes.

23 A. I can hear you.

24 Q. So would we -- with the PPA Rider ending
25 December 31 of 2019, would you agree with me that the

1 last two years of the PPA Rider were 2018 and 2019,
2 which is this audit period?

3 A. It sounds like you are comparing it to
4 this other document we looked at where they are
5 talking about the last four years. That document was
6 from a number of years ago so I don't know if they
7 mean in the last four years or they mean -- I -- I
8 can't determine. It's maybe a legal thing. They've
9 got planning years, you know, 2020, 2021, to 2024,
10 those are four years, but the PPA is like superseded
11 by the LGR. I don't know how this is going to be
12 defined. I do not know.

13 Q. Okay. So back to your referencing the
14 Joint Stipulation that was marked as OCC Cross-Exam
15 Exhibit 10, does reference that "in any of the last
16 four years the PPA Rider" and then it goes on to
17 calculate how certain credits would be -- would be
18 calculated. And again, I am not focused on the
19 amounts. And it contemplates through 2024 just like
20 the PPA Rider was supposed to run through 2024,
21 correct?

22 MR. SCHULER: Objection. The question
23 asks the witness to opine on a document she said she
24 has not seen before. It also is another document
25 that predates the entries on rehearing which

1 materially changed the PPA Rider. Thus, this is not
2 relevant, and a prejudicial line of questioning.

3 MS. WHITFIELD: Well, I can turn to the
4 Entry on Rehearing, your Honor, if you would prefer.

5 Q. (By Ms. Whitfield) If you want to turn to
6 OCC Cross-Exam Exhibit 7, Dr. Fagan. And turn to
7 page 23.

8 MS. WHITFIELD: And for the record I will
9 identify OCC Cross-Exam Exhibit 7 as the Second Entry
10 on Rehearing dated November 3, 2016, in Case No.
11 14-1693-EL-RDR.

12 EXAMINER PARROT: Thank you.

13 A. I'm on page 23, yes.

14 Q. And if you look towards the bottom of the
15 page about eight lines up from the bottom, there is a
16 sentence that starts "because." And it talks about
17 "Because the affiliate PPA will no longer be included
18 in the PPA rider, AEP Ohio requests that the
19 \$100 million credit commitment be reduced," and then
20 it goes on to set forth what those specific credit
21 requirements are, those amounts. Do you see that?

22 A. I see it. This is not a document I'm
23 familiar with so this is -- I have no context for
24 this. I am just reading words.

25 Q. Okay. Sure. So let me just -- maybe

1 I'll just cut to the chase here.

2 So in your analysis in the audit report,
3 LEI's analysis in the audit report, LEI or you did
4 not look to see whether or not AEP Ohio was obligated
5 to or did, in fact, comply with this additional
6 credit obligations set forth in both OCC 12 and OCC
7 Exhibit 7 in the Entry on Rehearing.

8 MR. SCHULER: Objection. Lack of
9 foundation and the question assumes facts not in
10 evidence.

11 MS. WHITFIELD: Your Honor, I just asked
12 her during LEI's analysis and during the audit if
13 they considered or looked at whether AEP Ohio had
14 complied with the additional credit commitment set
15 forth in the Stipulation and amended in the Entry on
16 Rehearing that's marked as OCC Exhibit 7. If they
17 didn't look at it, she can say no, we didn't look at
18 it.

19 MR. SCHULER: Objection, your Honor. I'm
20 sorry. Yeah, and that's -- that's the point.
21 Assuming there is some sort of commitment and there
22 is an obligation which has not been established by
23 this witness, she said she was not familiar with OCC
24 Exhibit 7 or Exhibit 10.

25 EXAMINER PARROT: Go ahead and rephrase,

1 Ms. Whitfield.

2 Q. (By Ms. Whitfield) Dr. Fagan, did you or
3 LEI or your team look at any docket or any entries
4 that imposed obligations on AEP Ohio to make certain
5 credits to the PPA Rider?

6 A. That was out of scope so, no, we did not.

7 MS. WHITFIELD: Thank you. That's all
8 the questions I have, your Honor.

9 EXAMINER PARROT: Thank you.

10 OEG.

11 MS. COHN: No questions, your Honor.

12 EXAMINER PARROT: IEU-Ohio.

13 MR. MCKENNEY: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. McKenney:

17 Q. Good morning, Dr. Fagan. My name is
18 Bryce McKenney. If you can see me, I am in this box
19 here.

20 A. I can see you. Good morning,
21 Mr. McKenney.

22 Q. I'm going to do my best to just cover
23 areas that have not already been discussed so we do
24 not retread past lines of discussion. But I will
25 have to ask you to bear with me a little bit as it's

1 possible that may happen.

2 I want to begin on page 9 of the audit
3 report. I believe both Mr. Finnigan and
4 Ms. Wachspress have asked you questions on this
5 particular page. I'll give you just a second to get
6 there.

7 A. I'm there.

8 Q. All right. And it states there on that
9 page the language we've discussed that "LEI's
10 analysis showed that some of the time, the PJM energy
11 price did not cover fuel and variable cost, though
12 LEI's analysis did not fully evaluate a
13 re-dispatching of the OVEC units," correct?

14 A. Yes, that's correct.

15 Q. Okay. What would you do to fully
16 evaluate a re-dispatching of the OVEC units?

17 A. That -- that was out of scope. I can
18 answer theoretically, what is a dispatch, what do you
19 do.

20 Q. That is my question. What would you do
21 to evaluate re-dispatching the OVEC units?

22 A. We would use an hourly dispatch model
23 that's -- these are extensive projects. It's a whole
24 scope of work and it's work that LEI does. You would
25 need, you know, all the costs of the plant. You

1 would need PJM -- again, backward-looking analysis,
2 right? So you would be able to get data so you would
3 have data on energy prices in PJM on an hourly basis,
4 plant costs. Because these are coal plants, you
5 would want to have good information about startup
6 costs, minimum -- actually you use this in any
7 dispatch model. You have got a whole supply curve
8 full of power plants and their variable costs, fuel
9 costs, assumptions for costs of fuel, minimum run
10 times, startup times, et cetera. And you would run
11 that model and you can look at the hours in which it
12 is economic for that plant to be dispatched.

13 And so based on an analysis I suppose a
14 company would say, well, we need a certain amount of
15 hours of, you know, economic earnings to dispatch --
16 or actually the RTO can do that. The RTO can take
17 the cost of a plant and, you know, ask it to -- I
18 mean, this is information that a plant operator gives
19 to the RTO for, you know, economic dispatch. So it's
20 completely doable. It's a big project.

21 Q. To your knowledge, OVEC has not conducted
22 an evaluation of re-dispatching the units; is that
23 correct?

24 A. We didn't ask in the -- in the audit
25 period. I don't -- you know, they may have. We

1 didn't ask them for that.

2 Q. Similarly, to your knowledge then, AEP
3 Ohio has also not conducted an evaluation of
4 re-dispatching the OVEC units, correct?

5 A. I don't know.

6 Q. Okay. You state here that you did not
7 fully evaluate re-dispatching the OVEC units. So my
8 question is, would it be your recommendation that a
9 full evaluation of re-dispatching the OVEC units be
10 conducted?

11 A. So we recommended that they reconsider
12 the must-run offer strategy and, you know, we were
13 specific. Things that are involved in those
14 decision-makings, right, looking at demand forecast,
15 price forecast, et cetera. And then, of course, all
16 the other information that the Company knows about
17 its plant, namely its costs and its physical,
18 technical risk. So all those pieces, they could
19 contribute to a dispatch model or they could
20 contribute to sort of a forward profit loss. It's --
21 it's the gathering of the information together that's
22 important to look at which is -- which is what we
23 recommended.

24 Q. Thank you.

25 So the answer to my question about

1 whether you would recommend an evaluation be
2 conducted of re-dispatching the OVEC units, would you
3 agree is "Yes"?

4 A. I don't think you would have to do a
5 re-dispatch to reconsider -- what we've recommended,
6 reconsider the must-run offer strategy. You could do
7 the, you know, brief going-forward analyses that we
8 talked about as well. So you wouldn't have to do a
9 big look-back on dispatch. You know, it might inform
10 opinions but I don't think you would have to do that.

11 Q. Okay. So you could re-evaluate the
12 must-run strategy without conducting a full
13 evaluation of re-dispatching the OVEC units; is that
14 fair?

15 A. You mean the Company or you mean London
16 Economics?

17 Q. Either.

18 A. So for our purposes we wanted to
19 understand -- the scope of the audit is understanding
20 the disposition of energy and capacity. So to
21 understand the disposition of energy, we looked at
22 the must-run offer strategy. We looked at monthly
23 data which is indicative. So you don't need a
24 dispatch model to do that. So, for that purpose,
25 even though you don't need it -- now I have lost

1 track of your question, I'm sorry.

2 Q. I can move on to the next one actually so
3 that's no problem.

4 A. Okay.

5 Q. Based upon your answer, the Company or
6 London Economics could determine that the must-run
7 strategy is not optimal even without conducting a
8 full evaluation of re-dispatching the OVEC units; is
9 that right?

10 MR. SCHULER: Objection,
11 mischaracterization.

12 MR. MCKENNEY: I don't think there is
13 much of a characterization there, your Honor. It's a
14 reasonable follow-up question to my previous one.

15 I'm sorry, your Honor. I think you may
16 have been on mute.

17 EXAMINER PARROT: Sorry, Mr. McKenney.
18 Overruled.

19 MR. MCKENNEY: Thank you.

20 A. So do you mean retrospectively or going
21 forward?

22 Q. Start with retrospectively first.

23 A. So retrospectively, we didn't need a
24 dispatch model to indicate that the must-run offer
25 strategy might not be optimal and it would be a good

1 idea to look at it. We didn't conclusively look at
2 every hour or as we said, you know, try alternate
3 dispatch -- or offer strategies; so, hence, the
4 recommendation to reconsider.

5 Q. On what -- sorry.

6 A. And then on a going-forward basis, that
7 that wouldn't be LEI's role but a company could use a
8 dispatch model or not, right, they could use sort of,
9 you know, their own costs, their own startup times,
10 their own minimum run times and compare it -- all the
11 costs and risks and compare it what -- with what
12 their projected benefits would be, a week out, a
13 month out, whatever, and I do believe we said that.
14 A week to a month, let's say, and again you might
15 want scenarios of prices because, you know, prices
16 aren't that predictable. You wouldn't need a
17 dispatch model to do it. It probably wouldn't hurt
18 but I don't think you would absolutely have to have
19 it.

20 Q. Okay. So looking back at page 9 then,
21 we've talked about this language in the second
22 paragraph of Section 1.3 talking about -- I will just
23 read the sentence: "There may be other
24 considerations, such as providing employment at the
25 plants, or the plants' contribution to fuel diversity

1 in the State, that outweigh the impact on ratepayers,
2 which the Ohio legislature takes into consideration."
3 And I want to focus on that impact on ratepayers. As
4 that term is used there, it could be understood as
5 the economic impact to ratepayers? Would that be
6 fair?

7 A. That's what we meant. The impact of the
8 first sentence which is that the plants cost more
9 than the cost of energy and capacity that could be
10 bought on the wholesale markets and that's what we
11 meant. That's the impact on ratepayers in our
12 sentence.

13 Q. Okay. So I want to look down then on the
14 same page, and it states, "During some periods of
15 time, a must-run strategy can be optimal, but at
16 other times it may not." This is the last sentence
17 on the page. Do you see that there?

18 A. Yes.

19 Q. When you use the term "optimal" there,
20 you mean on an economic basis; is that correct?

21 A. On -- yes, counting all the potential
22 costs and earnings, et cetera, that might be the most
23 cost effective way to go.

24 Q. And you would agree then that running the
25 plants on the optimal economic basis would otherwise

1 reduce charges to ratepayers to operate the plants,
2 correct?

3 A. I am -- I don't understand. I'm sorry.

4 Q. Running the plants in the most optimal
5 economic basis would otherwise reduce the charges to
6 ratepayers.

7 A. I would agree with that sentence except
8 the word "otherwise" is throwing me off.

9 Q. Okay. If I rephrase without "otherwise,"
10 which I will endeavor to do now, you would agree that
11 running the plants on the optimal economic basis
12 would reduce the charges to ratepayers for the
13 plants; is that correct?

14 A. Probably. We don't know the future but
15 our suggestion was to reconsider must offer. So in
16 the report we describe that must offer is -- in that
17 two-year period has been sort of the standing way
18 that plants are offered. We're not saying don't do
19 that. But what we are saying is the flexibility to
20 look into, you know, to reconsider what you are doing
21 on must offer, more flexibility gives you more
22 opportunity to, you know, react to circumstances,
23 et cetera. And in -- in that way, you could reduce
24 costs. So that's why our recommendation is to
25 reconsider.

1 Q. Thank you.

2 I think part of -- the beginning of your
3 answer was that maybe my question was too broad, so I
4 will try once more.

5 You would agree that, during the audit
6 period, running the plants on a must-run strategy
7 increased the charges to ratepayers of the plants; is
8 that correct?

9 A. Relative to other -- relative to --
10 "increased" is a relative term. So relative to
11 running on a unit commitment -- excuse me, on an
12 economic commitment sometimes?

13 Q. That's right.

14 A. Possibly sometimes. That's what our
15 numbers in Figure 26 show. They are indicative.
16 Again, we didn't do an hour by hour, but it's
17 indicative that a more flexible approach might have
18 improved the bottom line.

19 Q. All right. I think I have exhausted that
20 question. I will move on.

21 We are going to move to page 21 now.
22 This is a clarifying line of questioning. I will
23 give you a minute to get there.

24 A. Okay. I'm there.

25 Q. Look at the last sentence of the first

1 paragraph in Section 3.3. It reads: "To be clear,
2 the OVEC units are not offered as 'reliability
3 must-run' units; simply as must-run units"; is that
4 correct?

5 A. That's correct.

6 Q. Reliability must-run is actually a PJM
7 designation that a plant may contractually run for
8 reliability; is that right?

9 A. That's correct. I think we mentioned it
10 yesterday but we wanted to clarify these two terms
11 for the reader.

12 Q. Right. So a unit with a reliability
13 must-run contract with PJM is contractually obligated
14 to run in order to maintain reliability, correct?

15 A. I think the way I would say it is PJM has
16 identified that it needs a plant for reliability.
17 And the plant might not -- it might not stay on the
18 system.

19 So say you need the plant for reliability
20 certain times of the year, okay? There might be
21 congestion, high demand, whatever, right? But the
22 other times of the year the system -- the plant
23 doesn't earn enough energy market revenues or
24 combined with capacity revenues to keep it operating.
25 So in that case, for the reliability of the grid, PJM

1 offers it sort of it's you call it maybe an
2 out-of-market contract so that it can be there for
3 reliability but not for economics, right? It's not
4 necessarily economic most of the time.

5 Q. And that's my point. A plant that has
6 executed a contract or a reliability must-run
7 contract is obligated to run.

8 A. That -- that's my understanding. Maybe
9 in particular times under particular circumstances
10 but I'm not sure about those details. I mean, that
11 might be part of what PJM requires like if the system
12 is XYZ percent, you know, congested in that area.
13 There might be specific times that they expect it to
14 run. It may not be all the time.

15 Q. Okay. So because the OVEC units were not
16 reliability must-run units, they were not
17 contractually obligated to maintain a must-run
18 strategy during the audit period; is that correct?

19 A. That is correct.

20 MR. SCHULER: Objection.

21 MR. MCKENNEY: I think the witness
22 answered the question.

23 MR. SCHULER: Assumes facts not in
24 evidence, specifically the contract for must run.

25 EXAMINER PARROT: She's already answered

1 and the objection is overruled.

2 Q. (By Mr. McKenney) The must-run strategy
3 by the OVEC units is also considered a
4 self-commitment strategy, correct?

5 A. Correct.

6 Q. And that is because nobody other than
7 OVEC itself made the commitment to run the plants
8 regardless of energy prices, correct?

9 A. I'm not sure that's really how it's
10 described in the markets. Self-commitment is self --
11 self-scheduling. So you are telling PJM, you know,
12 here is -- here is our minimum, our minimum
13 operations and we are going to -- you know, our plant
14 is on line. It's running. It's going to run
15 tomorrow. It's, you know, day-ahead, it's going to
16 run tomorrow and here's the minimum we are going to
17 run.

18 I think the fact that they are scheduling
19 that, you know, rather than PJM, that's the term --
20 that's the term "self" but, you know, it's a level of
21 operations that they are saying, you know, we are
22 going to run, you know, regardless of the price of
23 energy and, you know. That's maybe a more accurate
24 way to say it.

25 Q. Okay. So whether to operate the plants

1 on an economic must run for emergency basis was at
2 the sole discretion of OVEC; is that right?

3 A. That -- that is my understanding that
4 OVEC -- you know, the plant operator chooses the
5 commitment status.

6 Q. Thank you.

7 Now, I want to go back to some of the
8 questioning that you had with Mr. Finnigan. I know
9 it was a long time ago but I believe -- I'm not
10 trying to paraphrase your answer, so please correct
11 me if I am mistaken. You testified along the lines
12 that the plants were in the money in 2018 more than
13 they were out of the money, and out of the money in
14 2019 more than they were in the money; is that
15 correct?

16 A. Let's look at Figure -- it's -- excuse
17 me, confidential Figure 26. And we didn't look at
18 every single month. We chose seven months, I think.
19 We chose seven months. And in the seven months --
20 again, chosen I wouldn't say at random. We wanted a
21 sampling across the year, but in the seven months, on
22 a monthly average basis, not hourly, et cetera,
23 compared with, you know, PJM round-the-clock average
24 monthly prices, the plants were somewhat out of the
25 money in four months and more in the money in three

1 months and that was -- I don't want to go into too
2 much detail. That was weighted more -- it was a cold
3 winter and cold January, et cetera. So -- so the
4 in-the-money months, again not 24 months but the ones
5 we looked at, that was weighted towards 2018, and
6 then the 2019 were more of the out-of-the-money
7 months.

8 Q. So when the plants are in the money, is
9 it your understanding this would result in a charge
10 to customers under the PPA Rider; is that correct?

11 A. So "in the money" is just our sort of
12 Wall Street, you know, I don't want to say slang but
13 what it means is they are being paid in the -- the
14 energy market earnings are greater than their energy
15 charge. So that's in the money. They are operating.
16 You have to pay for your fuel but you are earning
17 money in PJM.

18 But going to the charges that are billed
19 to the rider, those charges aren't just the energy
20 charges, right? So those charges include demand
21 charges, other categories. So I think your question
22 kind of connected this energy market to the PPA Rider
23 but there is something important in between which is
24 demand charges.

25 Q. Let's turn to page 31 of the audit

1 report. It is just under Figure 12. The figure is
2 confidential. I am going to ask you about the
3 sentence just below that figure.

4 A. Okay.

5 Q. Your analysis confirmed that the ICPA
6 costs AEP Ohio more than the value of the OVEC
7 plants' energy and capacity in the PJM market; is
8 that right?

9 A. That's right.

10 Q. And this conclusion is consistent with
11 the net impact on AEP Ohio's PPA Rider, correct?

12 A. Correct.

13 Q. And that PPA Rider was a charge to
14 customers in every quarter during the audit period;
15 is that correct?

16 A. Let me check the chart. There might have
17 been one where it was a credit.

18 Q. Figure 16 on page 35, I believe.

19 A. Thank you.

20 Looking at 2018 and 2019. So there
21 were -- so this is not confidential. Okay. So
22 January 2018 was a credit and then the other 23
23 months there were charges.

24 Q. So even when the plants are in the money,
25 the PPA Rider is still a charge to customers -- let

1 me rephrase. Sorry. I will strike that.

2 Even when the plants are in the money,
3 the PPA Rider is still a charge to ratepayers,
4 correct?

5 A. That's correct. Because the PPA includes
6 demand charges.

7 Q. So the PPA Rider is not a very big
8 financial hedge mechanism, is it?

9 A. We didn't examine hedging.

10 Q. Okay. I am going to move on to a new
11 line of questioning here on the levelized cost of new
12 entry on pages 23 and 24.

13 A. Yes. I'm there.

14 Q. Disregarding the figures here on the page
15 just for a moment. Generally speaking, when the
16 price of energy and capacity in PJM are lower than
17 the levelized cost of energy, it is an indicator that
18 market prices do not support investment in a new
19 power plant. Would you agree with that
20 characterization?

21 A. Yes.

22 Q. So in the alternative, if market prices
23 are higher than the levelized cost of energy of a new
24 plant, then it could be a signal to investors that
25 the market -- I'm sorry. I'll strike that. I

1 restated the same question.

2 The levelized cost of energy is not only
3 a useful signal to determine whether a new plant
4 would be economic and should be built, but can also
5 be a signal on whether an existing plant is
6 uneconomic and may be time to retire; is that
7 correct?

8 A. I am trying to see where we said that.

9 Q. I am asking for an opinion from you, but
10 I think the very last sentence of page 23 would point
11 you in the right direction. It states "If expected
12 market prices are lower than the levelized cost of
13 energy, it is a signal not to build a plant." So
14 I'll rephrase my question here.

15 You would agree with that last sentence,
16 "If expected market prices are lower than the
17 levelized cost of entry, it is a signal not to build
18 a plant," correct?

19 A. Correct.

20 Q. And the levelized cost of energy can also
21 be a useful signal for existing plants on whether
22 they are economic and should continue operating,
23 correct?

24 A. It's a piece of the market that you would
25 look at. You probably wouldn't look at one year of

1 energy prices. You probably want to look out three
2 to five years. And if you're a plant which is
3 already operating, then there's pieces of the
4 levelized cost like level of investment or whatever.
5 It would be a piece of your decision-making but it's
6 not like you look out two or three years and say no,
7 it doesn't look good and -- you know, a retirement
8 decision is a little more complex. But it's a piece
9 of what people might look at, sure.

10 Q. So in a competitive context, you could
11 use a levelized cost of entry to determine whether a
12 plant would be viable on a going-forward basis; is
13 that correct?

14 A. That's what people use it for, yes.

15 Q. So on page 24, that last sentence of the
16 first paragraph reads: "It also implies that in a
17 competitive context, the OVEC plants would not be
18 viable on a going-forward basis," correct?

19 A. That's correct given how the costs are in
20 the demand charge and -- yes. Given the demand
21 charge, yeah.

22 Q. So you conducted this
23 levelized-cost-of-entry analysis and determined that
24 the OVEC plants would not be viable on a
25 going-forward basis, correct?

1 A. So the OVEC cost, which was, I think,
2 57.04 per megawatt-hour, it was over 50, that is not
3 a levelized cost that we developed. That is from --
4 from their annual report which we cite I think a
5 little earlier so that's -- that's from the OVEC
6 annual report so that puts a pin in that number.

7 And then the cost of generic new entry
8 PJM for CCGT, that's a standard calculation that one
9 in economics does for our analysis of the PJM market.
10 We didn't do it specifically for this project but it
11 gives you a benchmark cost. So that's how the
12 analysis for these two pieces came together.

13 Q. Okay.

14 A. But we didn't do a levelized cost of the
15 OVEC plants. We just looked at their -- you know,
16 the bottom line per the OVEC company.

17 Q. Dr. Fagan, I am going to try to rephrase
18 the question. As you sit here today, you agree with
19 that last sentence in the first paragraph on page 24
20 that the levelized-cost-of-entry analysis in the
21 audit report implies that, in a competitive context,
22 the OVEC plants would not be viable on a
23 going-forward basis, correct?

24 A. That's part of their decision but that's
25 what the market price is at the time of us doing the

1 audit, and given the assumptions that we made in the
2 LCOE analysis, it looks like it's cheaper to build a
3 new CCGT to meet demand in PJM than to have the OVEC
4 plants going forward.

5 Q. Okay. So you do not, today, disagree
6 with the conclusion in the audit report there.

7 A. No.

8 Q. Thank you.

9 All right. I am going to move on now to
10 page 26, Section 4.2. I am actually on page 27.

11 A. Okay.

12 Q. And that fourth bullet point reads that
13 you conducted analysis on whether AEP Ohio's PPA
14 Rider true-up process was in the best interest of
15 ratepayers, correct?

16 A. Correct.

17 Q. For purposes of your analysis, how did
18 you interpret "best interest of ratepayers" there?

19 A. Was the true-up process the -- you say
20 the least costly. Was it -- yeah, was it the least
21 costly way to handle the true-ups.

22 Q. So it's your testimony that the best
23 interest of ratepayers is the least costly outcome?

24 A. In this context which is pretty narrow,
25 it's, you know, given you've got this rider in place,

1 given there is costs in there, how were the true-ups
2 performed in this -- defined in this context which is
3 it's sort of a detailed accounting process, then,
4 yes, it's accounting. You're just taking costs that,
5 you know, were deferred, ratepayers didn't pay them,
6 and then you are truing up, you would want to do that
7 in the least-cost manner, yes.

8 Q. And there are other matters where the
9 best interests of ratepayers would also require the
10 least-cost outcome; is that correct?

11 MS. KERN: Objection. The question is
12 vague. I think she just specified she is talking
13 about true-ups in this context.

14 MR. McKENNEY: Your Honor, I am asking
15 about other contexts that this language may be
16 applied to. I think it's a reasonable question.

17 MS. KERN: You can ask her that question.
18 I mean, if there is a different context.

19 MR. McKENNEY: I'll rephrase.

20 Q. (By Mr. McKenney) This term "best
21 interest of ratepayers" as it is used in other
22 contexts, the least -- I am going to strike. I am
23 going to try this again here one more time.

24 The best interests of ratepayers as it
25 applies in other contexts may require the least

1 costly outcome; is that correct?

2 A. I would say it should consider the least
3 costly outcome.

4 Q. And would you say it should be a primary
5 consideration?

6 A. It depends.

7 MR. SCHULER: Objection.

8 MR. MCKENNEY: I --

9 MR. SCHULER: It's vague. What context,
10 by what entity, under what circumstances.

11 MR. MCKENNEY: I can move on, your Honor.
12 The question was answered, but I don't have further
13 questions on that subject.

14 EXAMINER PARROT: I'm not sure -- the
15 witness had started to answer, I think.

16 I am sorry, Mr. Schuler. Can you give me
17 your objection again. You were all kind of talking
18 over each other there, so.

19 MR. SCHULER: Yeah. I objected that the
20 question is vague, that it does not define context or
21 entity or circumstances under which this analysis
22 would be conducted.

23 EXAMINER PARROT: Okay. I am going to
24 overrule that objection.

25 Dr. Fagan, had you finished your answer

1 though? You had said it depends and --

2 THE WITNESS: It depends. Ratepayers are
3 served by many things and, for example, reliability.
4 So if you are looking at a hypothetical, other -- I
5 guess we are talking very broadly here, other
6 decision-making processes about cost, cost is a
7 consideration. But other things, depending on the
8 context, are -- you know, the reliability is
9 important too. So it's -- it's -- I can't -- I can't
10 say anything more specific than that.

11 MR. MCKENNEY: Thank you, Dr. Fagan.

12 Thank you, your Honor.

13 Q. (By Mr. McKenney) I am going to move on
14 now to a discussion regarding the capacity factor
15 analysis you conducted. If we can move to page 107
16 of the audit report.

17 A. I'm there.

18 Q. Okay. Thank you. Capacity factor is
19 defined there in that second bullet point as a
20 measurement of the ratio of actual energy output to
21 the maximum possible energy output over a given
22 period of time, correct?

23 A. Correct.

24 Q. Capacity factor then does not at all take
25 into consideration market pricing; is that correct?

1 A. The definition does not. It's just a
2 physical generation. Leave that -- yeah, so that's
3 the answer, yeah.

4 Q. Market pricing may affect capacity
5 factor, but the capacity factor itself does not --
6 strike the question. I'll move on.

7 Each of the OVEC units minus one were --
8 because each of the units minus one were operated
9 with a so-called must-run strategy, they had higher
10 capacity factors; is that correct?

11 A. Higher than if they were offered as
12 economic?

13 Q. I think that's your conclusion. I am
14 trying to get at it in the audit report here. So
15 because -- I can rephrase the question.

16 Because each of the units minus one were
17 operated with a must-run strategy, they had higher
18 capacity factors than if they had been operated on an
19 economic strategy; is that correct?

20 A. That sounds right. I am looking for it.

21 Oh, yes. As compared to other coal
22 plants of similar sizes, et cetera, et cetera. Yes,
23 operating at higher than average. So our comparison
24 was other coal plants of similar sizes. That's
25 correct.

1 Q. And to your knowledge were these other
2 coal units in PJM operated with a must-run strategy
3 or based upon market prices?

4 A. Oh, I don't know unit by unit, but many
5 of the plants -- it's PJM overall and many of them,
6 you know, they have to compete in the market based on
7 cost, so some might have been must run, some not.

8 Q. So if other coal plants had to compete in
9 the PJM market on cost, it's your understanding that
10 many of those plants, if not the majority of those
11 plants, were operated on an economic basis, correct?

12 A. I don't know how many or how many
13 megawatts but, by definition, if you are competing on
14 cost, you are implying that you're operating -- you
15 are offering based on economic commitment.

16 Q. And so then your testimony would be
17 consistent with the fact the OVEC units were not
18 operated on a cost basis, correct?

19 A. Right.

20 Q. I don't know if there is more to the
21 answer. I think I heard "Right."

22 I will go to my next question then.

23 Similarly-sized coal plants in PJM, many
24 of them have either announced or are planning for
25 deactivation because they are either uneconomic or

1 outdated; would you agree with that?

2 A. Yeah. Where -- we have that -- where are
3 you looking?

4 Q. Just asking your understanding,
5 Dr. Fagan.

6 A. Well, yes, there have been -- I can't
7 talk about plants off the top of my head individually
8 but there have been widespread announcements of
9 retirements of coal plants, not just in PJM, but,
10 yes.

11 Q. And some of that is because plants with
12 lower operating costs typically have higher capacity
13 factors; would you agree with that?

14 A. I don't think it follows from the other
15 thing we just said.

16 Q. A plant with lower operating costs would
17 generally run more often if it was dispatched on an
18 economic basis; would you agree with this?

19 A. Run more often than a plant with higher
20 operating costs, do you mean?

21 Q. Yes.

22 A. Sure. I mean, if you have a plant with
23 lower variable costs, lower operating costs, and you
24 are offering it for economic commitment, you are
25 usually going -- you're going to get, you know, the

1 market, PJM, will accept your offer probably more
2 frequently than a plant with higher costs because
3 presumably it's bidding higher, and PJM is going to
4 take the lowest-cost plants first in the dispatch
5 stack so, yeah. I mean, unless there is some kind --
6 maybe there is a reliability issue or something, but,
7 broadly.

8 Q. So the high capacity factors for the OVEC
9 units was not a result of market prices signaling
10 them to run but, instead, as a result of the decision
11 by OVEC to operate the plants regardless of market
12 prices, correct?

13 A. Well, that's right because they didn't
14 use economic signals, correct.

15 Q. Thank you. That's all I have on that
16 subject.

17 I do want to look at a related subject
18 which is the EAF on page 107. EAF is the equivalent
19 availability factor which is the proportion of the
20 period where a unit is available without any outages
21 or equipment deratings. Do you agree with that?

22 A. That's correct.

23 Q. Would it be fair to say the capacity
24 factor and equivalent availability factor are
25 similar, where capacity factor is the output of the

1 unit, the equivalent availability factor is the
2 availability of the unit?

3 A. So we measured two different things. So
4 you could have a plant with really high availability.
5 The EAF could be high. But maybe it's an
6 expensive -- like you can have the EAF of like a
7 peaker. It can be available. But it's going to have
8 a low capacity factor. Peakers just don't run that
9 often. You only need them a certain number of hours
10 a year. So they are measuring two different things.
11 I wouldn't -- you know, I wouldn't conflate those, I
12 think that's the right word.

13 Q. Okay. But a plant without a higher
14 capacity factor for a period wouldn't necessarily
15 also have a higher equivalent availability factor
16 because the plant must be available to operate if it
17 is, in fact, operating. Would you agree with that?

18 A. You know, I would say maybe. I mean, you
19 could have a plant with an EAF, let's say it's really
20 only available 70 percent of the time. This is
21 totally hypothetical. Because, whatever, there is
22 issues or in a given year it was out for maintenance
23 for a month or two, let's say, and had a long
24 maintenance but if its EAF is 70 percent and it ran
25 the whole time, it would have a high capacity factor.

1 So again, I don't think you can -- what you are
2 trying to connect, I don't think it connects.

3 Q. I will try and short circuit this a
4 little bit. On page 112, the audit report says in
5 terms of the equivalent availability factor, units at
6 both plants performed better in 2019 than the
7 previous two years. This means they were generally
8 available to operate without any outages or equipment
9 deratings, correct?

10 A. They were available. They were more
11 available in 2019 than 2018.

12 Q. Okay. So like capacity factor --
13 actually strike that. I won't compare the two.

14 The performance of the plants in regard
15 to this sentence on page 112 is not related to their
16 economic performance, correct?

17 A. Right. EAF is not about economics. It's
18 about availability.

19 Q. Thank you.

20 You mentioned a few questions ago,
21 answers ago, that peaking plants don't run as
22 baseload. Peaking plants do not run as baseload.
23 That's a correct statement, correct?

24 A. By definition.

25 Q. Right. Peaking plants can be coal fired,

1 correct?

2 A. I -- I'm not sure about that. That
3 sounds unusual. Usually peakers have low -- they
4 have low capital cost to variable cost ratios, so
5 peakers, yeah, sometimes they are steam units.
6 Sometimes they run on oil. I'm not saying you
7 couldn't have a coal peaking unit, but I can't say
8 there isn't one. It just sounds very unusual.

9 Q. The distinction between a peaking plant
10 and a baseload plant is its marginal cost of
11 operations. Would you agree with that?

12 A. In the market, yes. But as a technical
13 matter, it's just -- it's a different kind of
14 technology. Peakers, you can start them up really
15 quick. You can ramp them up really quick. They do
16 have a high marginal cost of operation, especially if
17 you are running oil which is expensive. But it's
18 not -- but it's not just marginal cost. It's you
19 can -- the technology of the plant do what the system
20 is calling on a peaker to do.

21 Q. So peakers dispatch on an economic basis
22 because they would cost their owners a tremendous
23 amount of money if they were to run all the time; is
24 that correct?

25 A. I -- that's a given. That's a given.

1 That's why they are peakers. They, you know, they
2 don't run all the time. They would be out of the
3 money as we say.

4 Q. Okay. You testified I think to
5 Mr. Finnigan and Ms. Wachspress that the audit report
6 does not make any findings of imprudence, correct?

7 A. That's correct.

8 Q. There were ways to make improvements,
9 correct?

10 A. That's correct.

11 Q. So the audit report does not say that the
12 cost of activities that generated revenues were
13 prudently incurred either, does it?

14 A. We don't say that in the exec summary. I
15 think we use the term in the report. I don't think
16 it made it to page 9.

17 Q. Likewise, the audit report does not say
18 the Company's bidding strategy in the PJM capacity
19 markets was prudent, correct?

20 A. Let me read that. I'm not sure you are
21 correct.

22 Yeah, we say -- yeah, on page 50, in the
23 middle of the second paragraph, we're talking -- this
24 is confidential so I am not going to mention the
25 offer price, but our sentence is "LEI feels this

1 offer price was prudent."

2 Q. Okay. So I want to go back to our
3 peaking plant analysis.

4 MS. BOJKO: I'm sorry, Bryce. Can I
5 interrupt for a second? I have that language as
6 confidential. Is it not confidential? Are we
7 allowed to discuss that?

8 THE WITNESS: You are right. I'm sorry.
9 It's not just the chart. I'm sorry. My mistake.

10 MR. SCHULER: I couldn't get to the page
11 fast enough.

12 THE WITNESS: I'm sorry.

13 MR. MCKENNEY: So I won't ask any more
14 questions on that. It was not the intention of my
15 question to ask a question that would go into the
16 confidential record.

17 So my -- I can withdraw it if it helps.
18 I don't think there is any harm in your answer. I
19 actually would be happy if the whole question and
20 answer were struck from the record.

21 MR. SCHULER: Sorry. We are reviewing it
22 really quickly. I think we might be able to agree
23 that particular sentence that was just read by
24 Dr. Fagan is -- can be public. And just to confirm,
25 I believe she read the sentence, the second sentence

1 of the first full paragraph on page 50, correct,
2 beginning with "LEI feels"?

3 MR. MCKENNEY: Just "LEI" -- yeah, those
4 seven words there.

5 EXAMINER PARROT: I am not seeing how
6 that could be confidential.

7 MR. SCHULER: Yeah, we're okay with
8 leaving that as part of the public record, your
9 Honor.

10 MR. MCKENNEY: Thank you, your Honor.
11 Thanks, Mike -- Mr. Schuler.

12 Q. (By Mr. McKenney) A minute ago we were --
13 Dr. Fagan, a minute ago we were discussing a peaking
14 plant versus a baseload plant. Is it your
15 understanding that a baseload plant could become a
16 peaking plant if its marginal cost of operation
17 increased over time?

18 A. Just generally -- are you saying -- would
19 you -- if your marginal cost increased over time,
20 would you stay in the market and try to operate as a
21 peaker?

22 Q. That's my question. If the marginal cost
23 of operation increased for a given plant, would it --
24 could it continue to operate as a peaking plant
25 instead of a baseload plant?

1 A. It would depend on the whole cost
2 structure of the plant, I would say.

3 Q. Would you say it would be unreasonable to
4 operate a peaking plant under a must-run strategy?

5 A. It's not something I ever considered.
6 And I guess you would have to have a really bad
7 congestion pocket on the grid where only the peaker
8 plant could -- could provide the reliability or
9 whatever. I don't know. Not even congestion. It's
10 hard to imagine a situation like that. I haven't
11 actually thought about that.

12 Q. So you would agree it would have been
13 reasonable then for a peaking plant to offer --
14 operate under a must-run strategy.

15 A. It would be -- a peaking plant that
16 doesn't offer based on economics would be very
17 strange. I don't know that there aren't -- it's
18 highly unusual, I would say.

19 Q. It's because it would be uneconomic to
20 the plant owner. Would you agree with that?

21 A. It would be likely to be uneconomic.
22 If -- power markets are all different, maybe there is
23 a plant out there doing this kind of thing and making
24 money. You can't -- you can't eliminate that
25 possibility but it would be highly unusual.

1 Q. So it's your testimony then that
2 generally plants should be operated on an economic
3 strategy and not a must-run strategy?

4 A. So we were just talking about peakers. I
5 think now we are talking about just plants generally.

6 Q. You answered my question. It is your
7 testimony that -- I'll rephrase.

8 On an economic basis, a plant that has a
9 marginal cost of operation that is higher than what
10 it makes in energy markets, it would be uneconomic to
11 run on a must-run basis; is that correct?

12 MR. SCHULER: Objection. Vague and
13 incomplete hypothetical.

14 MR. MCKENNEY: Your Honor, I think we've
15 laid the foundation for the question. I think we've
16 gone over how plants should operate, what an economic
17 basis is. I don't think it's vague. I think I am
18 asking for the auditor's opinion as opposed to a
19 hypothetical. So I think the auditor -- or Dr. Fagan
20 should be allowed to answer if she has an answer.

21 EXAMINER PARROT: Dr. Fagan, if you
22 followed the question, go ahead and answer. If you
23 need clarification, you can ask for it, of course.

24 THE WITNESS: Maybe not clarification,
25 thank you, your Honor, but please just to repeat it.

1 Q. (By Mr. McKenney) A plant that has a
2 higher marginal cost of operation than what it makes
3 in energy markets would generally lose money if it is
4 not operated on an economic basis; is that correct?

5 A. Yes, I guess so. I wouldn't -- it's a
6 hypothetical situation that I've just never seen, you
7 know, in an energy market. You wouldn't -- well, I
8 suppose if you had a contract, but if you were just
9 getting paid, you know, out of the energy markets,
10 you would lose money.

11 MR. MCKENNEY: Your Honor, that's all the
12 questions I have.

13 EXAMINER PARROT: All right. Thank you.

14 MS. WHITFIELD: Your Honor.

15 EXAMINER PARROT: Go ahead.

16 MS. WHITFIELD: I'm sorry. Would it be
17 possible to take a quick personal health break? I'm
18 sorry.

19 EXAMINER PARROT: Just a moment.

20 Ms. Bojko, OMA is next. I was going to
21 get a sense, are you going to need a while? And I am
22 asking because it might make sense to just take a
23 lunch break rather than just a short break.

24 MS. WHITFIELD: Sure.

25 MS. BOJKO: Yes, your Honor. I probably

1 have an hour or so, I would think.

2 EXAMINER PARROT: Okay. Let's come back
3 around 12:30 and this should be considered your lunch
4 recess so we are off the record.

5 (Thereupon, at 11:58 a.m., a lunch recess
6 was taken.)

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1 Thursday Afternoon Session,
2 January 13, 2022.

3 - - -

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

6 OMAEG.

7 MS. BOJKO: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Bojko:

11 Q. Good afternoon, Dr. Fagan. I lost you
12 again. People keep moving. Do you see me?

13 A. If I speak I think I'll show up on your
14 screen. That happens to my screen when someone
15 speaks, I can all of a sudden see them.

16 Q. I see you now. Thank you. You were
17 right beside me and now you moved.

18 Dr. Fagan, my name is Kim Bojko. I am
19 representing OMAEG in this case, and I have some
20 additional questions for you and some clarifying
21 questions based on your prior testimony.

22 First, I want to ask you what you have in
23 front of you and what you've been referencing
24 throughout the cross-examination the last two days.

25 A. So I have paper copies of -- in a binder

1 of both the RFP, LEI's proposal, my prefiled
2 testimony, the final audit report, the errata, the
3 set of e-mails from September 8. And electronically,
4 if I go in my folders -- oh, my connection has been
5 lost. I need to reconnect to our server somehow.
6 Take one second. I go on lunch and I take my eye off
7 this thing for a second and it -- all right. Go back
8 to the folders.

9 Q. I mean, are the folders just the
10 exhibits, the cross exhibits?

11 A. Yeah, exactly. That's what they are.

12 Q. You referenced -- I thought you said, and
13 this is why I am asking, I thought you said in your
14 cross earlier today you were looking at your notes.
15 Do you have notes in front of you?

16 A. I'm not sure. I have -- I guess I have
17 markings on some of our reports.

18 Q. Okay. And --

19 A. Oh, I know. I think -- was it when I
20 highlighted and noted when things were confidential?

21 Q. I'm not sure. I thought you said notes
22 and that's what I was just asking what you were
23 referring to.

24 After last night, did you do a debrief to
25 discuss your testimony, either last night or this

1 morning, with anyone other than your -- anyone other
2 than Staff counsel?

3 A. Just the Staff counsel. Well -- yeah,
4 yeah.

5 Q. Did you speak to any Staff members?

6 A. Oh, right. Okay. So, yeah, we had a
7 call. So it was Staff -- it was Staff counsel and
8 Rodney Windle was on the call, yes.

9 Q. And you didn't speak with any other
10 party. You didn't speak with AEP, did you?

11 A. No.

12 Q. Were you in attendance or did you listen
13 into, I forget if it was virtual, I think it was,
14 were you in attendance or did you listen to AEP
15 Witness Stegall's deposition?

16 A. No.

17 Q. Did you read Mr. Stegall's transcript of
18 his deposition?

19 A. I think I read parts of that briefly.
20 Are they one of the exhibits?

21 Q. It was not one of our exhibits. I think
22 OCC sent it around in case they needed it for
23 purposes. It shouldn't have been forwarded to you as
24 an exhibit.

25 A. It's just --

1 Q. I was asking if you reviewed it.

2 A. The name is familiar. I didn't read all
3 the exhibits and things that were sent around in
4 their entirety. But I opened all the files and read
5 what they were -- what they were. It just rings a
6 bell, but.

7 Q. So you may have read the transcript that
8 was sent around to the parties?

9 A. Or parts of it.

10 Q. Did you discuss -- did you have any
11 discussions with AEP after the filing of the Staff
12 Report on September 16?

13 A. Not that I recall.

14 Q. On page 3 of your testimony, you stated
15 that you conducted the audit of AEP's PPA Rider for
16 2018 and '19 and that you used the word there "I."
17 Did you alone conduct the audit?

18 A. I had two LEI staff members, junior
19 folks, working with me.

20 Q. And then you also say you were
21 responsible for drafting the audit report. Did you
22 actually draft the audit report or did the team draft
23 the audit report?

24 A. I drafted some sections. And my staff
25 drafted other sections. But I am responsible for

1 reviewing their sections. So they are my
2 responsibility.

3 Q. So you would have reviewed the audit
4 report and you would have approved, so to speak, the
5 audit report; is that fair?

6 A. Correct. Absolutely, yes.

7 Q. And is it fair to say that you and LEI,
8 as a company, stand behind the audit report as
9 written?

10 A. That is correct.

11 Q. And that would include the findings and
12 conclusions contained therein, correct?

13 A. That's correct.

14 Q. Can we take a look at the errata sheet
15 that was marked as OCC Exhibit 2 yesterday? Do you
16 have that in front of you?

17 A. I do.

18 Q. Just for the record, the errata modifies
19 the audit report that was marked as Staff Exhibit 1
20 and 1A, correct?

21 A. That's correct.

22 Q. And when were the changes made? When was
23 this errata created?

24 A. In the end of December. So it's dated
25 December 28. I was rereading the audit report and

1 I -- I didn't like -- I explained before the page 20
2 and 23. And I had also been reading other materials
3 and realized that we didn't calculate the coal burns
4 correctly.

5 Q. So we will get into the individual
6 changes, but first I wondered who drafted the errata.
7 Did you draft it alone?

8 A. Yes.

9 Q. Did Staff suggest any of these changes?

10 A. They did not.

11 Q. Did AEP suggest any of these changes?

12 A. They did not.

13 Q. Isn't it true that the errata report
14 makes substan -- substantive changes to the audit
15 report by removing whole paragraphs and sentences?

16 MS. KERN: Objection to the extent that
17 the witness testified yesterday that it did not
18 change the substance of the audit report.

19 MS. BOJKO: Your Honor, sorry, you moved
20 on me too. Your Honor, I think the witness can
21 answer the question as proposed without being coached
22 about her prior testimony.

23 EXAMINER PARROT: I am going to overrule
24 the objection.

25 A. It does not materially change the audit.

1 Q. Doesn't it substantively remove
2 paragraphs and sentences from the audit report?

3 A. Yes.

4 MR. SCHULER: Objection to the word
5 substantive. Substantive is vague.

6 Q. And --

7 EXAMINER PARROT: Hold on. I'm just
8 noting -- she's answered. Objection is overruled.

9 MS. BOJKO: Thank you, your Honor.

10 Q. (By Ms. Bojko) You talked with
11 Mr. Finnigan yesterday about the first two changes
12 that were made, but I have a question regarding the
13 third bullet point. If you could turn to that. And
14 can you hear me okay, Ms. -- Dr. Fagan?

15 A. Yes.

16 Q. Okay. Our fan just kicked on. I just
17 wanted to make sure.

18 In the third bullet point, what is the
19 errata to the audit report for this third change?

20 A. So the errata is on pages 73 to 74 of the
21 audit, Exhibits 1 and 1A, that we incorrectly
22 calculated the monthly average days of coal inventory
23 for Clifty Creek and Kyger Creek. We based -- "LEI
24 based its calculations (incorrectly) on average burn
25 in each month. The inventory on hand should have

1 been calculated based on full load, instead of
2 average coal burn. LEI does not have the full load
3 data to calculate a new set of monthly averages. In
4 any case, there is no material impact on LEI's audit
5 results."

6 Q. Okay. Thanks for the explanation of why.
7 But I'm asking what changed. An errata changes the
8 words in an audit -- in a testimony or in the audit
9 report. What is physically changed by this third
10 bullet? What are you trying to change?

11 MR. SCHULER: I would caution the witness
12 that I believe it changes confidential information.

13 A. It changes confidential information, yes.

14 Q. Well, did you file a confidential errata?

15 A. We just filed this errata. Oh --

16 Q. What change -- I guess I don't -- an
17 errata is a change to prefiled testimony, deposition
18 testimony, here in this case it's an audit report.
19 What is changing in the audit report per this bullet?

20 MR. SCHULER: Again, I would caution the
21 witness if Ms. Bojko is asking her to read the actual
22 words that are supposed to be removed from the audit
23 report as a result of the errata, those are
24 confidential words that would need to be done on the
25 confidential record.

1 MS. BOJKO: Well, I mean, I would ask
2 your Honor how does he know that words are removed if
3 none of us have seen the change, how would AEP know
4 that that's the change? That's what I am trying to
5 ask. What is being changed? Is there a deletion?
6 Is a number being changed? She doesn't have to say
7 the numbers, but she can tell me what the change is.

8 A. The change -- well, we couldn't make a
9 complete change. We had the wrong way to calculate
10 average burns like we say in the errata. But like we
11 say in the errata, we don't -- we didn't have the
12 full load data to calculate the new set of monthly
13 averages, so we couldn't change something we didn't
14 have the new information to do it. But we wanted to
15 flag that, you know, upon reflection, we don't think
16 the numbers there were quite accurate.

17 Q. Okay. Well, when you thought numbers
18 were not accurate on page 20, you deleted the entire
19 paragraph. So are you suggesting that this whole
20 analysis on page -- pages 73 and 74 should be deleted
21 in their entirety?

22 A. No, we are not suggesting that.

23 Q. So again I ask, what are you suggesting
24 changes by an errata?

25 A. We didn't suggest the language. I think

1 more specific language, maybe it would have made
2 sense if I just caveated that we used average burns
3 instead of full load burns. And that might have been
4 much more clear.

5 MS. BOJKO: Your Honor, may we go off the
6 record for a minute?

7 EXAMINER PARROT: Yes.

8 (Discussion off the record.)

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

11 (Discussion off the record.)

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

14 Q. (By Ms. Bojko) Ms. Fagan -- or Doctor,
15 excuse me. Are you saying here today that you
16 cannot, based on the errata sheet, bullet No. 3, you
17 cannot tell the record the changes that you are
18 proposing to make to LEI's analysis, specific changes
19 to the audit report?

20 A. We can't. We don't have the data to do
21 so.

22 Q. And so it's your testimony today that on
23 pages 73 and 74 and the calculations made are
24 incorrect and no longer valid; is that correct?

25 A. They are not as precise as they ought to

1 be, and if they have to be precise, maybe they are
2 invalid. I think they are still indicative. And in
3 any case, it doesn't change materially the results of
4 the audit.

5 Q. But it does change the printed words in
6 the audit report, correct?

7 A. If --

8 MS. KERN: Objection, objection, what
9 printed words, as to vagueness, I mean, I think we
10 are talking about specific pages and specific
11 calculations here.

12 MS. BOJKO: Your Honor, I asked her what
13 specific changes, and she said she couldn't answer
14 me, so I'm not being vague. I am using her own
15 words.

16 MS. KERN: Well, not in that question,
17 though, Kim. You didn't specify the page; so, I
18 mean, if we can have the question read back and you
19 can specify what pages you are talking about again or
20 whatever your Honors prefer.

21 MS. BOJKO: I would be happy to rephrase.

22 EXAMINER PARROT: Go ahead.

23 Q. (By Ms. Bojko) Dr. Fagan, I am talking
24 about pages 73 and 74. Isn't that how you indicated
25 on your errata sheet that there was an inaccurate

1 calculation; is that right?

2 A. That's correct.

3 Q. Okay. You didn't give a section number.
4 You just stated pages 73 and 74; is that correct?

5 A. That's correct.

6 Q. Okay. And on that -- on those two pages,
7 there are one, two, three, four figures, tables; is
8 that correct?

9 A. That's correct.

10 Q. And it's my understanding from your
11 change that those calculations that are inputted on
12 those figures would have to be recalculated, and the
13 numbers and the graphs would change based on those
14 new calculations; is that correct?

15 A. The calculations for Figure 41 and 42
16 would be impacted.

17 Q. Okay. When you say "impacted," it would
18 mean those charts are currently incorrect, and you
19 would have to redo the graphs with the new
20 calculations, correct?

21 A. We would have to do a portion of the
22 graphs.

23 Q. Right. Because of the new numbers needed
24 for the total calculation and the graph inputs,
25 correct?

1 A. That's correct.

2 Q. And these figures would then produce
3 different numbers and conclusions, correct?

4 A. They would produce different numbers
5 of -- not possible to say -- I don't think the
6 conclusions would change much, but you would get
7 different numbers.

8 Q. You don't know because you don't have the
9 data, right?

10 A. Correct.

11 Q. And those are the only three changes that
12 you have made to your audit report on this errata
13 sheet; is that correct?

14 A. That's correct.

15 Q. So but for these three changes, you stand
16 by all the other findings and conclusions in the
17 audit report, correct?

18 A. That's correct.

19 Q. And who -- who brought the incorrect --
20 or who -- who brought it to your attention that there
21 was incorrect data used in Figures 41 and 42?

22 A. I was reviewing materials, and it might
23 have even been related to a different audit but at
24 the same plant. I don't recall. I was reviewing
25 materials that had to do with one or the other of

1 these audits, and when I reviewed that, it wasn't
2 someone else bringing it to my attention, but I went
3 back and looked at what we did and said, oh, that's
4 not precisely accurate.

5 Q. I'm sorry. So you were looking at an
6 audit of a different utility in a different case, and
7 you realized your error in this case; is that what
8 you said?

9 A. I think so. But it was -- it was our
10 audit, and it still has to do with the OVEC plants,
11 so I realized if that was in error there, it must
12 have been in error here. So I took it upon myself to
13 say this -- I don't want to mislead, you know, and I
14 couldn't correct it, but I didn't want it to stand
15 without -- I guess this is more of a caveat.

16 Q. Okay. And so you are the auditor in the
17 Duke OVEC case; is that correct?

18 A. That's correct.

19 Q. And was that the audit you reviewed that
20 you realized this error?

21 A. A filing -- possibly. It was either that
22 one or this one because it's, of course, about OVEC.

23 Q. I don't understand "that one or this
24 one." You don't have the data in this case, right?
25 So it had to be the Duke OVEC case, correct?

1 A. I'm not sure we had --

2 MR. SCHULER: Your Honor, I'll object.
3 This is seeking to divulge information of ongoing
4 audits. Specifically I cite, your Honor, 4901-1-16.
5 It requires confidentiality of ongoing transactions
6 and audits at the Commission. And I understand the
7 question to be about pending audits in other cases
8 that are currently ongoing.

9 MS. BOJKO: Your Honor, I don't know what
10 Mr. Schuler is referring to. I was asking the
11 witness a follow-up question to something she stated.
12 She said she realized there was incorrect data, and
13 she pulled it from a different source. I was asking
14 her that source and whether that source was the Duke
15 audit which she is the auditor. And I am going to
16 object. This has been said before, the Duke audit is
17 not ongoing. There is an audit report that has been
18 filed. So the investigation is not ongoing.

19 EXAMINER PARROT: Dr. Fagan, you may
20 answer the question.

21 A. So some of the materials I read pointed
22 out -- and I don't remember if it was this one or the
23 other one that the full load wasn't used and we used
24 average burns. There wasn't different data that I
25 could then use to update this. It pointed out the

1 inaccuracy in our work. So I couldn't correct it and
2 put in new numbers. But like I said, I wanted to
3 flag it so there's no -- we don't want to mislead
4 anybody.

5 Q. And just to clarify on the record,
6 Ms. Fagan, you stated you were the auditor in the
7 Duke proceeding, Duke OVEC proceeding. That relates
8 to the exact same OVEC units that we are talking
9 about in this audit, correct?

10 A. That is correct.

11 Q. And that audit report, you've completed
12 your investigation and you have filed that audit
13 report at the Commission's docketing in the Duke
14 case; is that correct?

15 A. That is correct.

16 Q. So there's no ongoing investigation that
17 you are performing in the Duke audit case of the OVEC
18 units, correct?

19 A. That's correct. Our report -- our final
20 has been filed.

21 Q. Thank you.

22 I believe yesterday you stated that you
23 got the scope of work for the audit from the RFP; is
24 that correct?

25 A. That's correct.

1 Q. I'm sorry. I just didn't hear your
2 answer. You broke up.

3 A. That's correct.

4 Q. Thank you.

5 I think you said you had it in front of
6 you, the RFP.

7 MS. BOJKO: Your Honor, I don't believe
8 that we have officially marked this RFP yesterday.
9 So at this time I would like to mark as OMAEG
10 Exhibit 5, the PUCO request for proposal. It's the
11 entry that was issued in this proceeding on
12 January 15, 2020, and it has attached to it the
13 actual request for proposal.

14 EXAMINER PARROT: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. (By Ms. Bojko) Dr. Fagan, do you have in
17 front of you what's been marked as OMAEG Exhibit 5?

18 A. That's the RFP?

19 Q. Yes.

20 A. Yes.

21 Q. Given all the questions yesterday and
22 this morning, is it fair to assume you are familiar
23 with this entry and the attached RFP?

24 A. We read the entry. We focused very much
25 on the RFP and the scope of work.

1 Q. Can you turn to page 4 of the attached
2 RFP, Section II.

3 A. Yes.

4 Q. This section is titled "Purpose,"
5 correct?

6 A. That's correct.

7 Q. And under the purpose is a Section A, a
8 provision A, which is titled "Prudency and
9 Performance Audit," correct?

10 A. That's correct.

11 Q. Then under -- under that section in the
12 second paragraph, so the second paragraph of II.A,
13 you would agree with me that the RFP states that the
14 purpose of the annual prudency audit of rider PPA is
15 to establish the prudency of all costs and sales
16 flowing through rider PPA and to demonstrate that the
17 Company's actions were in the best interest of
18 ratepayers.

19 A. Yes.

20 MR. SCHULER: Objection. I believe that
21 mischaracterizes the words in that paragraph.

22 MS. BOJKO: Well, I was asking her
23 understanding. I was not reading from the RFP.

24 EXAMINER PARROT: With that
25 clarification, overruled.

1 A. We understand that that was the
2 purpose -- is the purpose.

3 Q. Isn't it true that the draft audit
4 report, and that was OCC Exhibit 17 that we discussed
5 yesterday, did in fact respond to this directive in
6 the RFP in its findings? It talks about what was in
7 the customers' best interests, or the ratepayers,
8 excuse me.

9 MS. KERN: Objection as to vague. I'm
10 not sure what portions you are referring to.
11 Objection as to relevance of a draft report to this
12 proceeding which has a final audit report filed in
13 the docket.

14 MR. SCHULER: AEP Ohio joins the
15 objection.

16 MS. BOJKO: Your Honor, I think she can
17 give her opinion. She is the auditor that wrote it
18 or approved it, the audit report, whether that
19 provision in the audit report, I think the witness is
20 very well aware of the sentence I am referring to but
21 if I need to read it, I think she is well aware of
22 it. She can answer the question if she can.

23 MS. KERN: I would object then on the
24 grounds, your Honor, that the question was asked and
25 answered yesterday. The witness testified it was

1 outside the scope in her opinion and that was one of
2 the reasons it was removed per her final discretion
3 of what she filed as the final audit report.

4 MS. BOJKO: Your Honor, counsel
5 testified. She did not say that yesterday. I think
6 both -- there are a lot of counsel that testified
7 yesterday as to what they believe the scope is. And
8 I pointed to a scope in the RFP and asked her if that
9 sentence fell within this provision. If the answer
10 is no, then the witness can testify to that.

11 EXAMINER PARROT: The objections are
12 overruled.

13 Dr. Fagan, if you need Ms. Bojko to point
14 you to the specific sentence she is referring to, you
15 may ask her to do that, but to the extent you can
16 answer the question, go ahead.

17 A. Oh, I think the sentence -- of course I
18 know the sentence that she is referring to. And as I
19 mentioned yesterday, we -- we felt that it was too
20 broad. It's -- the purpose of the RFP includes it,
21 but the scope of our investigation, the scope that's
22 contemplated, that's asked for in the RFP, doesn't
23 say that, which is why we took it out.

24 Q. Okay. So it's your testimony today that
25 under the section of purpose to the prudence and

1 performance audit, that that does not apply to what
2 the performance and prudence audit was supposed to
3 look at, that you do not believe that you were
4 supposed to look at the prudence of all costs and
5 sales flowing through the PPA Rider and to
6 demonstrate that the Company's actions were in the
7 best interest of retail ratepayers.

8 MS. KERN: Objection, mischaracterizes
9 the witness's testimony.

10 EXAMINER PARROT: Rephrase, Ms. Bojko.

11 Q. (By Ms. Bojko) Do you recall that part of
12 the scope of your audit was to establish the prudence
13 of all costs and sales flowing through the PPA Rider
14 and to demonstrate that the Company's actions were in
15 the best interests of retail ratepayers?

16 A. That was the purpose, I think that the
17 Commission would use it for. But for the scope of
18 the investigation, it -- it's more specific and it
19 doesn't say best interest, per se. It talks about
20 prudence.

21 Q. So the answer to my question is no, it's
22 your understanding that your audit was to not
23 establish the prudence of all costs and sales flowing
24 through the PPA Rider and to demonstrate the
25 Company's actions were in the best interest of

1 ratepayers.

2 MR. SCHULER: Objection, asked and
3 answered.

4 MS. BOJKO: Your Honor, she didn't answer
5 the question.

6 EXAMINER PARROT: I think she did. She
7 didn't give you a yes or no.

8 If you are able to do that, Dr. Fagan, go
9 ahead, but if you feel it's more nuanced than that,
10 you may say that.

11 A. I feel it is more nuanced than that.

12 Q. Okay. Let's look at some other scope
13 provisions then to see what your understanding is of
14 the scope of the audit if you do not believe that is
15 a piece of the audit.

16 Let's look at -- let's look at page 6 of
17 the audit, Section 2 -- or, I'm sorry, not of the
18 audit. Page 6 of the RFP, Section 2. We are still
19 looking at the scope of your audit.

20 A. I'm there.

21 Q. Is it your understanding that Section 2
22 of the RFP requires the auditor to ensure that all
23 OVEC fuel and variable operations and maintenance
24 costs, related expenses, were prudently incurred and
25 properly allocated by AEP?

1 A. Yes.

2 Q. Also in Section 2, is it your
3 understanding that Section 2 specifically requires
4 the auditor to compare and cured -- incurred fuel
5 costs and market prices to evaluate the
6 reasonableness of fuel expenses during the audit
7 period?

8 A. That's correct.

9 Q. Okay. Now let's look at Section 3 of the
10 RFP. Is it your understanding that the auditor was
11 expected to ensure that only prudently incurred costs
12 are included for recovery through the Rider PPA?

13 A. That's correct.

14 Q. And this section, it does not use the
15 term "fairly prudent," does it?

16 A. Barely?

17 Q. Fairly prudent.

18 A. No.

19 Q. And it does not use the terms "mostly
20 adequate," does it?

21 A. No.

22 Q. And it does not condition the prudence on
23 the ICPA, does it?

24 MR. SCHULER: Objection. Calls for a
25 legal conclusion. And mischaracterizes the remainder

1 of that paragraph Ms. Bojko just cited to.

2 MS. BOJKO: Your Honor, I asked for the
3 auditor's understanding of this section. I think she
4 can answer to what her understanding is. She is the
5 one that did the audit.

6 EXAMINER PARROT: Go ahead and answer,
7 Dr. Fagan.

8 A. Well, the ICPA is, I guess, the broad
9 vehicle that -- that -- how do I explain it? It's
10 what's in place and the audit is an audit of the
11 company's activities, decisions, et cetera, within
12 that framework. That's my understanding.

13 Q. But the ICPA isn't mentioned here with
14 regard to prudence, is it?

15 A. In this paragraph?

16 MS. KERN: Objection, objection. The
17 document speaks for itself.

18 EXAMINER PARROT: Overruled.

19 A. So is the ICPA mentioned in the paragraph
20 or --

21 Q. Correct.

22 A. It is not.

23 Q. And doesn't, in fact, the last sentence
24 of this say that the prudence is supposed to be in
25 accordance with the Commission's March 31, 2016,

1 Opinion and Order in Case No. 14-1693-EL-RDR?

2 A. That's what it says.

3 Q. And did you read the Commission's
4 March 31, 2016, Opinion and Order before or while
5 conducting your audit?

6 A. I didn't read it all the way through.
7 Maybe here and there but not all the way through, I
8 don't think.

9 Q. This requirement in Section 3, it does
10 not condition the prudency determination on other
11 factors or considerations, does it, beyond what we
12 just talked about, the Commission's order?

13 A. I guess not.

14 Q. Look at Section 5. Is it your
15 understanding that Section 5 requires the auditor to
16 review and report on OVEC's plant performance,
17 including the impact on ratepayers?

18 A. Yes.

19 Q. Section 5 also specifically requires the
20 auditor to state whether additional review is
21 necessary or to make a determination of
22 reasonableness of OVEC's and/or AEP's actions,
23 correct?

24 A. Correct.

25 Q. So you have to do one of two things: You

1 either have to say additional review is necessary;
2 or, you have to determine whether OVEC and/or AEP's
3 actions were reasonable, correct?

4 A. Correct.

5 Q. Now, let's turn back to page 4 of the
6 RFP. Let's go back to the purpose of the prudence
7 and performance audit section. In that section --
8 second paragraph under the purpose and prudence --
9 excuse me, under the purpose of the prudence and
10 performance audit, it explains here again that the
11 Commission established a prudence audit pursuant to
12 14-1693-EL-RDR, correct?

13 A. Correct.

14 Q. And then if you look at the last sentence
15 of that paragraph, it specifically states that the
16 RFP encompasses an independent audit of the PPA Rider
17 for the 2018-'19 period, and states as contemplated
18 by, and in compliance with, PUCO orders, correct?

19 A. Correct.

20 Q. And it specifically uses the word
21 "orders," plural. It references multiple Commission
22 orders, correct?

23 A. Correct.

24 Q. But you didn't review the Commission
25 orders in Case No. 14-1696 that established the

1 annual prudency audit to determine if your audit was
2 as contemplated by, and in compliance with, those
3 orders, did you?

4 A. We might have reviewed some of them but
5 we really focused our efforts on the scope of
6 investigation rather than the framework around it.

7 Q. So again, I am going to ask you, after
8 you completed your audit and you drafted your audit
9 report, did you review the Commission orders in
10 14-1696 to determine if your audit was as
11 contemplated by, and in compliance with, those
12 orders?

13 MS. KERN: Objection, asked and answered.

14 MS. BOJKO: Your Honor, she didn't answer
15 the question. She didn't tell me if she did that
16 review.

17 EXAMINER PARROT: She did. She answered
18 the question.

19 MS. BOJKO: I thought I rephrased to say
20 after the investigation was completed because her
21 answer was during the investigation, they might have
22 looked at some orders. I said after the
23 investigation was completed and the audit report was
24 filed -- drafted, filed.

25 EXAMINER PARROT: She gave you a broad

1 answer. She didn't limit it to a specific time
2 frame.

3 MS. BOJKO: Okay. May I ask a clarifying
4 question then, your Honor?

5 EXAMINER PARROT: You may.

6 Q. (By Ms. Bojko) Dr. Fagan, after you
7 completed your audit, did you do a final review to
8 determine if your audit was in compliance with the
9 Commission's orders in 14-1693? 1693, yes.

10 A. No.

11 Q. Okay. Let's turn to the audit report
12 itself. Do you have that in front of you?

13 A. Yes.

14 Q. You are an economist; is that correct?

15 A. That is correct.

16 Q. On page -- let's go to page 7 of the
17 report.

18 A. I'm there.

19 Q. Section 1.1.1, No. 1. Here it states
20 that the scope of LEI's work includes a review of the
21 current dynamics of the PJM wholesale market in which
22 OVEC operates, and the impacts that changing market
23 dynamics have on OVEC's operations and practices; is
24 that correct?

25 A. That is correct.

1 Q. PJM is the regional transmission
2 organization for 13 states which includes states that
3 have deregulated electricity markets; is that
4 correct?

5 A. That is correct.

6 Q. And deregulation means that the
7 generation component of electricity can be shopped
8 for and priced at market; is that correct?

9 A. There's a wholesale market. Shopping
10 refers to the retail market which I think most of the
11 states in PJM have -- there are many states. I am
12 not sure if some of them don't have a fully open
13 retail market which is shopping but generally, yes.

14 Q. So absent government subsidies, it's fair
15 to say that it would not be economically rational for
16 a generator to continuously operate at a loss in a
17 deregulated market.

18 MR. SCHULER: Objection to the
19 characterization of "government subsidies." Vague.

20 EXAMINER PARROT: Overruled.

21 A. I'm sorry. Would you repeat the
22 question?

23 Q. Sure.

24 So absent government subsidies, is it
25 fair to say that it would not be economically

1 rational for a generator to continuously operate at a
2 loss in a deregulated market?

3 A. Well, subsidy or not, you wouldn't
4 generally operate at a loss for a long period of
5 time. You might take temporary losses depending on
6 your forecasts so, you know, I think it depends on,
7 you know, the time scale that you are looking at.

8 Q. Fair enough.

9 Let's turn to page 52 of the audit.

10 A. I'm there.

11 Q. Okay. I am looking at 5.3.8. Here you
12 discuss how the OVEC plants operated in the PJM
13 day-ahead energy market using a must-run commitment
14 status even for periods of time when their variable
15 operating costs exceeded the value of electricity; is
16 that correct?

17 A. They're offered -- during the audit
18 period they were offered as must run and there were
19 times when the price doesn't necessarily cover the
20 fuel -- the variable costs of the plant.

21 Q. Based on your understanding of the PJM
22 markets and the industry as you've explained it
23 yesterday, today, and throughout your audit report,
24 if merchant generators operating in PJM use must-run
25 commitment status for long periods of time when their

1 variable operating costs exceeded the value of the
2 energy they produced, the merchant generators
3 wouldn't recover these costs, would they?

4 A. They wouldn't recover the energy or
5 variable costs. They might have other -- they might
6 have other revenue streams from PJM but that piece
7 they wouldn't.

8 Q. And I think you, in response to
9 Mr. McKenney, I think you would agree with me that
10 merchant generators in PJM, isolated to the PJM
11 market, they would not operate their plants in this
12 manner. I think for long periods of time when the
13 variable operating costs exceeded the value of the
14 energy they produce.

15 MR. SCHULER: Objection, mischaracterizes
16 testimony.

17 MS. BOJKO: I wasn't characterizing any
18 testimony. I asked a question.

19 MR. SCHULER: Well, the preamble to the
20 question was referencing her prior testimony. Just
21 maybe ask the question.

22 MS. BOJKO: Thank you. I can rephrase,
23 your Honor.

24 EXAMINER PARROT: Go ahead.

25 Q. (By Ms. Bojko) Do you know whether

1 merchant generators in PJM operate their plants in
2 this manner, meaning do they use must-run commitment
3 status for long periods of time when their variable
4 operating costs exceed the value of the energy that
5 they produce?

6 A. I don't know specifically. There may be
7 other revenue streams that they are getting from PJM
8 that you get even when you are not operating.
9 Ancillary services, you know, capacity payments, so I
10 can't answer specifically.

11 Q. In the month -- you talked about
12 ancillary services earlier today. In the months --
13 in the -- okay. In the months customers were charged
14 for costs through the PPA Rider, isn't it fair to say
15 that any revenue associated with ancillary services
16 was not greater than the total bill received by AEP?

17 A. That's fair, yes.

18 Q. Look at page 53 of the audit. I have a
19 couple of follow-up questions from a discussion you
20 had earlier this morning. To be clear, in Figure 26
21 that you discussed this morning, when you referred to
22 the four months of negative earnings, that was four
23 months out of the sample seven that you used,
24 correct?

25 A. That's correct.

1 Q. And seven months compares to the total
2 audit period which would be 24 months, so you looked
3 at seven months out of 24, correct?

4 A. Correct.

5 Q. And so four out of seven months results
6 in -- resulted in negative earnings, that equals
7 57 percent of the time they resulted in negative
8 earnings, correct?

9 A. We used monthly average data, so if you
10 used hourly data you might get a different percent
11 and -- so I am going to try to be careful because
12 this is marked confidential. The months -- so there
13 were three months in the money, four months out of
14 the money on a monthly average basis. The three
15 months that were in the money were -- were more, the
16 increment over -- the increment of the energy price
17 over the energy charge was a larger dollar amount in
18 those three months than the shortfall in the other
19 four months. And so maybe percentage-wise weighted
20 by the difference of cost might be a better analysis
21 but you probably want to do the percentages and I
22 think this is where you try to go. You would want to
23 do it hourly, I would say.

24 Q. I am --

25 A. This is indicative, yeah.

1 Q. I want to use the methodology you did and
2 you did it on a seven-month sampling basis. So on
3 that seven-month sampling basis, four out of the
4 seven months, 57 percent, resulted in negative
5 earnings, correct?

6 MR. SCHULER: Objection, asked and
7 answered.

8 MS. BOJKO: Your Honor, she didn't answer
9 the question as posed. She created a new question
10 and answered it.

11 EXAMINER PARROT: Overruled.

12 A. This basis is intended to be indicative.
13 We didn't contemplate figuring out percentages. I
14 mean, you can do the math and figure out the
15 percentages. That wasn't our intent with this.

16 Q. You're not objecting to my 57 percent as
17 that I didn't do the math correct, are you?

18 A. I am not doing the math in my head but
19 okay.

20 Q. So it's fair to say, though, Dr. Fagan,
21 that during the 24 months, if you are to look at
22 24 months of the audit period, there likely were
23 additional months that resulted in negative earnings;
24 is that correct? Based on your methodology, your
25 monthly sample methodology.

1 A. That --

2 MR. SCHULER: That calls for speculation.
3 The witness has already testified she only looked at
4 these seven months.

5 EXAMINER PARROT: Overruled.

6 To the extent you can offer an opinion,
7 Dr. Fagan, go ahead.

8 A. I was going to say you just can't tell.

9 Q. So you think that if you would have
10 looked at all 12 months, we would have had 90 percent
11 in the money, as you call it, versus 57 percent out
12 of the money?

13 A. I can't tell.

14 Q. But you only did a sampling of seven
15 months out of 24; and of those seven, four resulted
16 in negative earnings, correct?

17 A. Correct.

18 Q. And I'm a little confused about your
19 testimony earlier. How could you determine whether
20 must run was prudent if you didn't ask whether they
21 used profit and loss forecasts?

22 A. You generally wouldn't use profit and
23 loss forecasts if you are doing must run.

24 Q. Well, isn't prudence based on a decision
25 that they made based on data that they had at the

1 time that they made the decision?

2 A. We know they used -- so in -- they have a
3 daily -- which I believe is confidential but they
4 have a daily meeting where they look at plant data,
5 et cetera. But not, I don't think, forecasting
6 energy prices because of the must-run strategy.

7 Q. So am I hearing you say you don't know?
8 You don't know what they looked at and you don't know
9 or did not analyze the appropriateness or the
10 prudence of the decisions based on the data they had
11 at the time?

12 MS. KERN: Objection, mischaracterizes
13 testimony.

14 EXAMINER PARROT: Go ahead and answer,
15 Dr. Fagan.

16 A. So you are asking -- would you repeat?
17 I'm sorry.

18 Q. I am asking if -- did you look at the
19 data and the forecasts or whatever data AEP had and
20 determine if their decision at the time was prudent?

21 A. We looked at their operating procedures.
22 I don't think that included specific forecasts of PJM
23 prices.

24 Q. I think your answer to me right now was
25 with regard to OVEC; is that correct? I did --

1 A. Oh, I'm sorry, yes, OVEC.

2 Q. Now can you answer the same question
3 based on OVEC -- or, I mean, AEP. Did you review the
4 data that AEP had to determine if AEP's decisions at
5 the time or actions taken at the time were prudent?

6 A. We didn't ask AEP that.

7 Q. Can we turn to page 9 of the audit,
8 please. I am looking at Section 1.3, the section
9 that begins "Overall, LEI found that the processes,
10 procedures, and oversight were mostly adequate." Do
11 you see that?

12 A. Yes.

13 Q. Here you are referring to AEP's
14 practices, procedures, and oversight; so AEP's
15 actions, correct?

16 A. Some of that refers to what OVEC does
17 because some of the processes like for capital
18 spending, for example, some of those processes are
19 the processes of AEP. So some of the processes,
20 procedures, and oversight are OVEC.

21 Q. So I'm trying to understand your finding
22 then. Your finding was that the -- OVEC and AEP's
23 processes, procedures, and oversight were mostly
24 adequate and consistent with good utility practice,
25 that applies to both OVEC and AEP?

1 A. Yes.

2 Q. And you qualified the end of that
3 sentence with mostly adequate and mostly consistent.
4 You qualified that by recognizing the ICPA impacts
5 the OVEC operations, correct?

6 A. If the ICPA is in place, then customers
7 will be charged for the cost of the plants until, you
8 know, our understanding, until May 2024.

9 Q. Okay. So you answered my second one.
10 There is two conditions of that determination, one
11 was the condition of recognizing that the ICPA
12 exists, and the second condition in that statement is
13 that customers will be charged for the costs; is that
14 right?

15 A. That's our understanding, yes.

16 Q. Okay. So if either of those conditions
17 or qualifications did not exist, your conclusion may
18 be different, correct?

19 A. That's -- that's possible, yes.
20 Different context.

21 Q. You -- you further clarify -- oh, excuse
22 me.

23 You further clarify your statement by
24 using the word "mostly" in front of "adequate" and
25 "consistent"; is that correct?

1 A. That's correct.

2 Q. And you would agree with me that there
3 were areas where AEP's practices were not adequate
4 and consistent with good utility practice, correct?

5 A. So the reason we use the term "mostly" is
6 because we had these recommendations below.

7 Q. So you would agree with me there were
8 areas where the practices, procedures, and oversight
9 were not adequate and consistent with good utility
10 practice, correct?

11 A. We felt they could be improved.

12 Q. And then right below that on page 9 of
13 the report, it states, starting with "However," that
14 "LEI's analysis shows at this time that the OVEC
15 plants cost customers more than the cost of energy
16 and capacity that could be bought on the PJM
17 wholesale markets." Do you see that?

18 A. Yeah.

19 Q. I think yesterday you defined "at this
20 time" was not when you drafted the audit report but
21 rather the 2018-'19 period; is that correct?

22 A. That's correct. It should -- it should
23 speak to the audit period.

24 Q. Okay. So from this sentence you seem to
25 be -- you seem to be saying here that from a pure

1 economic standpoint it is not in customers' best
2 economic interest to keep the plants running at a
3 loss. Is that a fair reading?

4 A. No. I think "best interest" is a little
5 broad for our unit. But, you know, the period that
6 we audited, it would be cheaper. I don't know if we
7 can go into best interest because there is a lot of
8 interests, but cheaper to buy energy and capacity on
9 the wholesale markets.

10 Q. Okay. I didn't use the word "best
11 interest." So if -- it might be helpful if I repeat
12 my question.

13 So you seem to be saying here that from a
14 pure economic standpoint, it is not in customers'
15 best economic interest to keep the plants running at
16 a loss. Is that a fair reading?

17 A. I don't -- we didn't do a full
18 cost/benefit of reliability and other factors, so I
19 am much more comfortable just saying the plants cost
20 customers more than the cost of energy and capacity
21 that can be bought on the PJM wholesale markets.

22 Q. Okay. I was asking you from a pure
23 economic standpoint. Reliability isn't an economic
24 standpoint, is it?

25 A. It's not for dispatch. But reliability

1 is sometimes defined based on economics like the
2 value of lost load so it has an economic component.

3 Q. Okay. Let's talk a little bit about
4 that. We established earlier today that OVEC is not
5 run for reliability purposes, correct?

6 A. It is not as far as I know.

7 Q. All right. And you do know that the OVEC
8 output does not directly serve Ohio customers,
9 correct?

10 A. Most power plant output goes -- you can't
11 really trace electrons usually, so, you know, load
12 gets bid into the grid, generation gets offered to
13 the grid. In certain circumstances people do know
14 exactly where the power is coming from, but in PJM I
15 would say it's -- it goes into and comes out of the
16 grid. You can't trace an electron.

17 Q. All right. And so it doesn't directly
18 serve or support any particular amount of customers,
19 correct?

20 A. I don't know. I don't think so, but.

21 Q. Okay. Well, you do know there is a plant
22 in Indiana. Is it fair to assume that the Indiana
23 plant isn't directly serving Ohio customers?

24 A. It's -- it would be hard to say that any
25 particular plant in Ohio is serving Ohio customers to

1 one degree or another. Maybe some of it is. Maybe
2 some of it isn't. You can't tell. It all gets, you
3 know, all the electrons get put into a pot.

4 Q. Right. And OVEC hasn't been determined
5 that it is needed for reliability, correct?

6 A. Not as far as I know.

7 Q. And OVEC is not green power either, is
8 it?

9 A. Is -- is there -- is there an Ohio
10 definition? Is there --

11 Q. OVEC isn't renewable power, is it? To
12 your knowledge?

13 A. It's a fossil fuel plant.

14 Q. A coal plant, a 60-year-old coal plant;
15 is that renewable power?

16 A. No, I wouldn't say so.

17 Q. Okay. And customers are not choosing to
18 be served by OVEC, are they?

19 A. Not as far as I know.

20 Q. Let's turn back to page 9. After the
21 sentence I read, there is another "However" sentence
22 that says there may be other considerations. Do you
23 see that?

24 A. Yes.

25 Q. I want to talk a bit about those other

1 considerations that you believe outweigh the impact
2 on ratepayers or could outweigh the impact on
3 ratepayers as you testified earlier; is that right?

4 A. That is not quite right. The weigh or
5 outweigh would be a consideration for the State, not
6 for LEI.

7 Q. Okay. But you pointed out that these
8 particular considerations may outweigh the impact on
9 ratepayers, correct?

10 A. From the State's point of view, that's
11 possible. They are examples.

12 Q. Okay. Well, I want to talk about the
13 examples that you came up with and listed that may
14 outweigh the impact on ratepayers. The first one
15 there is -- the first one there is employment at the
16 plants. Do you see that?

17 A. Yes.

18 Q. In stating these considerations, did you
19 assume that customers would continue to pay for the
20 cost of OVEC as noted in the prior sentence?

21 A. We didn't give this an analysis, so the
22 short answer to your question is no. They were
23 examples of policy considerations, you know, societal
24 goals, to provide context to the findings.

25 Q. Are they societal goals or did you come

1 up -- who gave you these as societal goals?

2 A. They're examples of -- I am not sure how
3 to put it, things of value to people in a -- they are
4 just other values. It's just context.

5 Q. Which people? Which people hold these
6 items as societal goals?

7 MS. KERN: Objection, your Honor. I
8 believe this is asked and answered. She provided --
9 she said the statement is providing context and the
10 statement talks about State interests and Ohio
11 legislature, and I think she testified she was just
12 trying to qualify what she meant by the -- the items
13 she listed in that sentence. I think this has been
14 asked and answered.

15 MS. BOJKO: Well, your Honor, she just
16 mentioned "people" so I did a follow-up question so
17 it couldn't have been asked or answered. The first
18 time I used the word "people" was after she used the
19 word "people." Nowhere in the statement that
20 Ms. Kern is testifying to does it state "State
21 interests." If the witness wants to say what
22 Ms. Kern just said, then she can say that to my
23 question, but she shouldn't be coaching or
24 testifying.

25 MS. KERN: Counsel, I do not appreciate

1 the insinuation you consistently have been saying I
2 am testifying and coaching. There was a lot of that
3 going on yesterday. I was -- I was looking where
4 "State" was referenced in the sentence that you are
5 asking the witness about.

6 MS. BOJKO: "State" is not referenced. I
7 did not ask anything about the "State."

8 EXAMINER PARROT: The witness has used
9 the term before, Ms. Bojko.

10 But anyway, as to the question that's
11 pending, Dr. Fagan, if you are able to add anything,
12 go ahead, as to what you mean by which people. I
13 took it to mean generally speaking, but go ahead.

14 A. People who live in Ohio.

15 Q. Who told you to think about or consider
16 these other considerations?

17 A. I think that came from a conversation
18 with Staff.

19 Q. So this statement is based on Staff's
20 consideration of what might be societal goals; is
21 that your testimony?

22 MS. KERN: Objection. Misrepresents the
23 testimony. The testimony and the sentence speaks for
24 itself.

25 MS. BOJKO: Your Honor, she is the author

1 of the sentence. We are trying to understand --

2 EXAMINER PARROT: Rephrase, Ms. Bojko.

3 Rephrase.

4 MS. BOJKO: I didn't mischaracterize her
5 testimony.

6 Q. (By Ms. Bojko) I said, is it your
7 testimony that Staff provided you with a list of
8 considerations that they deemed to be societal
9 concerns or considerations.

10 A. I don't know about that they personally
11 deemed it, just here's other things that are
12 considered by the State and they're -- they provide
13 context.

14 Q. Okay. So let's talk about these
15 considerations. The first one is employment. Isn't
16 it true that the ICPA requires the plants to remain
17 open and operating until June 30, 2040, regardless of
18 whether customers are paying for the cost of OVEC?

19 A. I know that the ICPA contemplates to
20 2040. But the second piece of your sentence, I -- I
21 don't have that particular knowledge in my head.

22 Q. Okay. So do you think the ICPA says that
23 it's only valid if Ohio customers are paying for the
24 costs to run OVEC?

25 A. I don't know.

1 Q. So if the plants are required to remain
2 open and operating to June 30, 2040, per the ICPA,
3 you would agree with that part of the sentence; is
4 that right?

5 A. I'm sure -- the ICPA is a -- ICPA is a
6 long document so I would want to see the context, but
7 I know broadly that's the timing of the ICPA.

8 Q. Okay. So if the plants are required to
9 remain open and operating until June 30, 2040, the
10 plants would remain open regardless of whether
11 customers are paying for the costs, correct?

12 MR. SCHULER: Objection. This is
13 speculation and it's also not relevant to the time
14 period that is at issue in this audit.

15 MS. BOJKO: Your Honor, my response to
16 that, this is an auditor recommendation. She asked
17 us to consider to take other things into
18 consideration that may outweigh the impact on
19 ratepayers, and I am now fleshing out what analysis
20 they did to make that determination and asking her
21 that if her statement might change if -- if she
22 realizes that that can't be a consideration because
23 the plants have to remain open so there would be no
24 job loss.

25 EXAMINER PARROT: Overruled.

1 If you are able to answer, Dr. Fagan, go
2 ahead.

3 A. Oh. As I mentioned before, this sentence
4 is about context. It's not about analysis that LEI
5 performed.

6 Q. But you used an analysis by saying it may
7 outweigh. So by using the word "outweigh," that was
8 an analysis you had to perform to get to that
9 conclusion, didn't you?

10 A. No.

11 MS. KERN: Objection, your Honor.
12 Objection. It mischaracterizes the statement and it
13 mischaracterizes her previous testimony that the
14 sentence was to provide context.

15 MS. BOJKO: I think she answered, your
16 Honor.

17 EXAMINER PARROT: I am sorry, Ms. Bojko,
18 what was that?

19 MS. BOJKO: I said I thought she
20 answered.

21 EXAMINER PARROT: I think she started to.
22 Go ahead, Dr. Fagan.

23 THE WITNESS: I said "No."

24 Q. (By Ms. Bojko) So "outweigh" to you, when
25 you wrote this, does not mean that the consideration

1 may outweigh or be greater than the cost to customers
2 of the OVEC plants?

3 A. What we mean in the sentence is the word
4 "may." There may be other considerations. In the
5 minds of the people who make these decisions, they
6 may outweigh, they may not. It's context.

7 Q. Would you agree with me the definition of
8 "outweigh" is be greater or more significant than?

9 A. I could look it up but I would say that's
10 probably about right.

11 Q. And do you believe that -- to me this is
12 a very board statement and you've been careful about
13 agreeing to broad statements. Do you believe this is
14 a broad statement about these characterization -- or
15 considerations?

16 A. It's -- it's meant to be context.
17 It's -- it's not analysis.

18 Q. Okay. So do you believe that this broad
19 statement is in the scope of the audit?

20 A. It's context.

21 Q. That didn't answer my question. Do you
22 believe that this was in the scope of your prudence
23 and performance audit?

24 A. I am going to look at the RFP.

25 Well, I would say it's not literally in

1 the scope but typically in the report you do an
2 introduction and that -- that also isn't in the scope
3 in the general work requirements. But typically you
4 would put something -- you put a framing around a
5 report. You wouldn't just dive in. You know, you
6 have got the scope of work, disposition of energy and
7 capacity, et cetera, et cetera, those are all
8 sections in the report. But, you know, the
9 introduction, there is framing materials, there's
10 results and conclusions. It's not literally written
11 in the scope that we would do that but it's -- it's
12 just part of putting a report together to have
13 introduction and context and that kind of thing.

14 Q. And just so I'm clear, you think that
15 that contextual addition is more narrow or different
16 than the -- the phrase "LEI's analysis shows that the
17 OVEC contract overall is not in the best interest of
18 AEP Ohio ratepayers"?

19 A. It's -- it's different. It's just a
20 framing and, like we said, context-setting piece.

21 Q. So let's go back to these plants. How
22 many jobs are at the plants?

23 A. There's, I can check, I want to say a
24 little over 200 at each.

25 Q. If you could maybe just tell us for the

1 record what you are looking at to find the answer.

2 A. I'm looking for where we talked about --
3 operations, staffing. I am looking. I will let you
4 know in a minute.

5 Q. Are you looking in the audit report?

6 A. Oh, yes, yes. On page 99. Right under
7 9.3.2. There's 228 staff at Kyger Creek and 264 at
8 Clifty Creek. Clifty is the one in Indiana.

9 Q. I'm sorry. Did you say page 98 or 99?

10 A. 99. 99.

11 Q. Okay. I'm sorry. I thought you said
12 9.2. You said 9.3.2.

13 A. I'm sorry. 9.3.2.

14 Q. Okay. So did LEI do an analysis to
15 determine the cost to customers for the plants to
16 remain open and operating versus the salaries of the
17 employees at the plants?

18 A. No.

19 Q. Let's look at another consideration that
20 you've identified on page 9. Let's look at fuel
21 diversity. Do you know what Ohio fuel diversity was
22 during the audit period?

23 A. I don't know offhand.

24 Q. Did you research and study it when you
25 were writing this provision of the audit?

1 A. We did not.

2 Q. Did you look at the impact on customers
3 related to fuel diversity with and without the coal
4 units running?

5 A. That -- we did not.

6 MS. BOJKO: Your Honor, at this time I
7 would like to mark as OMAEG Exhibit 6, it's a
8 document that was premarked as OMAEG Exhibit 6. It's
9 the EIA's Ohio State Energy Profile 2001 and the EIA
10 State Electricity Profiles 2001.

11 EXAMINER PARROT: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. BOJKO: Thank you.

14 Q. (By Ms. Bojko) Dr. Fagan, you are
15 familiar with the EIA, correct?

16 A. I am a former employee of the EIA, yes.

17 Q. And -- well, then I hope you answer "Yes"
18 to this: You would consider EIA to be an
19 authoritative source, right?

20 A. I consider EIA to be an authoritative
21 source of data. EIA also does forecasts and
22 outlooks. Yeah, some of them are good, some of them
23 aren't, because forecasts and outlooks are tricky.
24 But on the data side, yes.

25 Q. And EIA is the U.S. Energy Information

1 Administration, correct?

2 A. That is correct.

3 Q. Okay. And in fact you relied yourself on
4 EIA's data in your audit report, correct?

5 A. That is correct. I'm pausing. I lost
6 connectivity to our server and I'm trying to get back
7 there to your exhibit but, yes.

8 Q. Okay. Then I will wait for you because
9 now I do want you to look at the exhibit at Table 5.

10 A. Okay. All right.

11 Q. It's on the last page of the exhibit if
12 that's helpful.

13 A. Yeah. I am connected to the internet and
14 for some reason -- I was on the server all morning.

15 Q. How it always works.

16 A. Okay. When I broke for lunch, I saw the
17 clock on my stove was flashing so I somehow lost
18 connectivity for a few minutes in the morning and
19 didn't notice it but maybe it kicked me off the
20 server. I cannot get back on. I don't want to
21 disconnect from the hearing to try to reboot
22 everything to get on the server. Unless you all want
23 me to, your Honor. I can't seem to get back on.

24 MS. BOJKO: Your Honor, I am happy to
25 jump to a different line of questioning but I think

1 we are still going to have the problem at some point.

2 EXAMINER PARROT: Let's go off the record
3 for a moment.

4 (Discussion off the record.)

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

7 A. So that's page 15? Okay. I am on
8 page 15. That's the last page in mine.

9 Q. Yes, Table 5.

10 A. Okay.

11 Q. So Table 5, in the far -- it's on the far
12 right in the first row showing utility generation.

13 A. Okay.

14 Q. Do you see where it shows, as of 2001,
15 Ohio's utility-scale energy sources for electricity
16 generation were comprised of .3 percent petroleum,
17 .2 percent natural gas, 83.5 percent coal,
18 10.9 percent nuclear, and .4 percent hydro and other
19 renewables?

20 A. I see that. It's -- it's data that's
21 over 20 years old.

22 Q. Right. Now let's -- I said that was
23 2001. Now let's turn to the front of the document.
24 On the front of the document there's 2019 consumption
25 estimates. And then if you look at page 3 -- and,

1 I'm sorry, go back to page 1 just to lay a little bit
2 more foundation. I got distracted with the server
3 issue. This document states from the EIA that it was
4 last updated July 15, 2021, correct? It's under the
5 "Ohio Quick Facts."

6 A. Yes. I see that.

7 Q. Okay. So now let's go to page 3 of 14 on
8 OMAEG Exhibit 6. And in the table at the bottom of
9 the page labeled "Utility-Scale Net Electricity
10 Generation (share of total)," there are percentages
11 in the left column next to the resources. Do you see
12 those?

13 A. Yeah. I am trying. Yes, I can't tell
14 what year it is.

15 Q. If you look at the right it says
16 "Period," and September '21 was when it was last
17 updated.

18 A. So period, it's not for that period?
19 It's when it was updated?

20 Q. Well, it says Period, September '21. The
21 document appears to be for that period.

22 A. So the month of September in 2021? Or is
23 it -- so the month -- a month of data that we are
24 looking at?

25 Q. That's what the document states. Some

1 periods it lists 2019, some for 2020, and for this
2 particular table it lists September 2021.

3 A. I just want to make sure I understand
4 this. So it's data last -- I am just going through
5 so I understand. So on page 2 it says data last
6 update December 16, 2021. Period is the right-hand
7 column. So some of the data is for an entire year.
8 Some of it is for a month, okay. Now go to page 3.
9 Okay. I just needed to orient myself to what I am
10 looking at.

11 Q. Fair enough.

12 If you look at the last table, it says
13 Ohio, "Utility-Scale Net Electricity Generation
14 (share of total)."

15 A. Yes, I see that.

16 Q. Okay. And here it lists the percentages
17 of the diversity in Ohio as petroleum-fired is
18 .1 percent, natural gas-fired is 37.5, coal-fired is
19 42.2, nuclear is 14.9, and renewables are 3.9; is
20 that correct?

21 A. Am I reading the same thing you are?
22 It's generation for the month of September 2021.

23 Q. So at this data point it appears that
24 Ohio's generation mix for utility-scale electricity
25 generation is more diverse today than it was in 2001;

1 is that fair?

2 A. So --

3 MR. SCHULER: Objection, relevance. We
4 are not here to determine what the generation mix is
5 today. We are here for an audit period of 2018 and
6 2019.

7 MS. BOJKO: Your Honor, I disagree. She
8 told me her statement that I am talking about in --
9 on page 9 was a broad contextual statement. It's
10 considerations for the state and the legislature to
11 consider when they are looking at this audit which
12 was drafted in 2020 and will be determined or a
13 decision will be thereafter, and she makes
14 prospective recommendations and this is one of those.
15 And I do not believe, as I said yesterday, that your
16 entry applies to recommendations in the audit report
17 in this manner.

18 EXAMINER PARROT: The objection is
19 overruled.

20 Dr. Fagan, if you are able to answer
21 based on the exhibit, go ahead.

22 A. So just to back up a couple of things.
23 This is not capacity. It's generation. And it's one
24 month. I think we have to look back in the bottom of
25 the data that we went through. I think that might

1 have been capacity so that's, you know, megawatts or,
2 you know, gigawatts or whatever. This is generation.
3 So that's -- I don't know if comparing 20 years and
4 it may be that it's more diverse but if we are
5 comparing apples and oranges, which, if you don't
6 mind, maybe I will go --

7 Q. Look at Table 5 at the top. It says
8 "Megawatthours." That would be generation, right?
9 Not capacity.

10 A. Is that the one at the very end?

11 Q. Yes. Table 5. The 2001 data we talked
12 about. At the very top it says "Megawatthours."

13 A. Yes. Okay. That's generation, okay.

14 Q. So they are a consistent comparison,
15 correct?

16 A. Yes, you are comparing generation with
17 generation, yes.

18 Q. Okay. So now that you have that context,
19 isn't it true that the generation mix for
20 utility-scale electricity generation is more diverse
21 today than it was in 2001?

22 A. I think to -- that might be true. But I
23 want to see -- I mean, I actually want to step back a
24 bit because I think you mentioned that we were
25 recommending that these other considerations be

1 considered. But in our sentence we were just
2 observing that the -- you know, the decision-making
3 bodies may take them into consideration. So I just
4 want to correct that because I think you called it a
5 recommendation but it's not.

6 Q. I mean, if that's what you are testifying
7 here today, I can't dispute it. That's not how I
8 read it with the word "outweigh" but okay. So based
9 on that -- are you trying to debate that the State of
10 Ohio has more diverse generation today than it did in
11 2001?

12 MS. KERN: Objection, your Honor. I
13 think we've been through this. I think she's
14 explained that that sentence was to give context. I
15 don't think she's -- I don't think she's opining on
16 this topic and I think this has been asked and
17 answered.

18 MS. BOJKO: Your Honor, I was trying to
19 follow up on something she said. She seemed hesitant
20 to make the conclusion that the State of Ohio's
21 generation is more diverse, and I am asking her if
22 she has some reason to dispute that statement.

23 EXAMINER PARROT: Go ahead and answer
24 that question, Dr. Fagan.

25 A. I'm having trouble with the 20-year time

1 frame. And whether you are more diverse or less
2 diverse than 20 years ago, it's not something we
3 examined for the audit. I just -- I mean, if you
4 have 2021 annual data compared to data from 20 years
5 ago, it might be more diverse but this isn't annual
6 data. And it's a shoulder month, it's September, so
7 in shoulder months you might have less gas running
8 anyway if you took a year of data. I don't know if
9 these percentages would be -- you know, they might be
10 different. It's -- I am just uncomfortable with
11 comparing a month of data with annual data from 2001.

12 Q. Do you believe as an auditor that works
13 in the industry, sitting here today do you believe
14 that the State of Ohio's generation mix is more
15 diverse than in 2001?

16 A. I would want to see the numbers. It's
17 not something you want to believe. It's something
18 you want to check.

19 Q. Okay. So in your recommendation or
20 listing of other considerations for the legislature
21 to consider, you didn't do any analysis to determine
22 what fuel diversity in the State either existed
23 during the audit period or exists from a prior period
24 or a future period.

25 MS. KERN: Objection, your Honor. I

1 think this has been asked and answered several ways
2 now. This was a sentence providing context. She
3 uses the word "may." She did not conduct an
4 analysis.

5 MS. BOJKO: She never testified to that,
6 your Honor. She can testify that she answered that
7 question and say she didn't conduct an analysis,
8 which is the first time I have asked that question.

9 EXAMINER PARROT: Go ahead and answer,
10 Dr. Fagan.

11 A. So I do believe that I did say that the
12 sentence is for context. We didn't conduct an
13 analysis and it's just that there may be other
14 considerations. Not we say there ought to be but
15 it's simply for context.

16 Q. And you are not taking a position here
17 today whether those considerations would or would not
18 outweigh the cost impact on ratepayers, correct?

19 A. We don't know.

20 Q. Well, you don't know. You are not taking
21 a position one way or the other, correct?

22 A. Correct. It was -- it's not a position.
23 It's again just context.

24 Q. And beyond this statement on page 9,
25 there is nothing else in the audit report that talks

1 about fuel diversity; is that correct?

2 A. I don't think so.

3 Q. I am going to go back to the bottom of
4 page 9 of the audit report. You have testified about
5 this here today, but for context I need to point you
6 to the sentence. The second-to-last paragraph toward
7 the bottom, the report states that some of the time
8 energy prices do not cover fuel and variable costs.
9 Do you see that?

10 A. Yes.

11 Q. Isn't it true that the output from OVEC
12 must be offered in accordance with the OVEC Operating
13 Committee's procedures?

14 A. That is our understanding.

15 Q. And those procedures, the Operating
16 Committee's procedures, establish that all but one of
17 the units must always be offered as must run except
18 when offline with maintenance; is that correct?

19 A. If you'll bear with me, I will -- I will
20 find the words.

21 Q. I think you might go to page 44.

22 A. 44, okay.

23 Q. If that's what you are looking for.

24 A. I have some words that I have marked
25 confidential so I am just going to quietly read and

1 just make sure I don't . . .

2 So the part that's not confidential that
3 I can say right here is that OVEC self-schedules, it
4 must run, all but one of the units in accordance with
5 the OVEC Operating Committee procedures as approved
6 by the Operating Committee. And there is more detail
7 after that but it's marked confidential.

8 Q. And "self-schedules" means must-run
9 strategy; is that right?

10 A. Yes, correct.

11 Q. And there is obviously an exception if
12 they are offline for maintenance, right?

13 A. Yes. We say later, and it's not marked
14 confidential, the strategy, except for Clifty
15 Creek 6, is to self-schedule the resource with the
16 sponsor-approved Operating Committee procedures to
17 make sure the units are in service and expected to be
18 available in the day-ahead market. The only time
19 that's not done is when maintenance outages are
20 planned. Yes, so the short answer, I think you've
21 captured it.

22 Q. Okay. And as an economist, would you
23 agree as a general rule in the field of economics an
24 option has value?

25 A. If somebody is paying a positive price

1 for an option, then it has value, you know.

2 Q. And if OVEC had the option to use either
3 an economic or must-run commitment strategy depending
4 on the circumstances, this could provide value to
5 OVEC, couldn't it?

6 A. It could provide value, in fact that's
7 why we made the recommendation to consider, you know,
8 economic commitment. Is it value to OVEC or to the
9 ultimate customers? I guess it could be value to
10 either/or both or one or the other. But this option,
11 this idea of having a choice, that's -- you know,
12 that's the foundation of our recommendation.

13 Q. And that recommendation is because that
14 option could have optimized OVEC's participation in
15 the PJM day-ahead market, right?

16 A. "Optimization" is a pretty specific term
17 but it could have and let's say it could have
18 improved, you know, revenues versus costs.

19 Q. So it's true that giving OVEC this option
20 would have been in the best interest of retail
21 ratepayers, correct? Or could be?

22 A. It could be, which is, again, you know,
23 why it -- that's why we recommended.

24 Q. As part of the audit, LEI did not analyze
25 how much OVEC lost in total over the 24-month period

1 as a result of the must-run strategy, did it?

2 A. We didn't do the analysis but there was
3 no sort of comparative hour-by-hour analysis, no.

4 Q. And did LEI compare the daily net
5 revenues received to the expected net revenues had
6 OVEC utilized an economic offer strategy?

7 A. We did not.

8 Q. So LEI did not evaluate whether it would
9 have been more or less prudent during the audit
10 period for OVEC to have an economic offer strategy
11 versus the must-run strategy, correct?

12 A. What was the first part again?

13 Q. LEI did not evaluate whether it would
14 have been more prudent or less prudent during the
15 audit period for OVEC to have an economic offer
16 strategy versus a must-run strategy, correct?

17 A. We didn't evaluate it quantitatively but
18 we nevertheless recommended it as an option.
19 Something to examine.

20 Q. You talked a little bit today about
21 re-dispatching analysis. That's in your report. Do
22 you recall that discussion?

23 A. Yes.

24 Q. Okay. That re -- the re-dispatching
25 analysis would use information that was available to

1 OVEC at the time it offered energy into PJM, correct?

2 A. I would -- I would imagine it would.
3 They might -- you know, I mean, do you mean a
4 backward looking or forward looking or? Like what we
5 mentioned here with the backward-looking analysis
6 that we mentioned on page 9, doing that?

7 Q. Yeah. Your re-dispatching analysis you
8 referenced in the audit report, that would use
9 information that was available to OVEC at the time it
10 offered into PJM, correct?

11 A. So you are saying if they looked backward
12 a year or two, it would be based on information that
13 they know?

14 Q. Correct. Would they have that
15 information for you to do that analysis?

16 A. Oh, if we were going to do it. I would
17 imagine backward looking, that, sure, they would have
18 the information.

19 Q. Okay. And did you ask for that
20 information?

21 A. We did not contemplate doing a
22 re-dispatch analysis for this project. It's --
23 it's -- it's very elaborate and it's -- if that was
24 contemplated in the scope of work, it would have
25 been -- it's not trivial so it would have been

1 probably its own standalone piece. So we did not ask
2 for the level of information that would be required
3 to do that.

4 Q. So you didn't do a prudency analysis of
5 that information, correct? Excuse me. Let me
6 rephrase.

7 You did not do a prudency analysis based
8 on that information, correct?

9 A. That's right. A prudency analysis is
10 based on the approach in this report but like we
11 said, not -- not based on dispatch model.

12 Q. And you -- you did conclude during some
13 periods of time a must-run strategy can be optimal
14 but at other times it may not be, correct?

15 A. That's correct.

16 Q. Would you say using demand and price
17 forecast information to inform offer strategies is a
18 best industry practice?

19 A. It's a good practice. It might depend on
20 the kind of plant that you have.

21 Q. To your knowledge, did OVEC use your term
22 "demand and price forecast" to formulate its offers
23 during the audit period?

24 A. I am turning to the section of the report
25 where we talk about that. I believe we have a

1 confidential figure. Bear with me.

2 Okay. Not quoting from confidential info
3 but looking at page 42. So on a daily basis we --
4 our information is that what we have in that second
5 paragraph, LEI understands that OVEC's Energy
6 Scheduling department has an internal daily call.
7 They review unit status and availability. Derates,
8 liabilities, outage status, return-to-service dates,
9 et cetera, and they use this information to formulate
10 the day-ahead offers. So their information -- yeah,
11 their -- it doesn't -- they didn't say whether they
12 used demand projections from PJM or prices.

13 Q. In your review it appears they did not or
14 you would have listed that in the items they
15 considered; is that fair?

16 A. We would have.

17 Q. To your knowledge did AEP make any formal
18 recommendations during the audit period that OVEC use
19 demand and price forecasting to formulate OVEC's
20 offers?

21 A. We didn't ask that particular question.

22 Q. So you don't know?

23 A. I don't know.

24 Q. I have a couple of clarifying questions
25 about an exhibit that you were asked about yesterday.

1 Do you have OCC Exhibit 4 in front of you? It's the
2 ratemaking study that was discussed yesterday.

3 A. I am going to try to get back into our
4 server.

5 Q. Oh.

6 A. Because I have a big long -- oh, no. I
7 have all those OCC exhibits in a folder. I cannot.
8 So is that the Kansas study?

9 Q. Yes.

10 A. Maybe -- I was going to say maybe --

11 Q. I am not going -- I am actually going to
12 ask you a couple questions about it to see if you
13 know, that aren't specifically related to the wording
14 in the document itself, if you want to try that route
15 first.

16 A. Okay. Yeah. Because it's -- I was
17 thinking, oh, I will just get it off the LEI server
18 but that's where I can't get to.

19 MS. KERN: It was sent via e-mail. And
20 then we can check e-mail too. It should be in your
21 e-mail.

22 MS. BOJKO: Ms. Kern, we just lost you
23 and didn't hear what you said. I think you said you
24 e-mailed --

25 MS. KERN: Right.

1 MS. BOJKO: I think we lost you.

2 MS. KERN: We are going to e-mail it.
3 Just I didn't know if you can ask some of your
4 questions without her having the document. It should
5 be there, you know, shortly, if you want to keep
6 going. If you want to wait, that's fine.

7 MS. BOJKO: No. I just have a few
8 questions about the general LEI study if you want to
9 try.

10 EXAMINER PARROT: Hold on a moment. We
11 are still having issues.

12 Ms. Kern, you're glitching in and out on
13 us.

14 MS. KERN: I can hear you all fine. Am I
15 steady now?

16 EXAMINER PARROT: You're good now but we
17 lost you and you came back and we lost you again. So
18 you are going to have to watch it here.

19 MS. KERN: Okay. All right.

20 EXAMINER PARROT: You, too, Ms. Bojko,
21 because I don't want to proceed unless she's with us,
22 so. Okay. Go ahead.

23 MS. BOJKO: Of course, your Honor. Thank
24 you.

25 THE WITNESS: Your Honor, while we are

1 waiting for the e-mail to come through, may I take a
2 very brief break?

3 EXAMINER PARROT: Oh, we sure can. Yes.

4 THE WITNESS: Thank you.

5 EXAMINER PARROT: Take a 5-minute break.

6 THE WITNESS: Thank you.

7 EXAMINER PARROT: Off the record.

8 (Recess taken.)

9 EXAMINER PARROT: All right. Let's go
10 back on the record.

11 MS. BOJKO: Thank you, your Honor.

12 Q. (By Ms. Bojko) I believe that we were
13 waiting for you to receive OCC Exhibit 4, the Kansas
14 ratemaking study. Were you able to receive that
15 during the break?

16 A. No. Accidentally, Counsel sent OMAEG
17 Exhibit 4, so I sent them a quick note and now they
18 are looking for the one to send.

19 Q. Okay. I honestly do not think you need
20 the exhibit. Can we maybe just start the questions
21 and I just have a few clarifying, more foundational
22 questions about the study.

23 EXAMINER PARROT: All right. Let's go
24 ahead.

25 MS. BOJKO: Thank you.

1 Q. Who was the lead author of this study for
2 LEI?

3 A. I wasn't involved in the study.
4 Typically -- I don't have the document in front of
5 me. Typically the authors are identified on the
6 bottom right-hand side of the page.

7 Q. So if the name Robert Elliott Vincent is
8 the only name on the bottom of the page, that's who
9 you would say would be the lead author of that
10 document?

11 A. I can't see it. I don't know the name
12 that you are saying.

13 Q. Oh, I'm sorry. That was the notice.
14 That was the Commission Staff. So I apologize.

15 If you look at page 2, which I believe is
16 the first page of the audit. I'm sorry. I'm looking
17 at the filing of the notice that was filed. It says
18 the contact is Gabriel Roumy/Ma. Cherrylin Trinidad.

19 A. Yes. So Gabriel Roumy and my colleague
20 Cherrylin Trinidad, yes. They obviously were the
21 leads on this.

22 Q. Okay. Thank you. And there could be
23 co-leads; is that what you are saying? They both
24 were the leads?

25 A. I wasn't involved in the project. They

1 are both contacts so they would both be
2 knowledgeable, I guess, for, you know, follow-up.
3 But I don't know exactly who did what. I wasn't
4 involved in that one.

5 Q. And would you consider both of those --
6 you said you are familiar with both individuals; is
7 that correct?

8 A. Yes. They are my colleagues.

9 Q. Okay. And would you consider both of
10 those individuals to be experts within the electric
11 utility industry?

12 A. Yes, I would.

13 Q. And do you know what their background is?
14 Are they economists? Are they?

15 A. I -- Gabriel is an engineer. I can't say
16 for sure.

17 Q. Okay. Fair enough. Those are the only
18 questions I had about -- just some foundational
19 questions about that study. Thank you. It sounds
20 like I have exhausted your knowledge.

21 Okay. So let's turn to -- whose -- who
22 is LEI's contact person at Staff for this project?

23 A. Our contact was Mahila Christopher.

24 Q. And do you believe that she was the Staff
25 lead on the case?

1 A. I don't know that phrase. She was our --
2 she was my main point of contact.

3 Q. And while LEI was drafting the audit
4 report, LEI did receive suggestions from Staff; is
5 that fair?

6 A. We provided a draft and they made
7 suggestions. Obviously, according to the RFP, there
8 is a date we provide a draft, they review, make
9 suggestions, and then we created the final report.

10 Q. Okay. I want to talk through that with
11 you a little bit. When did LEI send the first draft
12 audit report to Staff?

13 MS. KERN: Objection, your Honor.
14 Assumes there was more than one draft.

15 EXAMINER PARROT: Rephrase, Ms. Bojko.

16 MS. BOJKO: Well, your Honor, that's what
17 I am trying to ask. If the witness could respond.
18 If it was the first and only, she can say that, but
19 when was the first draft audit report sent to Staff.

20 EXAMINER PARROT: And I think you can get
21 there by rephrasing the question, so do that, please.

22 Q. (By Ms. Bojko) All right. How many draft
23 audit reports were sent to Staff to review?

24 A. We sent one.

25 Q. And what was the date of that draft?

1 A. Let me -- if you don't mind me checking
2 my files, I will do that. Oh, shoot. Maybe it will
3 let me in. I can't get on our server.

4 The timeline for our contract for our --
5 per the RFP was a draft by September 1.

6 Q. Right. So I am asking did you send that
7 draft on September 1 or was it September 2?

8 A. Oh, that's -- I am trying to check. Let
9 me just see if it's in an e-mail from a while ago.
10 Let's see.

11 MR. SCHULER: Your Honor, I object to
12 Ms. -- Dr. Fagan searching through e-mails for this.
13 You know, I know we are all -- it's still a fairly
14 new concept of doing things virtually where
15 everything technically could be accessible, that's
16 kind of been some of the foundation as we have tried
17 to avoid people getting onto computers, Googling
18 things, contacting people through other means. It's
19 part of the rules that we also agreed to in this
20 case. I suggest perhaps we find another way for this
21 line of questioning if Dr. Fagan does not have access
22 to the document she has.

23 MS. KERN: Quite frankly, your Honor, I
24 agree. I know she's our witness but I don't think
25 it's appropriate for her to be searching through her

1 computer.

2 MS. BOJKO: And to be clear, your Honor,
3 I didn't ask her to do that. I asked when the first
4 draft -- how about we go about it this way, your
5 Honor.

6 Q. (By Ms. Bojko) If you can look up NRDC
7 Exhibit 2. There are -- there are different dates in
8 that exhibit which is why I am asking the question.
9 And if this has also become marked as OMAEG
10 Exhibit 4. That might be helpful to you because I
11 think you have the OMAEG exhibits.

12 MS. KERN: Dr. Fagan, are you able to
13 access those exhibits or are you still experiencing
14 difficulty?

15 A. I'm experiencing difficulty but that one
16 I believe got sent to me so I -- I am opening it.
17 What is it telling me? I think that will work.
18 Okay. So that's the e-mails. That Exhibit 4 is the
19 e-mails?

20 Q. And just for the record so it's clear,
21 it's been officially marked as NRDC Exhibit 2 but
22 OMAEG also provided it in its prefiled exhibits which
23 is OMAEG Exhibit 4.

24 A. And that is what I am looking at, yes.

25 Q. Okay. So in the e-mail exchange as you

1 pointed out, it seems to be the third e-mail down,
2 there is a deadline or timeline, so to speak, and it
3 lists September 1 as the deadline for the Staff
4 Report. And then if you look down in another e-mail,
5 it says we received the Staff Report yesterday, so
6 that would be September 2.

7 I was asking if you -- if there was only
8 one draft report and if that was sent to Staff on the
9 1st or the 2nd.

10 A. I think we sent it on the 1st.

11 Q. But you are confirming that you did not
12 send one also on the 2nd. There would have only been
13 one.

14 A. If we had -- I don't know. I can check.
15 If we had a second one, it might have been upon
16 reading it and finding like typos and things to clean
17 up. I can -- I know it's not ideal to check e-mails
18 but I can check.

19 Q. Okay. I don't want you to check e-mails.
20 From your recollection, you only sent one e-mail to
21 Staff and that would have been either on September 1
22 or September 2?

23 A. Yes. And likely September 1, because
24 that's when it was due but, yeah.

25 Q. Okay. And when did you send the draft to

1 AEP?

2 A. Can I check my e-mails for that or no?

3 Q. I would --

4 MR. SCHULER: We would request not.

5 MS. KERN: I would ask the witness not to
6 check her e-mails.

7 MS. BOJKO: She can check the e-mails
8 that are in the NRDC Exhibit 2 if that's what she is
9 referring to. That is a marked exhibit.

10 MS. KERN: Yes, yes, I agree with that.
11 I thought she meant check her external e-mail.

12 MR. SCHULER: AEP Ohio also agrees she
13 can check NRDC Exhibit 2, the e-mails.

14 MS. BOJKO: Mr. Schuler, I can't -- you
15 keep trailing off at the end of whatever you are
16 saying. It's hard to hear you.

17 MR. SCHULER: Apologies. My mic is very
18 directional.

19 MS. BOJKO: Is there an objection
20 pending, your Honor? I am not sure. Okay.

21 MS. KERN: No. I didn't raise one.

22 Q. (By Ms. Bojko) Dr. Fagan, can you tell me
23 when you sent the draft to AEP?

24 A. I would have sent it my guess is after
25 September 8 because in my note to Mahila, you send

1 the draft to the Staff first. They have comments.
2 Then you send to the -- the process is you send it to
3 the client -- excuse me -- the Company being audited,
4 and my note is, okay, you know, once I have your
5 comments, I will have a good idea of how long it will
6 take to address them. And then I am saying I would
7 guess we could complete it by the end of the week in
8 any case, likely sooner. So that means we can get
9 the draft to Ed, that's Ed Locigno, by Friday the
10 11th. So I might have got it to them a day or two
11 sooner than that. But not before September 8th
12 because on that date I wrote the e-mail and hadn't
13 sent it yet. So sometime between, I guess, the 9th,
14 10th, or 11th, something like that.

15 Q. Okay. So let me understand the process.
16 You send a draft to Staff. Staff -- Staff provides,
17 and you did that on September 1, thereabouts. Then
18 Staff provides suggestions, edits, observations. And
19 then do you incorporate those changes prior to
20 sending it to AEP, so does AEP receive a different
21 draft than what you sent to Staff?

22 A. That's correct. That's why I -- that's
23 why my e-mail reads the way it does. I need an idea
24 of how long it will take to address their comments.
25 You know, my estimate, by the end of the week, then

1 we send to Ed Locigno. So that's right.

2 Q. Okay. So there are actually two draft
3 audit reports. One draft audit report goes to Staff
4 and then a different draft audit report goes to AEP.

5 MS. KERN: Objection, your Honor. I
6 mean, I think there are different ways that the word
7 "draft" could be interpreted. It's -- one, I
8 would -- I argue that there is one draft if there
9 were edits made to the same draft. So I would ask
10 counsel to define how she is using "draft" in her
11 question for clarity of the witness.

12 MS. BOJKO: Your Honor, I think I was
13 pretty clear. I described the process. One draft --
14 I asked her if one draft goes to Staff, if they
15 modify that draft, and a different draft goes to AEP,
16 which means that there were two different versions of
17 a draft audit report. Is that correct?

18 EXAMINER PARROT: Go ahead and respond to
19 that, Dr. Fagan.

20 A. I've never thought of it as two different
21 versions. It's a report at different stages of
22 review in my mind.

23 Q. Just so I'm clear, AEP does not see the
24 first draft that was sent to Staff on September 1.
25 They see a revised draft after you incorporate

1 Staff's comments; is that correct?

2 A. They see a revised draft. We incorporate
3 Staff's comments to the extent we accept them. So I
4 guess it is a revision and then that goes to the
5 Company.

6 Q. Okay. And then the Company reviews that
7 version that you sent them on sometime after
8 September 8. They review that draft and then they
9 can offer suggestions or comments on that draft; is
10 that right?

11 A. They have -- that's true. They have
12 really two categories of comments and one would be
13 correcting factual mistakes and the other would be
14 indicating what needs to be redacted for a public
15 version.

16 Q. So the draft that we looked at yesterday,
17 OCC Exhibit 17, was dated September 9. That was the
18 date after OCC -- after Staff provided you comments
19 on September 8. So is the draft dated 9-9, the
20 version that went to AEP?

21 MR. SCHULER: Objection. The document
22 that has been labeled as OCC Exhibit 17 is an
23 incomplete version, and OCC did not establish a
24 foundation further than the two pages that were on
25 there.

1 MS. BOJKO: I mean, your Honor, we are
2 happy to provide the whole draft audit. I don't
3 think that is necessary and would just be cumbersome
4 to the record if people are only talking about two
5 pages. I think it's fair to say that often in cases
6 we are allowed to use excerpts of documents. But for
7 completeness purposes, if Counsel would like the full
8 document to be used as the exhibit, I am happy to
9 provide that.

10 EXAMINER PARROT: Let's just rephrase,
11 Ms. Bojko, make it clear you are talking about an
12 excerpt.

13 MS. BOJKO: Oh, well, I actually wasn't
14 talking about the excerpt, so maybe, thank you, your
15 Honor, I'll rephrase because my question might not
16 have been clear.

17 Q. (By Ms. Bojko) There was an audit report
18 dated 9-9. Is it fair to assume that's the version
19 that went to AEP since you sent it to them after 9-8?

20 A. I don't know. I might have sent one
21 on -- I don't know. I can't -- I could check
22 e-mails. Other than that, I can't recall which they
23 would have seen.

24 Q. Okay. Well, I am just confused about the
25 date -- okay. Let's look at OCC Exhibit 17 so we are

1 all on the same page. Do you have access to that?
2 That's just the two-page excerpt from the draft audit
3 report.

4 A. I don't have it. I can't get on the
5 server.

6 MS. BOJKO: Your Honor, I have quite a
7 few questions about this and she has the e-mails.

8 THE WITNESS: I'll try one more time.

9 EXAMINER PARROT: Let's go off the
10 record.

11 (Discussion off the record.)

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

14 Okay. I believe Dr. Fagan has been able
15 to establish a connection to her server so,
16 Ms. Bojko, go ahead and proceed.

17 MS. BOJKO: Your Honor, is it possible
18 for the court reporter to maybe read back where I
19 was? I think I was just asking about the exhibit,
20 right? I asked her to look at Exhibit 17.

21 EXAMINER PARROT: Yes, you were asking
22 about the dates on Exhibit 17.

23 MS. BOJKO: Okay.

24 Q. (By Ms. Bojko) So, Dr. Fagan, thank you
25 for taking the time to do that. Do you now have in

1 front of you what's been previously marked as OCC
2 Exhibit 17?

3 A. I do.

4 Q. Okay. And OCC 17, for the record, is a
5 two-page excerpt from the audit. It's titled "Audit
6 of the OVEC Power Purchase Agreement Rider of Ohio
7 Power Company, Draft," and then it has the words
8 "Contains Company Confidential Information"; is that
9 correct?

10 A. That's correct.

11 Q. Okay. And on the bottom of that title
12 page, cover page, it has a date. What is the date?

13 A. September 9, 2020.

14 Q. And this is just an excerpt -- excerpt
15 but does it appear to be a draft of the audit report
16 that was filed in this case?

17 A. Yes.

18 MR. SCHULER: Objection to the framing of
19 the question. Assumes facts not in evidence.

20 EXAMINER PARROT: I believe she's already
21 answered the question. The objection is overruled.

22 Dr. Fagan, did you follow the question?

23 A. This is an excerpt from our draft of the
24 final report of which was filed in the case. I think
25 that's an accurate way to state it.

1 Q. Thank you for that clarification.

2 And this excerpt actually has the word
3 "Draft" on it; is that correct?

4 A. It does.

5 Q. And I think I asked you, does this
6 exhibit appear to be a fair representation of the
7 first two -- or two pages of the draft of the audit
8 report that was dated 9-9-20?

9 A. Yes.

10 Q. Okay. So if you were to send an audit
11 report in draft form to the Staff on 9-1, would that
12 title page have looked the same as OCC Exhibit 17
13 except having a different date on the bottom of it?

14 A. Probably. Sometimes we put this sort of
15 cover page on towards the end of the project. So
16 sometimes we don't have this kind of nice cover page.
17 We probably did have it. Just sometimes we don't.
18 But if there is confidential information and if it's
19 a draft, which it was, one way or another, even
20 without this particular page, we would indicate that.

21 Q. Okay. But it's fair to assume that you
22 would not have sent this version with a 9-9-20 date
23 on it on September 1, 2020, when you sent it to
24 Staff.

25 A. No, we would -- the draft for Staff would

1 be dated the deliverable date which would have been
2 September 1.

3 Q. Okay. So it appears to me, and correct
4 me if I am wrong, that there were two versions of a
5 draft, one dated 9-1-20 and one dated 9-9-20; is that
6 correct?

7 A. Yeah.

8 Q. And when you sent the 9-9-20 version -- I
9 am going to call that, since people are -- since I
10 got objected to calling them two drafts, I am going
11 to call them, if it's okay with you, the 9-1 draft
12 and the 9-9 draft. Would you understand what I mean
13 when I call them those?

14 A. I do.

15 Q. Okay. So when you sent the 9-9 draft to
16 AEP, would Staff have been copied on that exchange of
17 the document?

18 A. I would have to check if this is the
19 version that was sent to AEP. I would typically copy
20 Staff. Sometimes you send an e-mail, you forget to
21 do the copies, and then you look at it and say oh,
22 darn, and then you forward it saying I should have
23 CCed you. Sometimes that happens to me.

24 Q. But the typical practice is to copy Staff
25 because the RFP requires you to inform Staff of all

1 communications between you and AEP; is that right?

2 A. I'm not just because it requires that.
3 It's just -- it's just common practice but, yes. But
4 not to say that sometimes I absentmindedly don't do
5 that and then I have to go back and do it.

6 Q. Fair enough. You said you are not sure
7 this -- OCC Exhibit 17 was the exact version of the
8 draft that went to AEP. Are you suggesting that
9 there may have been a third version of the draft that
10 AEP saw?

11 A. I don't think so, but as we work on
12 documents, we update the dates so we can keep track
13 of things and there might have been edits and
14 cleanups that we found and cleaned up but I'm fairly
15 certain this is.

16 Q. And when you do cleanups, you add a new
17 date to reflect the updated version and would you
18 retain the old versions in your system?

19 A. We sometimes do.

20 Q. Okay. So after you sent the 9-1 draft to
21 Staff, there was an e-mail exchange on 9-8 between
22 you and Commission Staff members; is that correct?

23 A. That's correct.

24 Q. And those -- those e-mail exchanges
25 between -- were between you, Mahila Christopher, and

1 Rodney Windle; is that correct?

2 A. You are referring to the exhibit, right?

3 Q. Yes. I am referring to NRDC Exhibit 2.

4 A. Let me open that now that I have access
5 to everything. Okay. I've got it. I do have it
6 open now.

7 Q. Okay. I'm sorry. I asked you if the
8 e-mail exchange was between yourself and Mahila
9 Christopher and Rodney Windle.

10 A. Correct.

11 Q. Okay. And your -- what I think I heard
12 you say previously, your AEP contact was Edward
13 Locingo. Did I say that correctly?

14 A. I think it's Locingo.

15 Q. Oh, Locingo.

16 A. There are a few AEP folks but he was the
17 main -- I would say the main person. At least on
18 the -- yeah, yeah, okay.

19 Q. And it looks like Andrea Moore from AEP
20 would have also been a person that you communicated
21 with regarding the audit report; is that correct?

22 A. I think she was sort of the legal lead on
23 that side, so communications were all CCed to her,
24 you know, Data Requests, that kind of thing.

25 Q. I'm sorry. Did you say Andrea Moore was

1 the lead legal person?

2 A. Regulatory person maybe, I'm not sure.

3 Q. Okay. So let's look at the e-mail
4 between you and Staff that was dated September 8,
5 2020. Do you have that in front of you?

6 A. I do.

7 Q. Top of NRDC 2.

8 A. I have that.

9 Q. Okay. And in this e-mail Staff referred
10 to their suggestions as editorial suggestions,
11 correct?

12 A. Yes, they say editorial suggestions.

13 Q. Okay. And Staff also says that Staff
14 would still need final acquiescence from PUCO admin,
15 correct?

16 A. That's correct.

17 Q. Okay. And do you know who the PUCO admin
18 is?

19 A. I do not know.

20 Q. Let's look at the second bullet point
21 under the main observation. Here Staff suggests that
22 LEI reduce subjectivity and the level of detail in
23 the audit report and then give them an example; is
24 that correct?

25 A. "Reduced subjectivity and level of

1 detail/specifics would be required such as the
2 language on page 26, paragraph 2," and they have the
3 language.

4 Q. So Staff gave you an example of language
5 they would like reduced subjectivity and level of
6 detail/specifics; is that correct?

7 A. That's correct.

8 Q. So in this bullet, Staff is suggesting
9 that you be more broad, correct?

10 A. I disagree.

11 Q. Well, they are telling you to reduce your
12 level of detail/specifics, right?

13 A. Right. But they are not also saying, oh,
14 by the way, add other statements. So I didn't draw
15 that conclusion.

16 Q. So what does "reduce level of
17 detail/specifics" mean? Does it mean add more detail
18 and be more specific, or does it mean eliminate
19 details and specifics to you?

20 A. In my reading of the e-mail, the details
21 and specifics that I felt that it was acceptable to
22 delete was pretty much what's shown here. I didn't
23 then comb through the report and take other things
24 out.

25 Q. Okay. So you took "such as" to just mean

1 this one example that they provided you.

2 A. One example and then I think a couple of
3 spots that I caught in the report that, you know, for
4 editorial consistency with the other -- the tone and
5 intensity comment. I don't remember in detail every,
6 you know, single edit but it was heavy, extensive --
7 it was a handful of things.

8 Q. Okay. And the Staff was -- wasn't
9 directing you to reduce the subjectivity and detail
10 and specifics. They were not observing that the
11 audit had a reduced level of detail and specifics,
12 correct?

13 MR. SCHULER: Objection, calls for
14 speculation about the mental state of Staff when
15 asked about Dr. Fagan, that's something different.

16 MS. BOJKO: I'll rephrase, your Honor.

17 EXAMINER PARROT: Go ahead.

18 Q. (By Ms. Bojko) When you read this, you
19 believed the words "reduced subjectivity and level of
20 detail/specifics" meant that you were to reduce that
21 in the audit, not that the audit had a reduced
22 level -- or reduced subjectivity and level of
23 details, correct?

24 A. That's correct.

25 Q. Okay. Let's go to the first bullet under

1 the main observations and this bullet states that
2 Staff suggests a milder tone and intensity of the
3 draft language on page 10, paragraph 3 of the draft
4 report, and then Staff puts the language it would
5 like to be revised, correct?

6 A. That's correct.

7 Q. Similarly, it's true that the milder tone
8 was not an observation in the draft but rather Staff
9 was requesting that the audit be given a milder tone,
10 correct?

11 MS. KERN: Objection to the
12 characterization.

13 MR. SCHULER: Objection.

14 MS. KERN: Oh, sorry. Can you guys hear
15 me?

16 EXAMINER PARROT: Yes.

17 MS. KERN: I'm sorry. My -- every now
18 and again my video will go off and I am not sure if
19 you can still hear me. Please let me know if that's
20 a problem. It sounded like Mr. Schuler and I were
21 saying the same thing.

22 MS. BOJKO: Your Honor, I'll rephrase.

23 EXAMINER PARROT: Go ahead.

24 Q. (By Ms. Bojko) Your reading of this,
25 Dr. Fagan, when you read it was that Staff was

1 requesting that the audit, at least the provision
2 given here, be given a milder tone; is that correct?

3 A. That was how I interpreted this.

4 Q. And let's look at -- okay. So this
5 references page 10, paragraph 3 of the audit -- draft
6 audit report. Do you see that?

7 A. Let me switch back.

8 Q. No, no. I am saying that the Staff
9 e-mail references page 10, paragraph 3. Do you see
10 that?

11 A. Yes.

12 Q. Okay. I am just trying to make sure we
13 are all on the same page. And if you look at -- if
14 you look at OCC Exhibit 17, do you believe the
15 sentence that they were asking has milder tone
16 relates to the 9-9 draft under Section 1.3, the third
17 paragraph down on the page, the second paragraph in
18 1.3, the sentence that starts with "However"?

19 MR. SCHULER: Objection. Compound.
20 Vague.

21 EXAMINER PARROT: Dr. Fagan, if you
22 follow, go ahead and answer.

23 A. So it's referring to those words. But
24 the words were also in the September 1 draft. And
25 her e-mail is dated September 8.

1 Q. So there's a difference between the 9-1
2 draft that the e-mail is referring to and the 9-9
3 draft, the language has already been modified; is
4 that correct?

5 A. Let me look again. So what I am looking
6 at in the OCC Exhibit 17 it's -- the first page says
7 September 9. The page that's 2 of 2 doesn't have a
8 page number like an LEI page number. I guess it's
9 from the 9-9 draft.

10 Q. Okay. Well, let's compare to the filed
11 version. It's also the third paragraph on the page
12 and the second paragraph under 1.3. The "However"
13 language is in the same place. That's the first
14 sentence of the third paragraph on the page is the
15 same sentence that we are talking about in the e-mail
16 versus the 9-9 draft versus the final audit report
17 that's filed that's been revised through the process;
18 is that fair?

19 A. So we're talking about the second
20 paragraph under 1.3. Would you repeat the question?
21 I'm sorry.

22 Q. I am just trying to make sure that the --
23 the section that Staff was referring to in their
24 audit -- in their e-mail relates to the same
25 paragraph, paragraph 2, under Section 1.3, which is

1 the third paragraph on page 9 of the final audit
2 report.

3 A. Yes.

4 Q. Okay. And just to complete the circle,
5 it is -- relates -- it's the same language, relates
6 to the 9-9 draft, the second paragraph under 1.3,
7 which is also the third paragraph on page -- we're
8 not sure, 9 or 10, right? They are all three
9 discussing the same language.

10 A. Ah. The e-mail, the draft that's in
11 Exhibit 17, and the final report, that's what you are
12 asking, are they talking about the same thing?

13 Q. Correct.

14 A. Yes.

15 Q. Thank you. Sorry if that was inartful.

16 So the sentence that's in the NRDC 2
17 Exhibit e-mail is not anywhere in the filed audit
18 report, correct?

19 MS. KERN: Objection, your Honor. We did
20 review this yesterday. I will stipulate that that
21 sentence -- Counsel will stipulate it's not in the
22 final audit report.

23 MS. BOJKO: Okay. I am fine with that
24 stipulation. I don't recall these specific questions
25 and some of it is foundation. If you could bear with

1 me, I know it's been a long two days. It's hard to
2 remember everything.

3 MR. SCHULER: Your Honor, just for
4 clarity -- sorry, Kim, but just for clarity of the
5 record, you said "the sentence." There is a couple
6 of sentences referenced in the NRDC Exhibit 2. We
7 might want to clear that up as well.

8 MS. BOJKO: Fair enough. Counsel, will
9 you stipulate to the fact that the sentence,
10 "Therefore, keeping the plants running does not seem
11 to be in the best interests of the ratepayers," is
12 not found anywhere in the final audit report filed
13 with the Commission in this case?

14 MS. KERN: Yes.

15 MS. BOJKO: And will you similarly
16 stipulate that the sentence in the 9-9 draft,
17 "However, LEI's analysis shows that the OVEC contract
18 overall is not in the best interest of AEP Ohio
19 ratepayers," is also not found anywhere in the final
20 audit report filed with the Commission in this case?

21 MS. KERN: I'm sorry. I do not -- I
22 didn't follow the question.

23 MS. BOJKO: I asked if you would
24 stipulate to the fact -- or the witness can just
25 answer.

1 MS. KERN: She can answer. I mean, I
2 just -- I think we have established that the sentence
3 that you were questioning her about was not in the
4 final audit report. I raised several objections to
5 that yesterday based on relevancy.

6 MS. BOJKO: Okay. And so now I am asking
7 whether the 9-9 draft audit that contains the
8 sentence, "However, LEI's analysis shows that the
9 OVEC contract overall is not in the best interest of
10 AEP Ohio ratepayers," if that sentence is anywhere in
11 the final audit report filed with the Commission in
12 this proceeding.

13 MS. KERN: The witness can answer.

14 A. It is not.

15 Q. So at some point after receiving the
16 Staff e-mail dated September 8, 2020, the quoted
17 language "Therefore, keeping the plants running does
18 not seem to be in the best interests of the
19 ratepayers," was removed from the draft audit report;
20 is that correct?

21 A. That's correct.

22 Q. And that was removed by you or someone at
23 LEI; is that correct?

24 A. By me.

25 Q. And it's my understanding from this

1 e-mail that Staff also provided you with a redline of
2 the 9-1 draft audit report; is that correct?

3 A. That's correct.

4 Q. And in that redline of the audit report
5 was the sentence referenced in the e-mail,
6 "Therefore, keeping the plants running does not seem
7 to be in the best interests of the ratepayers," was
8 that struck, deleted, from -- in the redline?

9 A. I don't recall. That might have been a
10 talking point just for the e-mail. That might have
11 been a comment in the report. It might have been
12 struck. I actually do not know.

13 Q. Okay. So if I understand the events
14 here, the 9-1 draft audit report had the language,
15 "Therefore, keeping the plants running does not seem
16 to be in the best interests of ratepayers" and -- and
17 that language was requested to be modified by Staff
18 for milder tone and intensity; is that -- is that
19 correct?

20 MR. SCHULER: Objection.
21 Mischaracterizes Staff.

22 Q. That was your understanding, correct?

23 A. Yes, that's what it says in the e-mail,
24 that was their request.

25 Q. And then is it fair to assume that after

1 receiving that on 9-8, you modified the sentence and
2 put it in the 9-9 draft to be, "However, LEI's
3 analysis shows that the OVEC contract overall is not
4 in the best interest of AEP Ohio's ratepayers."

5 MR. SCHULER: Objection. Counsel is
6 asking the witness about documents and what was done
7 over a year ago in very lengthy documents without
8 showing any of them to her.

9 MS. BOJKO: Your Honor, she has them in
10 front of her. I am asking -- she said she drafted
11 the language. She modified or deleted the language.
12 I'm asking her. She has them all in front of her,
13 Counselor. I am asking if she took the language in
14 the 9-1 draft that was quoted in the e-mail, revised
15 it to be the language in the 9-9 audit report that
16 was sent to AEP the day -- the next day.

17 EXAMINER PARROT: The objection is
18 overruled. Go ahead, Mr. Schuler. Go ahead.

19 MR. SCHULER: I was going to say we are
20 referencing and there is an assumption there was a
21 draft on 9-8 now that has not been established and
22 that it was put back into the 9-9 as Ms. Bojko has
23 phrased it, so I think it assumes facts that are not
24 in evidence and is asking questions about documents
25 that are not before her, not all of them, she is

1 referring to.

2 MS. BOJKO: Your Honor.

3 MR. SCHULER: As they exist.

4 MS. BOJKO: That's not what my question
5 was. I did not say there was a 9-8 draft. Counsel
6 is misinterpreting for his own purposes of coaching
7 the witness. I said was the -- I will rephrase, your
8 Honor.

9 Q. (By Ms. Bojko) The e-mail --

10 EXAMINER PARROT: Go ahead.

11 Q. -- that is in front of you, NRDC
12 Exhibit 2, contains a sentence, and I will read it
13 again so we are all clear what sentence I am talking
14 about, "Therefore, keeping the plants running does
15 not seem to be in the best interests of the
16 ratepayers." Was that sentence changed after
17 receiving Staff's comments on September 8, to be,
18 "However, LEI's analysis shows that the OVEC contract
19 overall is not in the best interest of AEP Ohio
20 ratepayers," when you created the 9-9 draft audit
21 report?

22 MS. KERN: Objection, your Honor.

23 Q. OCC Exhibit 17.

24 MS. KERN: Sorry, Kim. Objection, your
25 Honor, as to relevancy. What the auditor had in a

1 draft report at a certain point of time is not
2 relevant to this proceeding. What is relevant is the
3 final audit report. I cited to precedent yesterday
4 from the Ohio Power Siting Board. I am going to
5 raise that objection again. The final audit report
6 speaks for itself as to what the auditor found was
7 necessary for that report.

8 MS. BOJKO: Your Honor, I think it very
9 much goes to the case in hand, the RFP requires and
10 the Commission's entry requires the auditor to look
11 at certain items. It requires the auditor to be
12 independent. And if she made changes based on
13 people's comments or party's comments, that is very
14 relevant to the final audit report and what it says
15 or doesn't say.

16 MS. KERN: Your Honor, to the extent I
17 can please respond. I think the auditor did testify
18 about independence and the suggestion of independence
19 is perplexing here. The RFP also calls that the
20 auditor -- calls for the auditor to turn over a draft
21 to Staff for their review. So there -- there hasn't
22 been anything that has been shown to be out of line
23 with what the RFP required. That's the extent of my
24 response.

25 MS. BOJKO: Your Honor, if I may respond.

1 I am not suggesting -- I mean, that is the point of
2 cross-examination, to look at a witness, ask what
3 they did, ask how they arrived at the testimony that
4 they provide, and also at times challenge the
5 credibility of the witness, and then compare it to
6 what the requirements are to see if the utility met
7 the burden of proof. I haven't gotten to the end of
8 my questions yet which would allow me to either make
9 that assumption in the argument in front of the
10 Commission or not make that assumption in the
11 argument. If I would be allowed to finish, then
12 maybe Counsel would be able to see what the point is
13 and where I am going with this, but I haven't been
14 allowed to finish.

15 MR. SCHULER: Your Honor, just briefly.
16 AEP Ohio joins Staff's relevance objection but I also
17 point out that the question pending right now is,
18 "Was this sentence changed after receiving Staff's
19 comments on September 8, to be, 'However, LEI's
20 analysis shows that the OVEC contract overall is not
21 in the best interest of AEP Ohio ratepayers'?" That
22 is the very sentence that was the subject of the
23 e-mail on September 8, so the question, I guess, at
24 best doesn't make sense.

25 MS. WACHSPRESS: Your Honor, this is

1 Megan Wachspress on behalf of NRDC. I don't know if
2 you need more folks chiming in but we support
3 overruling this objection. Staff has put the editing
4 process of this audit into evidence by submitting the
5 testimony of Staff Witness Windle which goes
6 precisely to this issue and so they can't have it
7 both ways. They can't submit evidence on this issue
8 and then refuse to hear cross-examination on it.

9 And what I think Ms. Bojko has
10 established is that there was one round of changes to
11 the audit prompted by Staff comments and then it was
12 sent to the subject of the audit, AEP Ohio, with a
13 different sentence which is not then in the final
14 audit. So we're -- the facts as established so far
15 raises serious concerns about the credibility and
16 independence of the audit that I think are absolutely
17 at the heart of this issue and why we have live
18 testimony, as Ms. Bojko said, why we have live
19 testimony at all. So just to chime in there on
20 behalf of NRDC.

21 MS. KERN: Your Honor, we did provide
22 evidence from a Staff witness to explain Staff's role
23 in overseeing the audit per the Commission's
24 directives. I understand that the independence and
25 Staff's integrity has been questioned in pleadings in

1 this docket, but I would still maintain my objection
2 to this question.

3 EXAMINER PARROT: Anyone else?

4 All right. The objections as to the
5 question that's pending are overruled.

6 Dr. Fagan, you may answer the question.
7 If you need clarification, you may ask for it.

8 THE WITNESS: Can I just hear the
9 question again?

10 EXAMINER PARROT: Of course.

11 (Record read.)

12 A. Yes.

13 Q. And after you created the 9-9 draft audit
14 report, the sentence "However, LEI's analysis shows
15 that the OVEC contract overall is not in the best
16 interest of AEP Ohio ratepayers," that sentence was
17 subsequently changed in the final audit report to say
18 "However, LEI's analysis shows at this time that the
19 OVEC plants cost customers more than the cost of
20 energy and capacity that could be bought on the PJM
21 wholesale markets," correct?

22 A. Not so much changed. It was crossed off,
23 and then we used that second sentence, the plants
24 cost more than the cost of energy and capacity, as
25 the first sentence of the paragraph because that was

1 the meat of the conclusions. And rather than making
2 the broad statement, going into this is the reason
3 the plants cost more than the cost of energy and
4 capacity, that's the important bottom line of the
5 audit and, again, more specific than the broader
6 statement.

7 Q. Okay. So you are referring to the 9-9
8 draft that said -- the second sentence after it said,
9 "However, LEI's analysis shows that the OVEC contract
10 overall is not in the best interest of AEP
11 ratepayers -- Ohio ratepayers." This is because, as
12 detailed in the audit, the OVEC plant costs customers
13 more than the cost of energy and capacity that could
14 be bought on the PJM wholesale markets, correct?

15 A. That's correct.

16 Q. Okay. And so this change, the removal of
17 the sentence in the 9-9 draft about the overall
18 contract not being in the best interest of
19 ratepayers, was changed or removed after AEP Ohio
20 reviewed the draft edit -- or the draft audit report,
21 correct?

22 A. It was -- it was removed after 9-9. I
23 don't recall the date that I got the response from
24 AEP.

25 Q. So you don't know sitting here today

1 whether AEP received OCC Exhibit 17 as the draft
2 audit report or whether they received a different
3 version of the draft audit report, correct?

4 A. That's not what I said. So I might have
5 been working on edits, and I mean I am assuming they
6 got the -- the one on the 9th and we made the final
7 edits. I suppose we did make the final edits after
8 they sent theirs back but, again, ultimately it's my
9 decision. The Company can make comments. Staff can
10 make comments. That's their job. But ultimately
11 what's in there is, you know, my own view of what
12 ought to be in there.

13 Q. You said sent it back. Does AEP also
14 provide you with a redline of the draft audit report?

15 A. I don't remember if it was a redline or
16 if there was say a PDF markup. They indicate
17 redactions. That's an important piece of it and then
18 maybe there is other pieces as well. I don't recall
19 the format offhand.

20 Q. Well, I believe you said that this
21 language was -- the first sentence in the 9-9 draft
22 was lined out. Who would it have been lined out by?
23 Do you mean it was redlined out as a deletion? What
24 did you mean by that statement?

25 A. I don't know that I used the phrase

1 "lined out." I'm not sure what --

2 Q. Okay. I might have misheard you.

3 Okay. So I guess I am still confused on
4 what version of the draft audit report that AEP
5 received. Are you saying that you don't know whether
6 they received the 9-9 draft version or whether they
7 received a different version of the audit report?

8 A. I am very sure it's the 9-9. I would
9 have to check my e-mails but let's say September 9.
10 You know, that makes the most sense.

11 Q. Okay. And after receiving the 9-9 draft
12 of the audit report, AEP sent back comments,
13 suggestions, and did they send you a comment or
14 suggestion regarding this sentence?

15 A. I think they did but we might have
16 already worked on it, so they -- I am trying to
17 recall if they said yes, we agree with that edit or,
18 you know, we would like this edit. I think they did
19 comment on it one way or the other.

20 Q. So like this edit, are you suggesting
21 that AEP saw a different version than the 9-9 version
22 OCC Exhibit 17 that would have had edits to the
23 language such as Staff's edits or LEI's edits?

24 A. So we had edits from them on the 9-9
25 version and I think things might have gone around one

1 more time for final redactions, et cetera. So they
2 might have seen one between 9-9 and the final. I
3 would have to look at e-mails. But getting
4 everything cleaned up and redacted and finalized
5 sometimes takes an extra go around, so they might
6 have seen another one.

7 Q. And would that other document have been
8 saved on your system as a different version of the
9 draft audit report?

10 A. It's possible.

11 Q. Okay. So as I understand it, the 9-1
12 draft that went to Staff and the 9-9 draft that may
13 have gone to AEP and Staff, both of those drafts had
14 language regarding what was in the best interest of
15 customers; is that correct?

16 MS. KERN: Objection, your Honor. Asked
17 and answered. The draft report and the versions of
18 the draft contained language that is no longer
19 the-best-interest-of-customers language that is not
20 in the final report.

21 MS. BOJKO: It's actually not what I
22 asked, but that's fine if Staff wants to stipulate to
23 that fact.

24 Q. (By Ms. Bojko) And except for page 7 of
25 the final audit report and 27 of the final audit

1 report, nowhere else in the final audit report does
2 it speak to a determination of what's in the best
3 interests of customers or even mention what's in the
4 best interests of customers, correct?

5 A. I would want to do a word search on "best
6 interests." That's probably right.

7 Q. Okay. So looking at OCC Exhibit 17, the
8 9-9 draft of the audit report, isn't it true that as
9 of 9-9-2020, LEI believed that the OVEC contract was
10 not in the best interests of AEP Ohio's ratepayers?

11 A. It's too broad a statement.

12 MS. KERN: Objection as to relevancy of
13 what the auditor thought at a certain point in time
14 that is not in the final draft report. I object to
15 the relevancy of the question.

16 MR. SCHULER: AEP Ohio joins the
17 objection.

18 EXAMINER PARROT: And the objections are
19 noted for the record, but as we went through with the
20 other attorneys yesterday on these types of
21 questions, we are going to allow the questions, take
22 them one by one, of course, if you have other
23 objections. But as to the relevance issue, we are
24 going to leave that for the Commission to sort out.

25 So, go ahead, Dr. Fagan.

1 THE WITNESS: I'm sorry. What was the
2 question?

3 Q. (By Ms. Bojko) The question was, isn't it
4 true that as of 9-9-2020, LEI believed that the OVEC
5 contract was not in the best interests of AEP Ohio
6 ratepayers?

7 A. So -- and I think I said this yesterday
8 as well. It's too broad a statement.

9 Q. Okay. Are you suggesting -- you are here
10 to support LEI's analysis, is that correct, today?

11 A. That's correct.

12 Q. And under the 9-9 draft report, a
13 document that was memorialized and sent to outside
14 parties, that document showed LEI's belief at that
15 time on September 9, 2020, that the OVEC contract
16 overall was not in the best interest of customers,
17 correct?

18 MR. SCHULER: Objection, asked and
19 answered yesterday.

20 MS. BOJKO: This question was not asked
21 and answered yesterday, your Honor.

22 MR. SCHULER: Your Honor, to the extent
23 the question is asking about her beliefs about that
24 language, it was actually asked and answered
25 yesterday. You sustained objections around that

1 concept.

2 MS. BOJKO: Your Honor, that's why I
3 specifically yesterday, during the cross-examination,
4 I drafted new questions because this one was not
5 asked. I am not asking her belief.

6 MR. SCHULER: The question was, the
7 document showed LEI's belief at the time on
8 September 9. So, yes, it does ask about the belief
9 at the time.

10 MS. BOJKO: Your Honor, I will rephrase.

11 EXAMINER PARROT: Go ahead.

12 Q. (By Ms. Bojko) Under the 9-9 draft
13 report, LEI's analysis showed that the OVEC contract
14 overall was not in the best interests of the
15 customers; is that correct?

16 A. Our -- our analysis showed that the
17 plants cost the customers more than the cost of
18 energy and capacity that could be bought on the PJM
19 wholesale markets. That's what the analysis showed.
20 And that's the piece that I preserved for the final
21 report.

22 Q. Okay. You're not testifying that LEI's
23 analysis on 9-9-20 was somehow untruthful, are you?

24 A. Of course not.

25 Q. Of course not. And LEI doesn't routinely

1 put statements in its reports, draft or otherwise,
2 that it knows to be untruthful, does it?

3 MR. SCHULER: Objection. We went through
4 this yesterday. The term "truthful" is subjective in
5 nature. It's also asked and answered yesterday.
6 Same line of questioning.

7 EXAMINER PARROT: Ms. Bojko.

8 MS. BOJKO: Your Honor, it wasn't. I
9 specifically drafted these questions during the
10 cross-examination yesterday and refined my questions
11 so they would not be the same questions.

12 MR. MCKENNEY: Your Honor, I'll just note
13 we support directing the witness to answer these
14 questions. At least that this particular objection
15 be overruled. This was not in my line of questioning
16 if that's what the allegation is.

17 MS. WHITFIELD: Kroger would also
18 support.

19 EXAMINER PARROT: Okay. We got pretty
20 close to this line of questioning yesterday,
21 Ms. Bojko. I am going to give you a little leeway.

22 Dr. Fagan, go ahead and answer this one,
23 but let's get on with it, Ms. Bojko.

24 Go ahead, Dr. Fagan.

25 A. So as I said yesterday, the statement, I

1 took it out, it's too broad. What we believe is the
2 bottom line of our analysis, it's not that we -- you
3 know, it's not an issue of truthfulness. It's an
4 issue of a precise and accurate statement. And the
5 plants costing more than the cost of energy and
6 capacity that could be bought is a precise and
7 accurate statement.

8 Q. That actually wasn't my question so I
9 will repeat it.

10 LEI doesn't routinely put statements in
11 its reports, draft or otherwise, that it knows to be
12 untruthful, does it?

13 MR. SCHULER: Renewed objection. It's
14 the same question that was just asked. She gave the
15 same or similar answer she gave yesterday. It's
16 overbroad. That's why the objection --

17 MS. BOJKO: Your Honor, I am not even
18 talking about the OCC Exhibit 17. I am asking -- I
19 am allowed, as a witness has put testimony on the
20 stand, to test the independence and the credibility
21 of the witness as an expert. We do this in every
22 case. So I am asking the witness if LEI routinely
23 puts statements in reports, draft or otherwise, that
24 it knows to be untruthful. It's a simple yes or no
25 question.

1 EXAMINER PARROT: Dr. Fagan, are you able
2 to give a yes or no?

3 THE WITNESS: Oh, I wasn't sure.

4 A. No, of course we wouldn't do that.

5 Q. You personally have never intentionally
6 put an untrue statement about an LEI analysis in an
7 audit report, have you?

8 A. I think the answer is more nuanced
9 because there's levels of -- I mentioned before like
10 the breadth of a statement, how it can be
11 interpreted, et cetera. So I'm sure lawyers do this
12 too. You draft materials, you read them over, is
13 that really what we wanted to say. That was the
14 first pass at something. It's not that you are doing
15 something untrue. It's that it doesn't suit, so you
16 edit it.

17 Q. So the answer to my question is, no, you
18 would never personally intentionally put an untrue
19 statement in an audit report, correct?

20 A. Well, no.

21 Q. I am trying not to reask any questions.

22 Just for clarification, the 9-9 draft
23 conclusion, the, "However, LEI's analysis shows that
24 the OVEC contract overall is not in the best interest
25 of AEP Ohio ratepayers," that statement was based on

1 information LEI reviewed while conducting the audit
2 since it -- it references LEI's analysis, correct?

3 A. The statement refers to the sentence
4 afterward. The sentence afterward is "the OVEC
5 plants cost customers more than the cost of energy
6 and capacity that could be bought on the PJM
7 wholesale markets." So that was our specific
8 conclusion. The statement before that, the best
9 interest statement, it was sort of an overly broad
10 summary of the audit conclusion which was the
11 specifics about the cost of energy and capacity in
12 PJM.

13 Q. Okay. But the first sentence says "LEI's
14 analysis shows," correct?

15 A. So the first sentence of the first --

16 Q. Of the 9-9 draft, OCC Exhibit 17.

17 A. Read on to the sentence after that.

18 Q. I am just asking if those words appear in
19 the first sentence, Dr. Fagan.

20 A. They appear in the first sentence and
21 then it's "This is because."

22 Q. Did LEI do any additional analysis from
23 the 9-9 version of the audit to when it was filed on
24 9-16-2020?

25 A. I don't think so. If we did anything, it

1 would have been brief because there wasn't -- it was
2 a short period of time. I don't think we did.

3 Q. And is it fair to say that LEI did not do
4 any additional or different analysis after receiving
5 Staff's e-mail on 9-8-2020?

6 A. I don't think so. It was just, you know,
7 editing but not new analysis. There might -- I don't
8 recall but if there were, like I said, it would be
9 something very brief. There just isn't that much
10 time in that, you know, in the draft versus final
11 filing, you know, time frame.

12 Q. And this -- the change in the audit
13 report from the version 9-1 that was referenced in
14 the Staff e-mail, "Therefore, keeping the plants
15 running does not seem to be in the best interests of
16 the ratepayers," to what ended up in the final audit
17 report of the deletion of that sentence, that was
18 based on Staff's request from its 9-8 e-mail,
19 correct?

20 A. And my --

21 MR. SCHULER: Objection to the
22 characterization of Staff's e-mail.

23 MS. KERN: Objection, mischaracterizes.
24 She addressed this yesterday.

25 MS. BOJKO: I believe she already

1 answered, your Honor.

2 EXAMINER PARROT: I am not sure she fully
3 did. Go ahead and rephrase, Ms. Bojko.

4 Q. (By Ms. Bojko) We talked about three
5 different versions of the draft of the audit report
6 to the final. We talked about a 9-1 version, we
7 talked about a 9-9 version, and then the 9-16 final.
8 And the sentence we have been talking about I asked
9 if it was changed based on Staff's recommendation in
10 its 9-8 e-mail.

11 A. Based on Staff's recommendation and my
12 own judgment.

13 Q. And was it also based on AEP's comments
14 provided to you on the audit report?

15 A. I think I mentioned before -- I mean, AEP
16 might have had a comment, but I can't recall if it
17 was, oh, yes, we agree you are going to do that, or
18 we really think you ought to do it. I don't remember
19 which way.

20 Q. Okay. If you can keep the OCC Exhibit 17
21 handy, I would like you to flip back to OMAEG
22 Exhibit 5 which was the RFP that we discussed.

23 A. Okay. I have it.

24 Q. Okay. Previously we were discussing the
25 page 4 of the RFP. Let me see here where it uses the

1 words the prud -- "an annual prudency audit to
2 establish the prudency of all costs and sales flowing
3 through the PPA rider and to demonstrate that the
4 Company's actions were in the best interest of retail
5 ratepayers." Do you see that sentence again?

6 A. I do.

7 Q. Okay. So isn't it true that the 9-9
8 draft audit report did, in fact, have a finding
9 regarding the directive in the RFP regarding your
10 audit of the Company's -- of whether the Company's
11 actions were in the best interest of customers.

12 MR. SCHULER: Objection. The draft audit
13 report cannot have a finding. It is by definition a
14 draft and not a final finding.

15 MS. WACHSPRESS: Your Honor, if I may be
16 heard, this is Megan Wachspress from NRDC. I don't
17 know that that is an evidentiary objection. That to
18 me sounds like prompting the witness. I don't know
19 if there is anything to be done about that, but I
20 just wanted to register my objection to the form of
21 that objection and how it's interfering with the
22 cross.

23 MR. FINNIGAN: Your Honor, this is John
24 Finnigan. If I may join in that objection too. I
25 noted that before when I was questioning the witness

1 that throughout the hearing counsel for Staff and
2 counsel for AEP have been making coaching objections
3 and speaking objections. That's prejudicial to our
4 interests because if they have an objection to the
5 form of the question, they simply need to state,
6 "Object to form."

7 Anything beyond that is interfering with
8 our cross-examination of this witness and is highly
9 improper. This happened throughout the hearing.
10 We've objected to it a few times before. I just want
11 to raise the objection again because it's continuing.

12 MR. SCHULER: Your Honor, I would take
13 issue with these accusations, especially with respect
14 to Mr. Finnigan. This is not a deposition. I
15 believe he's citing deposition rules. He also
16 proffered a lot of evidence that looked like
17 testimony from an attorney yesterday. So all that
18 being said, I'm objecting to the question to the
19 extent it is assuming facts not in evidence. It is
20 also drawing legal conclusions.

21 MR. FINNIGAN: And my response is
22 objection to form.

23 EXAMINER PARROT: All right. Thank you
24 all. Appreciate it.

25 Ms. Bojko, rephrase.

1 MS. BOJKO: Thank you, your Honor.

2 Q. (By Ms. Bojko) Isn't it true that the 9-9
3 draft audit report, OCC Exhibit 17, did, in fact,
4 respond or make a draft finding to this directive
5 contained in the RFP regarding a demonstration of
6 whether the Company's actions were in the best
7 interest of ratepayers?

8 A. Well, as I mentioned before, the
9 statement in the draft was overly broad. Our finding
10 is actually the second sentence which is about the
11 costs of -- the costs flowing through OVEC versus PJM
12 costs, prices.

13 Q. But the 9-9 draft used the words that are
14 in the RFP requiring you to make a prudency finding
15 of whether the Company's actions were in the best
16 interest of retail ratepayers, correct?

17 A. The "best interest of ratepayers" piece
18 in the RFP is in the purpose. The scope of work that
19 we did is in part 3, scope of investigation. So
20 probably a legal question. I don't know that we were
21 required to make the demonstration, but I am not a
22 lawyer.

23 Q. Okay. Okay. So you're suggesting that
24 the commit -- the statement here that says, under
25 "Prudency and Performance Audit," you are suggesting

1 that the words, "The Commission provided in Case
2 No. 14-1693," that you may or may not have read some
3 or all of the orders, "for an annual prudency audit
4 to establish the prudency of all costs and sales
5 flowing through the PPA rider and to demonstrate that
6 the Company's actions were in the best interest of
7 retail ratepayers," you are saying that that was not
8 part of what you were supposed to do.

9 A. It's not that the prudency part in the
10 purpose statement is in the scope of work. But the
11 best interest part was not in the scope of work.

12 Q. Okay. And so you would be surprised --
13 first, remember the last part of this, it says, "as
14 contemplated by, and in compliance with, the
15 Commission's orders," you would be surprised then if
16 we went to one of those orders and the Commission
17 directed the audit and said the audit would do these
18 two things, right? That would surprise you because
19 you don't believe it's any part of this case, any
20 part of the audit.

21 A. I didn't read the 14-1693-EL-RDR.

22 Q. So you don't know what the Commission
23 ordered you to do as the auditor in this case, do
24 you?

25 A. We assumed it was the scope of work and

1 that's what we worked from.

2 Q. Okay. We'll come back to that.

3 I want to get the entry for you to
4 review, but so we don't hold up the hearing, I have a
5 couple more questions to ask you.

6 Dr. Fagan, I want to ask you, would it be
7 prudent for an auditor to review whether a company
8 and its affiliates have conflicts of interests when
9 the company is making certain decisions that may
10 affect customers?

11 A. Would it be prudent for --

12 MR. SCHULER: Objection. Asks for a
13 legal conclusion.

14 MS. BOJKO: Your Honor, I didn't ask for
15 a legal conclusion. She's a prudency auditor. I am
16 asking her if it would be prudent for a prudency
17 auditor to review whether a company and its
18 affiliates have conflicts of interests when the
19 company is making certain decisions that may affect
20 its customers.

21 MR. SCHULER: Conflict of interest is a
22 legal concept and not one she was charged with in
23 this particular audit.

24 EXAMINER PARROT: And we established
25 yesterday she is not an attorney. She is not here to

1 offer legal opinions of things.

2 So, in your layperson view of things as
3 an auditor, Dr. Fagan, go ahead and answer the
4 question.

5 A. We didn't look at it in the context of
6 this audit.

7 Q. That wasn't the question. I am asking a
8 prudency auditor would it be prudent for an auditor
9 to review whether a company and its affiliates have
10 conflicts of interest when the company is making
11 certain decisions that may affect its customers?

12 A. You are asking about the prudency of the
13 auditor?

14 Q. Yeah. I am asking if it would be prudent
15 for an auditor like yourself to review whether a
16 company and its affiliates have conflicts of interest
17 when you are determining the prudency of a decision
18 that that company is making that may affect its
19 customers.

20 A. You could include something like that.

21 MS. O'BRIEN: I just wanted to interject.
22 Someone might want to check on Kyle because I don't
23 see her video, and I see the yellow triangle of death
24 on her -- on her square.

25 EXAMINER PARROT: Go off the record for a

1 moment.

2 (Discussion off the record.)

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

5 MS. BOJKO: I'm sorry, your Honor. Was
6 there a question pending?

7 EXAMINER PARROT: There was not.

8 Q. (By Ms. Bojko) Dr. Fagan, isn't it true
9 if a company that has conflicts, that they could make
10 decisions that wouldn't necessarily be in the best
11 interests of their customers?

12 A. As a general matter, companies -- whether
13 they have conflicts or not, sometimes companies don't
14 make decisions that are in customers' interests just
15 accidentally or whether they have problems or they
16 don't. It probably happens all over the business
17 world.

18 Q. Fair enough. So let's take an example.
19 If a regulated utility that chooses profits to
20 shareholders or more favorable treatment to its
21 affiliates over the provision of lower cost to its
22 customers, its actions may not necessarily be in the
23 best interest of its customers, would they?

24 MR. SCHULER: Objection, relevance and an
25 incomplete hypothetical.

1 EXAMINER PARROT: To the extent you
2 follow it along there, Dr. Fagan, go ahead and
3 answer.

4 A. I think it's -- it's broad and
5 hypothetical and it -- I think that -- those kinds of
6 analyses, they are usually done I would say in very
7 particular circumstances. I wouldn't want to
8 comment.

9 Q. I'm really confused by your response
10 because I thought you were an expert in prudence.
11 And it's my understanding, and correct me if I am
12 wrong, that a prudence auditor would make these
13 decisions of what -- would make a finding as to
14 whether a company decision is prudent and in the best
15 interests of customers. Am I wrong? Are you not an
16 expert in prudence? Do you not do that on a regular
17 basis?

18 MR. LINDGREN: Objection. She's
19 testified she doesn't have knowledge of this specific
20 question, not that she's not a general expert.

21 MR. SCHULER: I'll also object that that
22 is argumentative.

23 EXAMINER PARROT: Argumentative.

24 Rephrase, Ms. Bojko.

25 Q. (By Ms. Bojko) Let's break it up. So you

1 are an expert in conducting prudency audits, correct?

2 A. Yes. I've conducted a number of them.

3 Q. And I believe Ms. Whitfield asked you if
4 you do it almost on a daily basis. You said not
5 quite on a daily basis but regularly. So you would
6 agree with me you determine the prudency of
7 companies' decisions on a regular basis, correct?

8 A. From time to time in my line of work,
9 yes.

10 Q. And in this line of work you would make a
11 prudency decision on whether a company acted in the
12 customers' best interests. Have you done that in the
13 past?

14 A. Specifically we do -- I would say not
15 necessarily is this in the customers' best interests
16 but are costs prudently incurred? Are they billed
17 correctly? You know, you do that in various kinds of
18 audits, FAC audits, management performance audits,
19 et cetera. So the results that I'm comfortable with
20 are the sort of concrete specifics of, you know, how
21 was this decision handled, how was that decision
22 handled. You know, is it a better idea to do, you
23 know, in this case a must -- you know, allow economic
24 commitment versus must run all the time?

25 So the work that we do, I am trying to

1 make it a -- it's more granular, right? It's more
2 granular. It's pieces of what's going on like plant
3 operations, disposition, et cetera. It's specific
4 suggestions looking at, you know, the cost, the
5 outcomes, et cetera. And that's what goes on on an
6 ongoing basis when you do these.

7 Q. Okay. And it's fair to say if you
8 decided that something a company did was imprudent,
9 then that would not be in the best interest of that
10 company's ratepayers, correct?

11 A. I don't know that it's the same thing.
12 So -- a term you all use, "hypothetical."
13 Hypothetically, a company might make -- have some
14 kind of imprudent decision. It might turn out great
15 for ratepayers in the near term for some reason or
16 another. It might look fine. It might not be great
17 later. Companies could make prudent decisions that
18 later turn out from unexpected circumstances to be
19 not great for customers. So I don't -- I don't think
20 there's this like one-to-one equality. It's just --
21 it doesn't match up perfectly like that.

22 Q. So if -- I think what you are telling me
23 is that it's very difficult for you to determine
24 whether a decision is prudent or not in these audits;
25 is that fair?

1 MR. SCHULER: Objection, supposition.

2 EXAMINER PARROT: Overruled.

3 A. Not so much difficult to determine
4 prudence but difficult to determine the bigger
5 picture, best interest. So defined narrowly and
6 looking at specific things, it's more evidence,
7 prudence is more evidence or not prudence or
8 something not prudent but then sort of the bigger
9 conclusion that's -- it's not that we can't throw out
10 conclusions about prudence. It's that taking that
11 extra bigger step is a more complex analysis or
12 undertaking.

13 Q. If a company did something imprudent that
14 cost their customers a lot of money and they charged
15 that cost to those customers, you would agree with me
16 that that decision or that would be something not in
17 those customers' best interests, correct?

18 A. Correct.

19 Q. Okay. So if a regulated utility decides
20 to provide profit to its shareholders and at the same
21 time charged significant costs to the ratepayers, you
22 would agree with me that that decision may not be in
23 the best interest of ratepayers, correct?

24 MR. SCHULER: Objection, vague,
25 incomplete.

1 EXAMINER PARROT: Overruled.

2 A. You would need more information to
3 understand the -- you know, the circumstances and --
4 could you repeat it?

5 Q. If a regulated utility chooses to put --
6 give profits to its shareholders while at the same
7 time charging customers a significant amount of money
8 for those profits, that would be a decision that was
9 not in the best interest of customers. It was in the
10 best interest of the regulated utility but not its
11 customers, right?

12 A. So the charging significant amounts of
13 money, do you mean over and above or that were
14 unnecessary? I just --

15 Q. You can't answer my question. You do not
16 see that there is -- strike that.

17 How about I ask this one: A regulated
18 utility that chooses favorable treatment to its
19 affiliates over a provision that would lower cost to
20 its customers would not be a decision that's in the
21 best interest of ratepayers, would it?

22 MR. SCHULER: Objection. Failing to see
23 the relevance of these questions, your Honor.

24 EXAMINER PARROT: Overruled.

25 MS. BOJKO: This is relevant to the

1 audit, your Honor.

2 EXAMINER PARROT: Overruled.

3 A. Could you ask it again?

4 Q. A regulated utility that chooses -- makes
5 a decision to provide favorable treatment to its
6 affiliates over a provision that would lower cost to
7 its customers is a decision that's not in the best
8 interest of its ratepayers.

9 A. Probably not but we are just talking -- I
10 don't know. Probably not.

11 MS. BOJKO: Your Honor, if you could just
12 give me a few minutes, I think I might be completed
13 except for one or two questions.

14 Okay. Just a couple more on this
15 language I wanted to go back to, your Honor. If you
16 can look for OCC Exhibit 9. And get that in front of
17 you, please. Your Honor, I don't recall if this was
18 marked yesterday. If someone could help me.

19 MS. O'BRIEN: I believe it was.

20 MR. SCHULER: I believe it was.

21 EXAMINER PARROT: It was.

22 THE WITNESS: I have it open.

23 MS. BOJKO: Hold on one second.

24 Q. (By Ms. Bojko) Okay. If you could
25 turn -- okay. Do you recall my questions about the

1 RFP, where the Commission, the purpose section,
2 directed you to be in compliance with orders, and it
3 used the word plural, in 14-1693-EL-RDR?

4 A. Yes.

5 Q. Okay. Following up on that question,
6 could you turn to what's been marked previously as
7 OCC Exhibit 9. For the record, this is an Opinion
8 and Order that was issued by the Ohio Public
9 Utilities Commission on March 31, 2016; is that
10 correct?

11 A. I'm looking for a date.

12 Q. Oh, it's on the last page.

13 A. Oh. Yes, I see the date.

14 Q. And is this the order -- one of the
15 orders that you did or you didn't read in this
16 14-1693-EL-RDR case?

17 A. I didn't read this.

18 Q. Well, let's turn to page 89 of the order.

19 A. I'm on page 89.

20 Q. Okay. The first full paragraph, the last
21 sentence, here the Commission is defining the scope
22 of the proceeding and the burden of proof. It says,
23 "The Commission notes that, consistent with
24 Commission precedent, AEP Ohio will bear the burden
25 of proof in demonstrating the prudence of all costs

1 and sales during the review, as well as that such
2 actions were in the best interest of retail -- retail
3 ratepayers." Did I read that correctly?

4 A. I'm on page 89 in the --

5 Q. Of the order.

6 A. Okay. It's 92 of the PDF, but it's 89 of
7 the order.

8 Q. Yes, yes.

9 A. Okay, okay. And I'm sorry. Would you
10 tell me where you are?

11 Q. The first full paragraph, the last
12 sentence where the Commission is defining the scope
13 of the proceeding. Do you see that?

14 A. I see it.

15 Q. So this has a lot of the language that we
16 were talking about in the RFP, doesn't it? It says
17 "The Commission notes that, consistent with
18 Commission precedent, AEP Ohio will bear the burden
19 of proof in demonstrating the prudence of all costs
20 and sales during the review, as well as that such
21 actions were in the best interest of retail
22 ratepayers." Do you see that?

23 A. Yes.

24 Q. So the "such actions" are referring to
25 the demonstration of the prudence of all costs and

1 sales during the review, right?

2 MR. SCHULER: Objection. Ms. Bojko is
3 asking the witness to interpret a Commission decision
4 that she says she has not read. I will also renew
5 objections from yesterday. This is the original
6 Opinion and Order that is talking about a different
7 version of the PPA that includes bilateral contracts
8 between AEP Ohio and AEP affiliates for actual
9 merchant generation.

10 MS. BOJKO: And, Mr. Schuler, if you let
11 me get through my cross, we will get to those other
12 orders for your pleasure.

13 EXAMINER PARROT: Dr. Fagan, if you are
14 able to offer a view, go ahead.

15 A. I don't think I am able to offer a view.
16 I apologize.

17 Q. Okay. Well, let's look -- do you believe
18 this is referring to the audit? It says "the burden
19 of proof in demonstrating the prudence of all costs
20 and sales during the review." Is the audit the
21 "during the review" piece?

22 A. Possibly.

23 MS. KERN: Objection.

24 A. I have no context.

25 Q. Well, I'm a little confused because AEP's

1 counsel keeps objecting to say that this is somehow
2 beyond the scope, and then you are saying it's beyond
3 the scope of the audit. I want to make sure you
4 understand the RFP made no distinction between
5 14-1693, an order that was issued in 2016, and a
6 later order that was issued. Is that your
7 understanding of the RFP?

8 A. We -- as I mentioned before, we didn't --
9 there is a number of orders, et cetera. We didn't
10 read those over, compare them, anything like that.
11 We followed our scope of investigation, the topical
12 areas. I mean, I read this. It looks like AEP
13 Ohio -- it's something AEP Ohio is supposed to do. I
14 don't read this as something that it tells the
15 auditor to do but that's just a little ole minded
16 reading. I am not a lawyer. I don't have all the
17 documents -- different documents to compare, so I
18 can't really give you an answer.

19 Q. Okay. Well, first of all, let's just
20 make it clear the RFP told you that the audit had to
21 be consistent with its orders in 14-1639, correct?

22 A. It says the RFP encompasses an
23 independent audit for the period as contemplated by,
24 and in compliance with, Commission's orders.

25 Q. Right. So it said the audit had to be as

1 contemplated by, and in compliance with, the 14-1693
2 orders, correct?

3 A. Yes, under the purpose, yes.

4 Q. Okay. Well, let's look at your audit
5 report on page 7. Look at 1.1. In 1.1 isn't it true
6 that you also referred to Commission decisions,
7 plural, in PUCO Case No. 14-1693-EL-RDR when
8 describing your objective and purpose for the audit?

9 A. So what we said is "AEP Ohio's net costs
10 (its share of OVEC's costs less sales of energy and
11 capacity) are passed on to AEP Ohio's ratepayers
12 through the Power Purchase Agreement Rider,
13 established in the Commission's decisions" in that
14 order.

15 Q. Right.

16 A. So --

17 Q. Oh, sorry.

18 A. You know, that's what we said about this
19 rider. That's the information about the rider that
20 was in the RFP. It frames the purpose of the audit,
21 but it -- you know, we didn't look through this as if
22 it were a checklist saying how the audit is
23 conducted. In looking at this it says "AEP Ohio will
24 bear the burden of proof in demonstrating prudence
25 and such actions were in the best interest." I think

1 if I had read that, I would say, okay, AEP Ohio will
2 bear the burden of truth -- proof, excuse me. It
3 doesn't -- but my interpretations -- I'm not a
4 lawyer. It's probably not even relevant, just --
5 it's I'm just reading words.

6 Q. Okay. But just to clarify, in your
7 objective and purpose, you say the rider was
8 established in 14-1693 by multiple decisions. That
9 is where the annual audit review was also
10 established; is that correct?

11 A. Where do we say the "multiple decisions"?

12 Q. The first line of the -- you just read
13 it. 1.1, the first sentence, you say the rider
14 "established in the Commission's decisions" in PUCO
15 Case 14-1693.

16 A. Yes.

17 Q. And you would agree that the OMAEG
18 Exhibit 5, which is the Commission's entry issuing
19 the RFP, instructed audit firms to submit a proposal
20 that was consistent with and in compliance with the
21 attached RFP.

22 A. Something -- do you mean -- do you mean
23 the order that the RFP was attached to?

24 Q. Yes.

25 A. Okay.

1 Q. OMAEG Exhibit 5.

2 A. Oh, we are -- that's the same paragraph,
3 right? That second paragraph under purpose, is that?

4 Q. No. I am actually talking about the
5 entry. I am asking if the entry that issued the RFP
6 asked for proposals that were consistent and in
7 compliance with the attached RFP.

8 A. Okay. Okay. I have the RFP. I don't
9 have the entry.

10 Q. OMAEG Exhibit 5.

11 A. Okay. I have that open. OMAEG
12 Exhibit 5, not the RFP. I don't see the -- I don't
13 see -- I don't see the entry. It's just got the RFP.

14 Q. I mean, you would have had to modify our
15 exhibit to not have it. It was one document. So it
16 would be at the front of the document. If you are
17 looking at OMAEG links or documents, we did them in
18 PDF so you wouldn't have been able to break it up.

19 A. And I would not have wanted to. So OMAEG
20 Exhibit 5, it's the RFP. Let me go back to my
21 e-mails and see if I got a more extensive version.

22 MS. KERN: Your Honor, I believe -- I
23 believe she has the right document. If counsel could
24 direct her to a part of the entry that she's asking
25 her about. I don't know that she's understanding

1 that the entry is in the beginning.

2 THE WITNESS: Okay. Let me go back.

3 MS. BOJKO: I don't know how to respond
4 to that. I am asking a general question. I am not
5 citing or quoting from anything. It's the entry
6 entered in the journal on January 15, 2020. It's the
7 very first page of that document. That's the entry
8 that then issues the RFP to the public for the public
9 to then respond to.

10 Q. (By Ms. Bojko) Do you see that now? It's
11 page 1 of OMAEG Exhibit 5.

12 A. Okay. So it says request -- what I am
13 looking at, OMAEG Exhibit 5, says Request for
14 Proposal No. RA20-PPA-1, Independent Audit of the
15 Power Purchase Agreement Rider of Ohio Power Company,
16 Issued by the Public Utilities Commission of Ohio,
17 address, proposal due, February 28, 2020.

18 Q. Before that, if you are in OMAEG
19 Exhibit 5, which is a PDF, there is a five-page
20 Commission entry.

21 MS. BOJKO: Counsel, can you resend her
22 OMAEG Exhibit 5 maybe? I thought you did that
23 earlier.

24 A. Let me check my e-mails again. This
25 is -- there is nothing in the front of this so let me

1 close out.

2 Q. We just opened our link, and it has it
3 there.

4 MS. BOJKO: Is anyone else having a
5 problem?

6 A. You know, I will go into it.

7 MS. WHITFIELD: My link has it.

8 A. Let me go from the link. I am opening an
9 Excel file. I know the link is in there someplace.
10 Okay. OMAEG 5. Okay. Now, I have it.

11 MS. BOJKO: Is it possible to have my
12 question read back, your Honor?

13 EXAMINER PARROT: Yes.

14 MS. BOJKO: I'll try it again, your
15 Honor, if it's easier.

16 EXAMINER PARROT: Go ahead, Ms. Bojko.

17 MS. BOJKO: Okay. Thanks.

18 Q. (By Ms. Bojko) I said, isn't it true that
19 the entry issued on January 15, 2020, issuing the
20 RFP, requires the proposals received to be in
21 compliance with the entirety of the RFP that is
22 attached?

23 A. I am just reading through to find it. So
24 does it start in paragraph 8?

25 Q. I wasn't trying -- I wasn't quoting any

1 particular passage. I was just referencing the
2 entry. But, yeah, if you want to look at 8, it
3 requires all proposals be submitted pursuant to the
4 RFP.

5 A. Uh-huh.

6 Q. And that they demonstrate the ability to
7 perform the services required in the RFP. "The
8 proposal must show, in detail, the auditor's
9 understanding of the project and the work required";
10 is that correct? Did I read that correctly?

11 A. That's right. And I have -- I read this
12 before obviously when we bid on it. I just
13 haven't -- I just need to refresh but, yeah, so
14 that's where I will start reading. Okay.

15 Q. Okay. And it says each proposal must
16 address, with spes -- with specificity, how the
17 auditor will handle all of the issues in the RFP.
18 Does it say that?

19 A. Yes.

20 Q. Okay. It doesn't say that the auditor
21 will only perform those issues or duties in half of
22 the RFP under the scope provision, does it?

23 A. It doesn't say that. But that's how I
24 interpreted the scope of work.

25 Q. So you don't believe you had to read and

1 follow the entirety of the RFP based on paragraph 8
2 in the Commission's entry issued January 2020?

3 A. There's other parts of the RFP. There's,
4 you know, explaining to us the purpose of the RFP.
5 The role of Staff's supervision, how -- you know,
6 providing invoices and all those things. So it's not
7 that we ignored half of the RFP, but for the tasks to
8 be performed, you know, the required services, the
9 tasks, that I took to mean the scope of the
10 investigation.

11 Q. Okay. So now let's look at paragraph 5
12 of that entry. Isn't it true the Commission
13 specifically mentions that the proceeding consists of
14 multiple orders including the Opinion and Order dated
15 March 31, 2016, which is the one that we just
16 discussed?

17 A. That's what it says.

18 Q. And isn't it also true that it mentions
19 the Second Entry on Rehearing dated November 3, 2016?

20 A. Yes, it says that.

21 Q. As well as one more order, the Fifth
22 Entry on Rehearing dated April 5, 2017, correct?

23 A. Yes, it says that.

24 Q. Okay. So let's look at -- I want to look
25 at and just to confer -- strike that.

1 I want to look at the November 3, 2016,
2 entry now that you were -- that this audit was stated
3 to apply to. It is OCC Exhibit 7. And that was
4 previously identified yesterday and marked as OCC
5 Exhibit 7. And for the record, OCC Exhibit 7 is the
6 Second Entry on Rehearing dated November 3, 2016. Do
7 you have that in front of you?

8 A. I do.

9 Q. Okay. So let's turn to page 74. This
10 time they made it easy for us. It's 74 of the PDF,
11 and it's page 74 of the Commission's order.

12 A. Okay.

13 Q. Now, let's look at paragraph 188. Are
14 you there?

15 A. Yes.

16 Q. Thanks.

17 The second sentence says, "We also find
18 that Dynegy's arguments are without merit, in light
19 of the fact that the stipulation provides for an
20 annual prudency review of the PPA rider, with AEP
21 Ohio -- Ohio bearing the burden of proof to
22 demonstrate that all costs and sales associated with
23 the generating units were prudently incurred, as well
24 as to show that the Company's actions were in the
25 best interest of re -- retail ratepayers." Did I

1 read that correctly?

2 A. You read it correctly.

3 Q. So in --

4 A. It's the same language, isn't it? It's
5 the same language we looked at in the other one? I
6 think it's the same -- so we looked at that other
7 order, right?

8 Q. I am sure the Commission was consistent
9 in what it believed the scope of the audit was and
10 what the audit was supposed to do, so I would
11 probably surmise it's pretty close.

12 A. I'm not sure that I agree that this
13 defines the scope of an audit. This -- when I
14 read -- and again, I am not a lawyer. I'm reading
15 words, and I'm possibly kind of little minded. It
16 looks to me like they are saying the Company has to
17 prove these things, the cost of sales and best
18 interest of retail ratepayers. It's -- it doesn't
19 say -- even if you were to have looked at this
20 before, you know, writing our proposal, I don't know
21 I would have thought that it means here's what you
22 need to do in the scope of your audit. I think I
23 would have said, okay, this is the framework. This
24 is what they are interested in. You know, this is
25 what they expect the Company to be able to do in

1 order to have the terms of what it might be.

2 I don't know that I would have said, oh,
3 here's their instructions to the auditor. I don't
4 think I -- it doesn't read that way to me.

5 Q. What it is doing is defining the annual
6 prudency review of the PPA Rider, correct?

7 A. It says --

8 Q. It says provides for an annual prudency
9 review of AEP -- of the PPA rider, with AEP Ohio
10 bearing the burden of proof to demonstrate that all
11 costs and sales associated with the generating units
12 were prudently incurred, as well as to show that the
13 actions were in the best interest of ratepayers. And
14 the auditor was hired to do that prudency review to
15 determine that all costs and sales associated with
16 the generating units were prudently incurred as well
17 as the Company's actions were in the best interest of
18 ratepayers, correct?

19 A. It says that, yeah.

20 MS. BOJKO: Your Honor, I have no further
21 questions.

22 Thank you so much for your time yesterday
23 and today, Dr. Fagan.

24 THE WITNESS: You're welcome.

25 EXAMINER PARROT: Let's go off the record

1 for a moment.

2 (Discussion off the record.)

3 EXAMINER PARROT: All right. Let's go
4 back on the record.

5 Mr. Schuler.

6 MR. SCHULER: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Schuler:

10 Q. Good evening, Dr. Fagan.

11 A. Good evening, Mr. Schuler.

12 Q. You've seen me a lot over the last few
13 days.

14 A. Good evening.

15 Q. I'll try and keep this as brief as
16 possible in the end of the second day.

17 You are familiar with AEP Ohio's electric
18 security plan that was approved in PUCO Case No.
19 13-2385-EL-SSO, also known as ESP III, correct?

20 A. We're familiar that -- I think there is
21 an echo in your room.

22 EXAMINER PARROT: Mr. Finnigan, you are
23 on mute. I think Mr. Finnigan was trying to talk.
24 He is on mute.

25 MR. FINNIGAN: I was on mute. I was just

1 saying I couldn't hear Mr. Schuler, that's all.

2 MR. SCHULER: Apologies. I will try to
3 make sure I'm directly into my microphone.

4 A. So we're broadly familiar that you're
5 operating under the series of the ESPs and that's the
6 most recent but I haven't read that in detail.

7 Q. Then I understand you haven't read it,
8 but would you agree that was the case that originally
9 established the PPA Rider at zero dollars, correct?

10 MS. BOJKO: Objection. Your Honor, she
11 just said she didn't read it, so no foundation.

12 MR. SCHULER: Just asking -- I asked if
13 she was familiar with it, she said she was. I am
14 just asking if she is familiar with the ultimate
15 holding in the case.

16 EXAMINER PARROT: Overruled.

17 A. I'm looking for the -- we might have
18 mentioned it briefly in section 4, if you will give
19 me a moment.

20 Q. You may want to turn to page 26 of the
21 audit report.

22 A. Yeah. So we did mention it in the
23 background of the PPA Rider and basically stating
24 that that's what established the rider. It was
25 modified in the rehearings but in -- the pieces of it

1 that we read, the terms that related to OVEC were not
2 changed. So that was our understanding.

3 Q. So you understand that there was a
4 version of the PPA Rider that was subsequently
5 changed in the Second Entry on Rehearing; is that
6 your testimony?

7 MS. BOJKO: Objection, your Honor.
8 Mischaracterizes the audit report and the witness's
9 testimony.

10 MR. SCHULER: Your Honor, I will
11 rephrase.

12 EXAMINER PARROT: Go ahead.

13 Q. (By Mr. Schuler) You are aware that the
14 PPA Rider, as initially approved, included a number
15 of AEP Ohio affiliate plants that would be included
16 under that rider, correct?

17 A. Yes. That piece we were aware of, there
18 were -- I don't know if they ended up being actual
19 plants or hypothetical plants that might be added. I
20 don't remember that level of detail but I do recall
21 though it was not just OVEC plants in the very
22 beginning but -- but things change and our concern
23 really is just the OVEC piece.

24 MR. FINNIGAN: Your Honor, may I ask a
25 point of clarification? Is this examination by AEP

1 to be conducted as on cross-examination so that
2 Mr. Schuler is allowed to ask leading questions like
3 the last one? Or, since AEP has the burden of proof
4 and the Staff witness report is what they're trying
5 to prove, they're aligned in interest, and it should
6 be as on direct examination with no leading
7 questions?

8 MR. SCHULER: Your Honor, I would suggest
9 that this is a cross-examination. As Mr. Finnigan
10 just stated, AEP Ohio has the burden of proof in this
11 case. There is an auditor that is auditing AEP Ohio
12 so that would certainly qualify as adverse interests,
13 and we should be permitted to ask cross-examination
14 questions.

15 MR. FINNIGAN: Your Honor, the --

16 MR. SCHULER: Mr. Finnigan, please let me
17 finish up.

18 EXAMINER PARROT: Mr. Finnigan.
19 Mr. Finnigan, he is not -- Mr. Finnigan, he is not
20 finished.

21 Go ahead, Mr. Schuler.

22 MR. SCHULER: I believe my -- I believe I
23 did finish on the record, your Honor. I am happy to
24 restate anything if you did not catch it though.

25 EXAMINER PARROT: You just said let me

1 finish up, so I assumed that meant you weren't
2 finished. I'm sorry if I misunderstood.

3 Go ahead, Mr. Finnigan.

4 MR. FINNIGAN: I didn't mean to interrupt
5 but I was just asking if you could clarify, your
6 Honor, that this is a case where AEP's interests are
7 aligned with the auditor's interests and the Staff's
8 interests in the sense that the auditor testified
9 that she had no finding of imprudence in her report,
10 and that's the outcome that AEP obviously wants here.
11 So with their interests aligned, there can be no
12 cross-examination. There -- AEP's attorneys should
13 only be allowed to ask questions as on direct
14 examination without being able to lead the witness
15 with these yes or no type questions as Mr. Schuler
16 has started out doing. I just would ask that you
17 clarify that at the outset of his examination.

18 EXAMINER PARROT: I think that's an
19 overly simplistic view of things in this case,
20 Mr. Finnigan. So I am not going to instruct the
21 Company in that way, but if we do get to a question
22 that I feel is maybe more of a friendly type of
23 question, at that point I will interject, and you may
24 do so as well, of course.

25 MR. FINNIGAN: Okay.

1 EXAMINER PARROT: All right, Mr. Schuler.

2 MR. FINNIGAN: Your Honor, if I could
3 just have a continuing objection to leading questions
4 by Mr. Schuler and then I won't interrupt him each
5 time.

6 EXAMINER PARROT: All right. Noted for
7 the record.

8 Go ahead, Mr. Schuler.

9 MR. SCHULER: Thank you, your Honor.

10 Q. (By Mr. Schuler) Your understanding of
11 the purpose and scope of the audit you were to
12 conduct is not to reconsider the ICPA to be included
13 in the PPA Rider for the audit period of 2018 to
14 2019, correct?

15 A. That's correct. We stated, you know,
16 given the ICPA in place, et cetera, yes.

17 Q. I will ask a hopefully very obvious
18 question. In your audit you did not consider factual
19 developments that took place after December 31, 2019,
20 correct?

21 A. We did not.

22 Q. You would agree we spent a lot of time
23 talking about prudence over the last two days, and
24 the term appears throughout -- numerous times
25 throughout the audit report, correct?

1 A. That's correct.

2 Q. As an auditor, you would agree that
3 prudence of a decision must be determined based upon
4 information known to the decision-maker at the time
5 of the decision, correct?

6 A. Correct.

7 Q. You would also agree that hindsight
8 review is not part of a prudency audit, correct?

9 A. I wouldn't state it quite like that.

10 So we have the benefit of hindsight, for
11 example, looking at the actual energy prices, let's
12 say, in -- in PJM during the audit period. So we're
13 looking backwards. The people making the decision at
14 the time, they didn't know how that would play out.
15 You can still look at this and say, you know,
16 something was prudent, maybe it could have been done
17 better. We recommend a better way to do it, so. And
18 that, because we do have hindsight, we can compare
19 the decision-making to the outcomes. But you still
20 don't judge. You know, you -- you can give advice,
21 the recommendations based on hindsight, which is
22 exactly what we did. We looked at the outcomes in
23 the market.

24 But outcomes can be -- just stepping away
25 from the audit, outcomes can be terrible even if

1 people make good decisions because there is a lot in
2 the world you can't control. But you can look back
3 on it and say, well, if this thing happened, you
4 know, if this thing could happen again in the future,
5 whatever, I will make a slightly different decision
6 and that way I can be -- you know, I can do better no
7 matter what the scenario is. So I think it's a
8 little more subtle.

9 Q. So what you're saying is you have the
10 benefit of hindsight as an auditor looking at
11 prudence, correct?

12 A. We do, and we used it in the report.

13 Q. But making a determination about whether
14 the decision-maker was prudent did not involve, and
15 should not involve, hindsight in place of the
16 decision made by the decision-maker, correct?

17 A. That's correct.

18 Q. You would agree it's also possible that a
19 prudent decision will not always result in the
20 lowest-cost option, correct?

21 A. Logically that has to be true because
22 lowest cost isn't optimization but prudence can
23 encompass a range of behavior. We talked about
24 yesterday a reasonable person would -- might have a
25 different view of prudence, so you have say a

1 spectrum of prudent behavior that's more than one
2 thing but an optimization problem, whether it's
3 maximum or minimum, that -- so you have a spectrum
4 compared to a single thing, they are not one to one.

5 Q. So you would also agree then that it's
6 possible that a decision that was prudent at the time
7 of the decision that does not turn out to be the best
8 possible decision that could have been made based on
9 actual events, correct? Because there is a
10 spectrum --

11 MR. MCKENNEY: Objection.

12 A. That could happen.

13 EXAMINER PARROT: Dr. Fagan, hold -- hold
14 on a moment. I think --

15 MR. MCKENNEY: I am withdrawing my
16 objection, sorry.

17 EXAMINER PARROT: All right. Go ahead.

18 A. That could happen.

19 Q. Dr. Fagan, could I take you to page 16 of
20 the audit report. Let me know when you are there,
21 please.

22 A. I am there.

23 Q. And you would agree that you have a
24 discussion here about the FirstEnergy Solutions
25 bankruptcy?

1 A. That's correct.

2 Q. And here you state that energy -- let me
3 start from the beginning. Strike that.

4 Am I reading this correctly that you
5 state in the audit report, "The bankrupt FirstEnergy
6 Solutions ('FES'), now Energy Harbor Corp., initially
7 refused to pay its 4.85 percent PPR under the ICPA."

8 A. Correct. That's our understanding.

9 Q. Would you agree that Energy Harbor
10 eventually took financial responsibility for all OVEC
11 costs that were incurred during the bankruptcy
12 proceedings?

13 A. That, I believe, happened after we
14 completed the audit report. But I understand that to
15 be true. Subject to checking but I believe they did
16 that.

17 Q. Would you agree that, during the time of
18 the audit report, AEP Ohio and other sponsoring
19 companies that were entitled to FES's share of the
20 available energy -- strike that.

21 Would you agree that AEP Ohio and other
22 sponsoring companies were entitled to FES's share
23 available -- of available energy during the pending
24 bankruptcy?

25 A. That's my understanding. I don't know

1 about the whole period of the bankruptcy, but at some
2 point the other companies were entitled to I think
3 proportionate shares.

4 Q. And you agree some of that took place
5 during the audit -- during the audit period, correct?

6 A. I believe -- 2018 or 2019, yes.

7 Q. You are aware that AEP Ohio sold that
8 energy into the PJM energy market, correct?

9 A. Yes, I think we have footnotes to that
10 effect in some of the material in chapter 4.

11 Q. Would you agree that that maximized the
12 revenues of the FirstEnergy shares during a time of
13 uncertainty?

14 A. I don't know if it maximized because
15 that's a very specific term, but my understanding
16 that the companies were allowed shares and I believe
17 they weren't required to pay the demand charges, so
18 it -- it probably was a benefit. I don't know about
19 maximize, but it probably was a benefit.

20 Q. Fair enough.

21 A. You know, a cost savings let's call it.

22 Q. So you would agree that FirstEnergy's
23 bankruptcy did not negatively impact the PPA Rider,
24 correct?

25 MS. BOJKO: Objection, your Honor. Calls

1 for speculation. She just used the speculative word
2 in her prior answer. She said she didn't know.

3 EXAMINER PARROT: Overruled.

4 A. I want to check whether I have something
5 specific in chapter 4. So we didn't talk about it
6 specifically in chapter 4, or we didn't talk about it
7 specifically.

8 Q. No, I understand that. I'm asking of
9 your knowledge. Let me -- let me ask a different
10 question.

11 You stated that AEP Ohio did not have to
12 pay the demand charges for FirstEnergy Solutions and
13 were also entitled to the energy of FirstEnergy
14 Solutions, correct?

15 A. We -- that's my understanding. I don't
16 think we wrote anything to that effect in the report
17 but that's my understanding of how that worked.

18 Q. So if that is the case, your
19 understanding, you would agree that the FirstEnergy
20 bankruptcy did not negatively impact the PPA Rider
21 during the audit period, correct?

22 MS. BOJKO: Objection, your Honor, calls
23 for speculation. She said she didn't do the
24 analysis. It's not in the audit report, and now he
25 is asking her to draw a conclusion of how it affected

1 the rider. That's speculative.

2 MR. SCHULER: Your Honor, I asked based
3 on her understanding that she just suggested was her
4 understanding.

5 A. We used the term "impacted" --

6 EXAMINER PARROT: Hang on a minute,
7 Dr. Fagan. Just a moment.

8 THE WITNESS: I'm sorry.

9 EXAMINER PARROT: Overruled. Go ahead
10 and answer.

11 A. We used the term "impacted" in the
12 heading of section 2.5 to discuss this -- the
13 bankruptcy and its impact, not quantitative but the
14 fact that these things are related. So there was the
15 FirstEnergy Solutions bankruptcy, here's how it
16 relates to OVEC and the AEP Ohio charges so -- oh,
17 yes, and we also -- it was sorted out in May of 2020,
18 so after the audit period, but we were aware of it
19 writing the report. So impacted, we didn't say
20 negatively, not positively. What we were saying is
21 this is how these things are related. This is how
22 these things are connected and that was our message
23 here.

24 Q. You would agree that the issues in the
25 FirstEnergy bankruptcy case are entirely different

1 from the issues in this case which is an audit of the
2 PPA Rider for AEP Ohio during this time of 2018 and
3 2019, correct?

4 MR. FINNIGAN: Your Honors, I think the
5 question about what the issues are in the bankruptcy
6 case versus what the issues are in a Commission case
7 calls for a legal conclusion.

8 MR. SCHULER: Your Honor, I am just
9 simply asking her understanding based on some of the
10 statements she made on pages 16 and 17 of the audit
11 report specifically discussing the bankruptcy
12 proceeding of FirstEnergy Solutions.

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

15 A. We're not -- we didn't look at the ins
16 and outs of the bankruptcy proceeding. It's just --
17 but we thought we ought to mention it because
18 FirstEnergy Solutions is one of the -- was one of the
19 participating companies, so we didn't -- it's beyond
20 the scope of the audit to determine were there
21 similar issues in a bankruptcy case to this case, so
22 we don't have a comment on that.

23 Q. Do you have any understanding of the OVEC
24 issues in the bankruptcy proceeding?

25 A. So my general understanding is what we

1 put here in the paragraph which is Energy
2 Harbor/FirstEnergy Solutions argued that, well, we
3 shouldn't have to pay a bill because we are in
4 bankruptcy, and FERC said -- FERC has jurisdiction,
5 then there has to be a public interest consideration.
6 And we're not lawyers. We wanted to just put in a
7 brief summary of, you know, the -- something that
8 impacts the eventual charges in -- in the pieces of
9 the OVEC bill that go to the other participating
10 companies like AEP Ohio.

11 Q. So you understand one of the issues in
12 the bankruptcy proceeding was FirstEnergy Solutions,
13 later known as Energy Harbor, trying to abrogate
14 their responsibilities under the ICPA?

15 A. I don't know if it was abrogate under the
16 ICPA but, yes, that's -- if that's the only contract,
17 then that would apply. But I can't -- I am not a
18 lawyer. You all can understand the terms much better
19 than I do.

20 Q. You are not aware of any other contracts
21 for OVEC other than the ICPA, correct?

22 A. I'm not aware of any.

23 Q. And you would agree that AEP Ohio has not
24 tried to abrogate its responsibilities under the ICPA
25 through a bankruptcy proceeding, correct?

1 A. I don't think there is anything like
2 that. I am not aware.

3 Q. And that's not an issue in this case
4 obviously, correct?

5 A. That's correct. We didn't write this
6 paragraph because it's an issue. We wrote the
7 paragraph because -- because other companies, other
8 participating companies were allowed to, you know,
9 get a proportionate share of FirstEnergy Solutions
10 that is -- that has a connection to the costs and
11 revenues from OVEC so that's why this is in the
12 report.

13 Q. All right. So it was an issue in the
14 bankruptcy proceeding; it is not an issue in this.
15 You would agree they are two distinct proceedings and
16 different analyses?

17 A. They are -- I didn't do any analysis on
18 the other two -- on the other proceedings. But in my
19 mind, this analysis, you know, for the purpose of the
20 audit is -- is distinct. It was done for this
21 purpose. I didn't do any research or -- you know,
22 examining these other ones in any more detail than
23 just to say I know what's going on and why does --
24 why do -- why did we write about it, why is it even
25 in this report.

1 Q. Let me change topics, Dr. Fagan. You
2 would agree that the terms self-commit and must-run
3 commitment statuses show up routinely throughout the
4 audit report, correct?

5 A. That's correct.

6 Q. And you would agree that they are
7 referring to the same concepts?

8 A. The same concept, that's my understanding
9 and how I use the terms, yes.

10 Q. And I believe Ms. Bojko also had you
11 agree that self-scheduling is properly a third term
12 for the same concept, correct?

13 A. Correct.

14 Q. Turn you to page 21 of the audit report.

15 A. I'm there.

16 Q. You agree that coal plants, like OVEC,
17 were designed as baseload units, correct?

18 A. Yes. Older coal plants, in fact, maybe
19 most coal plants, are designed to run baseload.

20 Q. And I believe you talked about this a
21 little bit earlier this afternoon, but coal units
22 designed to be baseload require different
23 considerations than gas plants that run
24 intermittently or as peakers, correct?

25 A. I want to be more specific about

1 different considerations. So I think we mentioned --
2 I mean, things that we talked about in this
3 proceeding, minimum run -- I mean, startup costs,
4 minimum run times, those kinds of considerations and
5 perhaps technical, the -- some plants are designed to
6 start up, shut down frequently, and other plants
7 aren't. So specifically those consider -- and costs
8 which you -- so those considerations you would -- you
9 would take into account.

10 Q. And let's unpack that a little bit. A
11 coal plant generally has a slower startup time than a
12 gas peaking plant, correct?

13 A. I don't know the exact times but
14 generally, yes.

15 Q. And coal plants can often have more
16 expensive startup costs than a peaker plant like a
17 gas peaking plant, correct?

18 A. Again, I don't know the actual numbers
19 but -- but generally I would say yes.

20 Q. You would also agree that baseload units
21 often operate as must-run commitment status, correct?

22 A. I think it probably depends on the
23 market, but they would maybe -- what can we say? I
24 mean, do you have a nuclear plant? They usually run
25 baseload. That's really hard, you know, startup. It

1 doesn't -- it would be surprising if those weren't
2 committed as baseload -- excuse me, as must run. So
3 you would have to look market by market but -- I
4 think I would want to be able to be more specific to
5 answer that.

6 Q. Fair enough.

7 You would agree that baseload assets,
8 such as coal plants, are not designed to cycle --
9 cycle regularly, correct?

10 A. My understanding is that baseload plants
11 are not designed for turning on and turning off and
12 ramping up and down frequently, so cycling, yeah,
13 that's not -- that's not the intent of their design.

14 Q. And that is because of the longer startup
15 times and more expensive costs we just discussed,
16 correct? One of the reasons.

17 A. One of the reasons, one of the reasons.

18 Q. You would agree that operating a plant
19 under an economic commitment status will likely
20 result in more cycling of the plants compared to a
21 must-run commitment status, correct?

22 A. It depends on, you know, prices in the
23 market, but compared to being on all the time, even
24 if you just cycled one time, that's more than, you
25 know, in a must run. So I think mathematically what

1 you said is correct. What it looks like in reality,
2 how much cycling depends on market conditions like
3 prices and the cost of the plant and all the
4 considerations.

5 Q. Certainly. But a must-run -- a plant --
6 strike that.

7 A plant in a must-run commitment status
8 will run at a least-economic minimum unless it is
9 during an outage, correct?

10 A. That's usually -- that's the definition
11 of must run or self-commitment is you are on at a
12 minimum level. You're available, and you are going
13 to run at this minimum level and it could be more but
14 there's an economic minimum, that's right.

15 Q. And there is no such certainty under an
16 economic commitment status, correct?

17 A. I don't know if "certainty" is the right
18 word. There are RTOs. Let me think about this.
19 There are RTOs including PJM. If you -- if you
20 are -- if you -- if they need to run and -- and they
21 call on you to run, you've provided the RTO with
22 information like minimum run times, startup times,
23 costs, this, and that. If they need the plant, there
24 is -- I want to say make-whole payments, so it's a
25 little more complicated than what you are saying

1 but -- would you repeat it?

2 Q. Sure. And let me -- let me rephrase
3 because I'm talking about PJM.

4 So a -- a plant in the PJM RTO that is in
5 an economic commitment status would not be guaranteed
6 to run as much as the plant under a must-run
7 commitment status, correct?

8 A. That's correct.

9 Q. And I believe we established this but for
10 clarity, that would result in cycling of the plant.
11 By "cycling" I mean ramping down or turning off and
12 then ramping up and/or turning back on, correct?

13 A. Choosing economic commitment would result
14 in some -- probably, it depends on market prices, but
15 probably more cycling than must run.

16 Q. Do you agree that increased cycling
17 increases wear and tear on coal plants?

18 A. That is my understanding. I am not an
19 engineer but that's my understanding.

20 Q. And based on your understanding, there
21 would be increased wear and tear on a coal plant that
22 is cycling, that could also increase maintenance
23 expenses as well, correct?

24 A. It could. It would be one of the
25 factors. We recommend the careful consideration of

1 the must-run offer strategy in the audit report and a
2 careful consideration, of course, includes all these
3 costs and risks, you know, wear and tear on the
4 plant, various levels of costs that could change. So
5 you could end up with -- you could end up with higher
6 O&M. It's a -- it's a possibility.

7 Q. So if that's a possibility, it's also a
8 possibility that increased wear and tear due to
9 increased cycling could also increase outages for
10 that plant, correct?

11 A. That's a little beyond my technical
12 expertise. You mean forced outages?

13 Q. Yes.

14 A. I'm not sure. It's beyond me to be able
15 to answer that.

16 Q. Well, you would agree as a layperson that
17 wear and tear can eventually cause something to
18 break, correct?

19 A. Yeah, in general, absolutely.

20 Q. And if --

21 MS. WACHSPRESS: Objection, your Honor.
22 Never mind.

23 Q. And if a coal plant like one of the two
24 in OVEC broke, and was not able to operate, it could
25 decrease revenues as a result, correct?

1 A. That could happen.

2 MS. WACHSPRESS: Objection, your Honor,
3 incomplete hypothetical.

4 EXAMINER PARROT: Go ahead and answer,
5 Dr. Fagan.

6 A. So as I was saying, it could happen.
7 There are various factors. We -- you know, I think
8 we talked about -- earlier about the factors that you
9 would consider. Again, we said careful consideration
10 to costs, risks, et cetera, for looking at having the
11 option to do economic commitment versus must run and
12 that would be -- that would be one of the things
13 that -- that would be considered.

14 Q. You said it could happen meaning that it
15 could increase outages. It's increasing -- strike
16 that.

17 You would agree that increased outages
18 could increase the likelihood of OVEC incurring
19 capacity performance penalties, correct?

20 A. Pretty complicated question. When
21 companies develop strategies for bidding into the PJM
22 capacity market because it's a capacity performance
23 market and they know they have to perform or pay a
24 penalty, they generally take a certain outage level
25 or percent probability into consideration. So if

1 they -- again, this is just working through the
2 logic. My guess is a company says, well, we might
3 have more outages. We are going to bid differently
4 into the capacity market to reduce our risk of, you
5 know, being called upon to run when we can't. So it
6 might -- so there is a feedback loop, right? People
7 are thinking. So if you think you might have more
8 outages, you might bid differently into the capacity
9 markets to manage risk. I mean, I could imagine that
10 that's what, you know, people would consider.

11 Q. You referenced your recommendation in a
12 couple of those answers there. Can you turn to
13 page 53 of the audit report where I believe you
14 discuss that.

15 A. I'm there.

16 Q. And I believe you have taken a look at
17 this quite a bit over the last two days but right
18 there on page 53 where it says "must-run offer
19 strategy," do you agree you made a recommendation,
20 LEI recommends that OVEC carefully consider when and
21 whether the must-run offer strategy is optimal? Do
22 you see that language?

23 A. Yes, I do.

24 Q. You did not conclude that must run was an
25 imprudent action during the audit period, correct?

1 A. That's correct.

2 Q. And you did not recommend that OVEC
3 retire, correct?

4 A. Retirement analysis was out of the scope
5 of the audit, so we didn't recommend or not
6 recommend.

7 Q. And there's no analysis in the report --
8 strike that.

9 Because it was outside the scope, as you
10 just said, there is no analysis in the report that
11 OVEC should retire, correct?

12 A. That's correct.

13 Q. Your language here about careful
14 consideration of when and whether the must-run offer
15 strategy is optimal, you would agree that you are
16 recommending careful consideration and study, not
17 that it actually happen, correct? Strike that.

18 MS. WACHSPRESS: Objection. Question...

19 Q. You recommend that OVEC should give
20 careful consideration and study to the consideration
21 of economic commitment, not that OVEC actually
22 implement economic commitment, correct?

23 A. I don't think we used the word "study,"
24 but I guess that's implied in "consideration." We
25 don't know what the outcome would be but we -- but as

1 we said, it appears in some months, the months
2 must-run offer strategy during the audit period
3 resulted in negative energy earnings for the plants.
4 We want to see the flexibility of not always having
5 to use the must-run offer strategy. We want to see
6 the flexibility that OVEC's considering using the
7 economic commitment strategy at times because given
8 the results of the audit, it could save money. Now,
9 there are considerations we talked about, right? We
10 had what the plants are designed to do and not do,
11 minimum run times, startup, shutdown, et cetera.
12 That's why we use the word "carefully."

13 There is a lot of things to consider.
14 But we didn't say you -- you know, you must not use a
15 must-run offer strategy.

16 Q. For the sake of asking the obvious, as a
17 practical matter, this recommendation of careful
18 consideration cannot be applied retroactively to the
19 audit period as that time has already passed,
20 correct?

21 A. That's logically correct. Yeah, yeah.

22 Q. So this is a recommendation for the
23 future, correct?

24 A. Yes. But -- yeah.

25 Q. Sorry.

1 A. I was saying by definition, yeah.

2 Q. In your audit you did not make any
3 specific factual findings to conclude that during the
4 audit period, an economic commitment of OVEC units
5 would have saved money, correct?

6 MS. WACHSPRESS: Objection,
7 mischaracterizes the evidence in the record.

8 MR. SCHULER: Your Honor, I am simply
9 asking if she knows. I am not trying to characterize
10 anything.

11 EXAMINER PARROT: Overruled.

12 A. As we said on page 9, we -- you know,
13 under "Disposition of energy and capacity," the first
14 paragraph in that, our "analysis showed that some of
15 the time, the PJM energy price did not cover fuel and
16 variable cost, though LEI's analysis did not fully
17 evaluate a re-dispatching...." So I think that gets
18 to your answer. We didn't go back and say, what if
19 dispatching looks different? I think that's what you
20 asked.

21 Q. But because you did not do a
22 re-dispatching study of the OVEC units, you cannot
23 conclude that during the audit period running the
24 OVEC units in an economic commitment status would
25 have saved money, correct?

1 A. The results of the audit indicate that it
2 might have based on the monthly average costs of the
3 months we sampled because some of those averages, and
4 I know that's confidential, some of those averages
5 were negative, so it was an indicator that it -- I
6 think that's the way we said it on page -- yeah, so
7 it appears that in some months the must-run offer
8 strategy may result in negative energy earnings for
9 the plant.

10 So given the information that we used,
11 there was an indicator that using a different
12 strategy in some months at some times based on
13 careful consideration would perhaps have resulted in
14 less negative energy margins and in this case on a
15 monthly average basis. As I said, we didn't do an
16 hourly analysis.

17 Q. And you would need an hourly analysis to
18 make that determination, correct?

19 A. Do you mean the determination of the
20 actual dollar amount of if you -- if they ran the
21 plants at economic dispatch all the time versus must
22 run all the time?

23 Q. Sorry. I think my question was
24 confusing. I apologize. Let me try it a different
25 way.

1 You said that it might have saved money
2 if OVEC had operated under an economic commitment
3 status during the audit period but that is not the
4 same as saying that it would have saved money if OVEC
5 had operated under an economic commitment status
6 during the audit period, correct?

7 MS. BOJKO: Objection, asked and answered
8 a couple times.

9 MR. SCHULER: She asked me a question
10 back. I was trying to clarify.

11 EXAMINER PARROT: Overruled.

12 A. It might have saved money, given our
13 analysis, looking at those two years, it might have
14 saved money.

15 Q. Is it fair it might not have saved money?

16 MS. BOJKO: Objection, your Honor. He
17 asked the same question, and she answered with the
18 answer she's provided.

19 MR. SCHULER: I asked if it might have.
20 I am asking now if it might not have.

21 MS. BOJKO: Actually your first question
22 was both, and then you broke it out.

23 EXAMINER PARROT: Overruled.

24 Go ahead, Dr. Fagan.

25 A. From a logical perspective, having the

1 option to do something like commit based on economics
2 versus must run, it's an option, meaning we would do
3 it if it saved money so -- so requiring it might or
4 might not save money. You know, based on the audit,
5 maybe it would have a few months. But allowing it,
6 considering it, seems to me like it would save money.
7 Otherwise you would consider it and not do it, so you
8 have the option to do something that could save
9 money. Given --

10 Q. You have not -- oh, sorry.

11 A. No. I was going to say with all the
12 careful considerations so, yeah.

13 Q. You have not quantified any savings that
14 could have been realized had OVEC operated under an
15 economic commitment status during the audit period,
16 correct?

17 A. We did not.

18 Q. You would agree that changing OVEC's
19 commitment status requires a decision by the OVEC
20 Operating Committee, correct?

21 A. That is our understanding.

22 Q. And that means that is not a decision
23 that can be made by an individual sponsor company
24 like AEP Ohio, correct?

25 A. Not individually but in the context of

1 committee discussions and activities, I guess I am
2 speculating on the conversations that go on, but
3 there must be discussions and, you know, people
4 present various views. So ultimately the decision
5 making is, you know, in a group, but AEP Ohio and the
6 other participants have input into that process. So
7 it's not -- it's not yes. It's not no. It's a more
8 nuanced answer.

9 Q. So AEP Ohio may have input but not
10 ultimate decision-making authority. That would go to
11 the Operating Committee, correct?

12 A. That's correct.

13 Q. Do you agree that forward market revenues
14 are uncertain?

15 A. The further forward you go, the more
16 uncertain they are. So broadly, yes.

17 Q. Can you turn to page 9 of the audit
18 report.

19 A. I'm there.

20 Q. You see there where the language in the
21 last paragraph, the last -- it rolls over, I believe,
22 onto page 10, "Markets can change, so LEI recommends
23 that OVEC re-consider its 'must-run' offer strategy,"
24 and then there is a parenthetical, "and utilize
25 near-term (one week to one month) demand and price

1 forecasts to formulate offers." Do you see that
2 language?

3 A. Yes.

4 Q. You have not concluded that running such
5 an analysis would actually result in anything other
6 than OVEC operating under a must-run commitment
7 status, correct?

8 A. That's correct.

9 Q. Is it possible if OVEC adopted your
10 recommendation, OVEC would continue to run in a
11 must-run commitment status?

12 MS. WACHSPRESS: Objection, incomplete
13 hypothetical.

14 MR. SCHULER: I was simply asking whether
15 it was possible, not whether it will actually happen,
16 your Honor.

17 MS. BOJKO: Objection, your Honor. It
18 also calls for speculation. These are all questions
19 that Staff counsel was objecting to when it was the
20 Intervenors, and some of them we were not allowed to
21 ask. They are the exact same questions. I am not
22 sure why.

23 EXAMINER PARROT: I think I allowed a lot
24 of them so overruled.

25 MS. BOJKO: Thank you, your Honor.

1 THE WITNESS: I'm sorry. Can I have the
2 question? May I hear the question again?

3 MR. SCHULER: I'm sorry, Karen. Can you
4 reread the question, please.

5 (Record read.)

6 A. It depends on energy prices and their
7 costs and their evaluation of risk. There is a lot
8 of factors. It's possible, I guess. I wouldn't
9 think it was likely but, again, there is many
10 factors.

11 Q. You agree that the OVEC Operating
12 Committee does not make daily decisions of dispatch,
13 correct?

14 A. Referring to -- we have a chart about the
15 daily operating meeting which I know is confidential,
16 so I won't read any of it in detail. But let me just
17 refer to it.

18 Right. We talked about this. So the
19 Energy Scheduling department has the internal calls.
20 They look at unit status availability, et cetera.

21 So it doesn't appear that the Operating
22 Committee is involved in those day-to-day decisions.
23 It doesn't mean that the Operating Committee doesn't
24 step back and review them, you know, from time to
25 time.

1 I am looking at a sample agenda of their
2 meeting. That's Figure 22. So this particular one
3 there is no agenda item that says specifically that
4 they are -- they review the -- the daily outcomes,
5 but I think there is a daily internal report. I just
6 want to find that part.

7 Right, so on page 44, "OVEC
8 subsequently," this is from joining PJM, "established
9 a daily internal PJM Demand Comparison Report, which
10 provides operating data" unit by unit. The report is
11 made available to plant operations personnel. So I
12 don't think the OVEC committee -- it doesn't look --
13 we didn't ask specifically. It doesn't look like on
14 a daily or weekly or monthly basis they look at this,
15 but we didn't ask that specific question.

16 Q. Would you agree that's probably a
17 decision done by the plant operators?

18 A. My understanding, again this is broad, is
19 that daily decisions require input from quite a
20 number of people in plant operations, so the
21 operator, perhaps a market analyst, it just -- it
22 could be a number of people. Is that what you are
23 asking?

24 Q. I'm asking whether the plant operators
25 would be responsible for daily decisions of dispatch?

1 A. That -- double-check language. That's my
2 understanding here. So -- so I don't want to read in
3 detail from Figure 20 because it's confidential. I
4 can answer your question better about who is involved
5 on a daily basis but not without reading confidential
6 information.

7 Q. That's fine. Thank you for respecting
8 that. We will try and work around that. We have
9 managed to do it all the last two days.

10 So it's fair to say based on the
11 confidential Figure 20, you have an understanding of
12 who handles daily operating decisions for the OVEC
13 units, correct, without identifying any of the
14 specific information?

15 A. It gives us a general idea of -- of who
16 is responsible for the decision-making, yes.

17 Q. You don't know, as you sit here today,
18 whether any of those persons responsible look at
19 expected energy margins, correct?

20 A. I think we talked about this before. We
21 didn't ask that so we -- we don't have it in the
22 report, although we did ask about energy and that --
23 I think we talked about it before on page 42, unit
24 status and availability, derates, potential unit
25 liabilities, outage status, concern -- return to

1 service dates. So the information we have talks more
2 about sort of the physical technical side of things
3 rather than from a price forecast or profit and loss
4 or, you know, those issues we were talking about
5 before.

6 Q. So if it's not in the report and you did
7 not ask about it, is it fair to say you don't know
8 that information?

9 A. We don't know.

10 Q. Let me turn you to Figure 26 where I
11 think we spent a lot of time over the last two days
12 and I will try to make this brief.

13 A. I am reminding myself it's confidential
14 so.

15 Q. Yes, it is, Dr. Fagan. Just a couple of
16 brief questions and some of these may have been asked
17 and answered and I apologize in advance. I think
18 it's a little bit muddy. The analysis you
19 conducted -- strike that.

20 Here you talk about an analysis where you
21 randomly sampled seven months during the audit
22 period, correct?

23 A. Correct.

24 MS. WACHSPRESS: Objection. Objection,
25 mischaracterizes the witness's prior testimony.

1 MR. SCHULER: I was not referring to
2 prior testimony. I'm asking what she did in this
3 figure, your Honor.

4 EXAMINER PARROT: Go ahead and answer,
5 Dr. Fagan, but I see what Ms. Wachspress is kind of
6 getting at there but I will leave it to you to
7 clarify.

8 A. And I do feel I need to clarify
9 something. So we say we "examined seven months
10 chosen at random" but, you know, "random" is not the
11 right word. We made sure we picked months that
12 represented different weather conditions, different
13 conditions. So "random" -- we use the word "random"
14 in the report. "Random" could have ended up -- you
15 know, technically the word "random," we could have
16 ended up with only winter months or only summer or
17 only spring and fall and that's not what we wanted.
18 We wanted a selection.

19 So "random" isn't the right way to
20 describe it. We used that word, but we intentionally
21 picked months based on the fact that they have
22 different times of the year and they represent, you
23 know, different requirements on the system, prices,
24 et cetera.

25 Q. You would agree for each one of those

1 seven months that you ultimately determined a net of
2 PJM price less OVEC charge, correct?

3 A. We determined a net of the monthly
4 average around-the-clock PJM price against the OVEC
5 energy charge.

6 Q. And that analysis did not include an
7 hour-by-hour re-dispatch as we discussed earlier,
8 correct?

9 A. That's correct.

10 Q. You did not conduct a similar analysis of
11 netting out PJM price less OVEC charge for all
12 24 months of the audit period, correct?

13 A. That's correct.

14 Q. You also did not conduct an analysis for
15 the net PJM price less OVEC charge for the 24 months
16 combined, correct?

17 A. That's correct.

18 Q. As you only looked at 7 out of 24 months,
19 it is possible that variable revenues exceeded
20 variable costs during the audit period, correct?

21 MS. WACHSPRESS: Objection, calls for
22 speculation.

23 MS. KERN: I join that objection.

24 MR. SCHULER: Your Honor, I am not asking
25 her to speculate about the future. I am asking her

1 to opine about the 24 months that are directly at
2 issue in the -- this audit proceeding.

3 MS. WACHSPRESS: Counsel is asking her to
4 speculate about the results of the study that he's
5 repeatedly established she did not actually do.

6 EXAMINER PARROT: Overruled.

7 A. We didn't summarize that here so I can't
8 answer. I don't know.

9 Q. Let me take you to page 63 of the audit
10 report. I am going to warn myself and you ahead of
11 this.

12 A. Confidential.

13 Q. This is all confidential. I am going to
14 try and work around it as best we can. I will try to
15 give warning before questions as well.

16 You state here -- sorry. I'm trying to
17 make sure I am not grabbing anything confidential.
18 Without referencing the number, at the bottom of
19 page 63, there is a paragraph there. And you found
20 that LEI -- excuse me. Strike that.

21 LEI found that for Clifty Creek plant,
22 the coal purchase prices were higher than the spot
23 prices from SNL. Other than the editing of a number
24 there, you would agree that I have accurately read
25 that statement, correct?

1 A. That's correct.

2 Q. In the confidential number that is part
3 of that sentence, you did not account for delivery
4 costs associated with spot market coal, correct?

5 A. That's correct. The delivery costs
6 analysis is a separate section.

7 Q. And that number, that confidential number
8 that is at the bottom of page 63 that we just
9 referenced, does not include that separate analysis.

10 A. That's correct.

11 Q. Okay.

12 A. This is just the commodity.

13 Q. You go on to state that that is mainly
14 attributable to expensive coal purchased from a
15 specific party. Do you see that without revealing
16 what the party's name is?

17 A. That's correct.

18 Q. Hopefully we can do this without getting
19 into a confidential document. You would agree that
20 the contract -- strike that.

21 You would agree that the expensive coal
22 you are referencing there is resulting from a
23 contract that you reviewed as part of this audit?

24 A. That's correct. The coal prices, the
25 OVEC coal prices are the results of our looking at

1 the contract prices that we reviewed for the audit.

2 Q. Without revealing anything else specific
3 or the name, would you agree -- do you recall that
4 that contract was a long-term contract for a term of
5 10 years?

6 MS. WACHSPRESS: Objection, leading the
7 witness.

8 MR. SCHULER: Your Honor, it's
9 cross-examination. I am allowed to lead the witness.
10 I believe we established that earlier.

11 EXAMINER PARROT: Overruled.

12 A. I don't remember the details of every
13 contract, but some of them are longer-term contracts.
14 Some are -- some are short-term contracts. There's a
15 variety for each of the plants.

16 Q. This one caught your eye, correct?
17 Hence, why it is specifically mentioned here?

18 MS. WACHSPRESS: Objection, assumes facts
19 not in evidence, why -- why it would catch the
20 witness's eye, the -- how Counsel would have a basis
21 to assert that fact. Are they referring to private
22 conversations? I'm not sure but.

23 MS. KERN: Staff would join the
24 objection.

25 MR. FINNIGAN: Your Honor, I join that

1 objection too. I mean, first, we heard that this is
2 a section with confidential material. We are not
3 going to talk about the confidential material. And
4 now we talk about something that's 10 years' long as
5 part of a contract and something that might have
6 caught your eye so. You know, this is unfair.

7 MR. SCHULER: I'll rephrase.

8 EXAMINER PARROT: All right. Okay. Go
9 ahead and rephrase.

10 Q. (By Mr. Schuler) You said you reviewed
11 numerous contracts during your audit, correct?
12 Strike that.

13 You said you reviewed numerous coal
14 contracts as part of your audit, correct?

15 A. To be clear, in this part of the audit,
16 my staff did the detailed reading of the contracts,
17 and I reviewed the results and the -- the report,
18 et cetera, so those are my responsibility, but I
19 probably -- I don't have the detailed recollection of
20 what's in all the contracts. But we, London
21 Economics, as London Economics as a team reviewed the
22 contracts.

23 Q. Did you review any of those contracts
24 during your audit?

25 MS. WACHSPRESS: Objection, your Honor,

1 vague. What contracts is he referring to?

2 MR. SCHULER: I apologize. I will
3 rephrase.

4 Q. Did you review any of the coal contracts
5 that we've been discussing, Dr. Fagan?

6 MS. BOJKO: Objection, asked and
7 answered. She already said she did not.

8 MR. SCHULER: Your Honor, I don't think
9 she said she didn't. She said her team looked at
10 them. I don't think she opined whether she had
11 looked at them at all.

12 EXAMINER PARROT: I agree.

13 Go ahead and answer, Dr. Fagan.

14 A. I didn't personally read all the coal
15 contracts, and I actually might not have read any of
16 them. My team read them, pulled together the
17 analysis, and I reviewed the analysis.

18 Q. Would you agree that many of those
19 contracts were entered into before the audit period
20 to the best of your knowledge?

21 MS. BOJKO: Objection, your Honor. She's
22 never reviewed them. How could she possibly answer
23 that question?

24 MR. SCHULER: Your Honor, she stated her
25 team reviewed them, and they are specifically talked

1 about in the audit report that she is sponsoring
2 here.

3 EXAMINER PARROT: If you are able to
4 answer, Dr. Fagan, go ahead.

5 A. I am looking to see if we noted that in
6 any of the confidential table where I won't reveal
7 the information but just to see if we have the date
8 they were entered into. So we don't have it in the
9 audit report so I'm not -- I don't have it at my
10 fingertips the date that the various contracts were
11 entered into.

12 MR. McKENNEY: Your Honor, before we have
13 any additional questions, I don't think there is
14 counsel on for the auditor currently.

15 EXAMINER PARROT: Thank you,
16 Mr. McKenney, for noting that. Mr. Lindgren is
17 there. Mr. Lindgren, I think you may be following my
18 playbook and talking while on mute.

19 MR. LINDGREN: Can you hear me now?

20 EXAMINER PARROT: We can.

21 MR. LINDGREN: Yes, I believe we lost
22 Ms. Kern again, but you can go ahead.

23 EXAMINER PARROT: Okay.

24 Q. (By Mr. Schuler) Dr. Fagan, do you know,
25 either based on your own personal review of the

1 contract or based on the information you received
2 from your audit team, whether any of the contracts
3 were entered into during the audit period?

4 A. I'm examining our section -- or our
5 6.1.3.5 to be able to answer and to also work around
6 the confidential so bear with me for a second.

7 MS. WACHSPRESS: Your Honor, if I may,
8 this is Megan Wachspress for NRDC. Counsel is asking
9 questions about whether the witness knows, and the
10 witness has been referring to the audit report.

11 Certainly Counsel can refer to specific places in the
12 audit report to refresh the witness's recollection,
13 but I worry that we are answering a series of
14 questions about her personal knowledge by reference
15 to a document that she is the lead author on but
16 not -- doesn't uniformly speak to her personal
17 knowledge.

18 MR. SCHULER: Your Honor, the audit
19 report is part of, and has been incorporated as part
20 of, Dr. Fagan's testimony, so it is Dr. Fagan
21 referring to her own testimony effectively.

22 MR. FINNIGAN: Your Honor, I would just
23 add --

24 MR. SCHULER: Completely permissible.

25 MR. FINNIGAN: Your Honor, I'm sorry. I

1 didn't mean to interrupt. I just want to object.
2 This is hearsay. We have no opportunity to
3 cross-examine these people that supplied information
4 about the length of the contracts.

5 EXAMINER PARROT: Overruled. Go ahead,
6 Dr. Fagan.

7 A. I think the question was -- I don't think
8 this question was about the length of the contract.
9 This question was when contracts were executed, is
10 it?

11 Q. Correct. Whether you or any of your team
12 know.

13 A. So we have a sentence, part of which
14 isn't redacted, on page 60. It's the last paragraph
15 on the page. "OVEC executed two contracts for the
16 year 2019." So if it's for the year 2019, I think
17 that's probably when it was executed. I would have
18 to look at it. I think that's as close as I can come
19 to if contracts were executed in the audit period.

20 Q. And without revealing any names, the
21 company that is a part of the contract referenced on
22 page 60 in your 2019 is different from the company
23 that is referenced at the bottom of page 63, correct?

24 A. That's correct.

25 Q. Dr. Fagan, I believe -- strike that.

1 Dr. Fagan, the capital expenditures made
2 on OVEC during the audit period were not found to be
3 imprudent in your audit, correct?

4 A. That's correct.

5 Q. And you would agree that investments made
6 after the audit period are obviously not a part of
7 this audit, correct?

8 A. I say that's correct. I mean, the
9 process of making the investments, we audited the
10 process as well as the investments. I am trying to
11 think if -- you know what? I wouldn't think so.

12 Q. Well, you did not audit capital
13 investments that were made after December 31, 2019,
14 correct?

15 A. That's correct.

16 Q. Such investments would presumably be a
17 part of a future audit if one existed, correct?

18 A. That's correct.

19 Q. Can I turn you to page 96 of the audit
20 report.

21 A. I'm there.

22 Q. Do you see the line at the bottom of that
23 page that says "Most coal plants of similar size as
24 Clifty Creek and Kyger Creek in PJM have either
25 announced or are planning for deactivation due to

1 economic viability issues and aging problems"?

2 A. Yes.

3 Q. The plant that you are referring to in
4 that sentence -- strike that.

5 Are any of the plants that you are
6 referring to in that sentence committed under the
7 Coal Combustion Residual rule or the Effluent
8 Limitations Guidelines rule?

9 MS. WACHSPRESS: Consistently calls
10 for -- objection, calls for speculation and facts not
11 in evidence.

12 MS. BOJKO: OMAEG joins.

13 MR. SCHULER: Your Honor, I'm asking if
14 that is a fact. I am not asking about the future. I
15 am asking whether those plants are committed.

16 MR. MCKENNEY: IEU-Ohio joins in the
17 objection.

18 MS. BOJKO: Your Honor, he is asking
19 about --

20 EXAMINER PARROT: Overruled.

21 A. I don't know.

22 Q. Can I take you to page 92 of the audit
23 report.

24 A. Okay. We have a confidential figure on
25 that table. Yes, I'm there.

1 Q. Yes. And I will not be asking about
2 that, but thank you.

3 There is a line there, do you see at the
4 top of the page? I believe it's the second sentence
5 "Under such circumstances, a cap or ceiling on annual
6 expenditures would be prudent to prevent
7 over-investment." Do you see that line?

8 A. Yes.

9 Q. You would agree that AEP Ohio is not in
10 control of -- strike that.

11 You would agree that AEP Ohio is not
12 solely in control of capital expenditures at OVEC,
13 correct?

14 A. That's correct.

15 Q. You would agree that capital expenditures
16 at OVEC is part of a six-step process that is
17 mentioned on a number of pages throughout your audit
18 report, correct?

19 A. That's correct.

20 Q. You also acknowledge in that same
21 paragraph that OVEC is not allowed to earn a return
22 on capital projects, correct?

23 A. That's correct.

24 Q. You would agree that OVEC having no
25 return on capital projects creates no incentive to

1 overinvest in OVEC, correct?

2 MS. WACHSPRESS: Objection, calls for
3 speculation, incomplete hypothetical.

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

6 A. I disagree with that.

7 Q. Dr. Fagan, you'd agree that there are
8 generally three ratings of coal plants, subcritical,
9 supercritical, and ultra-supercritical, correct?

10 A. I'm not an engineer. Broadly I think
11 that's right.

12 Q. Based on your knowledge, is it your
13 understanding that the main difference between those
14 ratings is generally pressure and temperature which
15 ultimately results in different efficiency ratings?

16 MS. WACHSPRESS: Objection. The witness
17 just testified she's not an engineer and that she
18 thinks that's right. I don't know that we have laid
19 a foundation for her to testify as to these kinds of
20 engineering specifics.

21 MR. SCHULER: Your Honor, that's why I
22 prefaced the question based on her understanding. If
23 she doesn't know, she can tell me that.

24 EXAMINER PARROT: Go ahead, Dr. Fagan.

25 A. There may be other factors and

1 considerations but my understanding -- and I don't
2 know the actual numbers for pressure and temperature,
3 but my understanding is that that's -- those are
4 distinguishing factors between the three kinds of
5 plants just based on my broad nonengineering
6 understanding.

7 Q. And based on your broad nonengineering
8 understanding, you would agree that those different
9 ratings, because they have different temperatures and
10 pressures, have different efficiency ratings,
11 correct?

12 A. There may be various reasons for
13 different efficiency ratings but I think the reason
14 that these plants -- that you have these developments
15 of coal technology is in order to get more
16 efficiency, but again, not an engineer but I think
17 that's the idea of changing an evolving technology is
18 to become more efficient.

19 Q. Would you agree that a more efficient
20 generation plant can create the same amount of energy
21 while using less fuel?

22 MS. WACHSPRESS: Objection as to
23 relevance. I'm not sure what this has to do with the
24 audit or the OVEC plants.

25 MR. SCHULER: Your Honor, if I could have

1 a little bit of leeway, I'm getting there.

2 EXAMINER PARROT: Go ahead, Dr. Fagan.

3 A. So -- so in theory that would be the idea
4 of efficiency using less fuel to get the same output
5 or maybe efficiency in -- fuel efficiency. There's
6 maybe technologies that use like water cooling more
7 efficiently. So I think the fuel piece is
8 probably -- is one piece, but you don't want to
9 only -- you wouldn't want to only look at that.
10 There's -- you know, there is other pieces of an
11 efficient operation.

12 Q. In other words, there could be other
13 pieces of O&M that could reduce as a result of
14 increased efficiency, correct?

15 A. I would probably want to know more
16 details. I mean -- I mean, O&M per unit of output
17 or? I just don't know.

18 Q. Okay. Take you to page 100 of the audit
19 report.

20 A. I'm there.

21 Q. You would agree here you have done a
22 comparison of OVEC O&M costs to an industry average
23 of O&M costs, correct?

24 A. You use the term "industry average," but
25 I would say it's more like an industry benchmark

1 because it's for -- it's from, you know, one kind of
2 coal. It's an EIA O&M cost for ultra-supercritical
3 coal which -- it's more -- it's a newer technology
4 than the OVEC plants. It was just sort of a
5 benchmark number. I don't know -- you probably
6 wouldn't call it an industry average. There is
7 probably a lot more, you know, subcritical coal,
8 et cetera, out there. So "industry average," it
9 should probably say "industry benchmark."

10 Q. Dr. Fagan, you reference the EIA report
11 there in footnote 176. Could you please open up
12 AEP Ohio Cross Exhibit 23 if you have it.

13 A. AEP Ohio.

14 MR. SCHULER: And, your Honor, while
15 Dr. Fagan is finding that, I'd like to have this
16 marked as AEP Ohio Exhibit 23. This is an EIA report
17 from February 2020 that is cited in footnote 176 of
18 the audit report.

19 EXAMINER PARROT: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 A. I might have opened the wrong one because
22 Exhibit 23 that -- the EIA report is dated September
23 1, 2020. So maybe it's a different one.

24 Q. Double-checking that. My apologies.
25 Sorry. My 23 that I have appears to be something

1 different.

2 A. My 22 looks like it's what you want. My
3 22 is a February 2020 EIA document, and I might have
4 the numbers wrong.

5 MS. KERN: That's what counsel has as
6 well.

7 MR. SCHULER: My apologies. I believe I
8 have things wrong in my files. Your Honor, could I
9 have this document -- we'll leave the marking at AEP
10 Ohio Exhibit 23, your Honor, and if Dr. Fagan opens
11 what has been labeled on the PDF as AEP Ohio Cross
12 Exhibit 22, I think we can get there by me asking a
13 few foundational questions, if that pleases the
14 Bench.

15 EXAMINER PARROT: Hang on a minute.
16 Let's go off the record for a second.

17 (Discussion off the record.)

18 EXAMINER PARROT: Let's go back on the
19 record. I think we are going to strike -- strike
20 that. This is Exhibit 22, not 23; is that correct,
21 Mr. Schuler?

22 MR. SCHULER: Correct. I would like to
23 have Exhibit 22, identified which is an EIA report
24 from February 2020 that is referenced in footnote 176
25 of the audit report.

1 EXAMINER PARROT: Very good. It's marked
2 AEP Ohio Exhibit 22.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Mr. Schuler) Dr. Fagan, do you
5 recognize this EIA report as what you referenced in
6 footnote 176 of your audit report?

7 A. Yes.

8 Q. And you would agree that the \$40.58 per
9 kW year average on page 100 of the audit report comes
10 from Table 1-2 of this exhibit? I am trying to find
11 an actual PDF page. One second. I believe it's
12 page 46 of the PDF. I apologize, page 47.

13 A. Yeah. 40.58 is on page 47, that's
14 correct.

15 Q. 47, yes.

16 A. So that's the 40, yeah.

17 Q. You would agree that Table 1-2 in this
18 exhibit represents estimated fixed O&M for a
19 greenfield ultra-supercritical coal plant, correct?

20 A. Ultra-supercritical, yes, and I think --
21 actually I think the whole report is greenfield
22 plants.

23 Q. Sorry.

24 MS. BOJKO: Your Honor, I'm sorry. Where
25 are you referencing, Mr. Schuler? Did you say

1 Table 1.2?

2 MR. SCHULER: 1-2 and it's on page 47 of
3 212 of the exhibit.

4 MS. BOJKO: Thank you.

5 MR. SCHULER: You're welcome.

6 Q. Sorry, Dr. Fagan. Were you finished with
7 your answer?

8 A. I wanted to check. I don't think they do
9 any brownfields, so I think it's all greenfields, so
10 yes, it's just like -- it's exactly what they say.
11 It's an ultra-supercritical plant. Greenfield means
12 from the ground up, you know.

13 Q. That was going to be my next question.
14 Greenfield refers to a new plant that has not yet
15 been built, correct?

16 A. That's correct.

17 Q. You would agree that an estimate for a
18 greenfield build is not necessarily the same as an
19 industry average of O&M costs, correct?

20 A. That's correct. And I did point that out
21 when we were first speaking that we have a phrase
22 "industry average," but it's we can say industry
23 benchmark.

24 Q. Can I turn you to page 21 of the audit
25 report.

1 A. Okay. I'm there.

2 Q. Do you see at the bottom of the page
3 there, the last line, "but others have begun shifting
4 away from self-committing and towards economic
5 dispatch and seasonal commitments in response to
6 increased regulatory scrutiny," continuing onto
7 page 22. Do you see that line?

8 A. Yes.

9 Q. You would agree it is not possible for
10 OVEC to go back in time during the audit period and
11 operate seasonally, correct?

12 A. It's not logically possible.

13 Q. I agree. You would agree that OVEC was
14 committed as a capacity resource for the entire audit
15 period, correct?

16 A. Yes, that's our understanding of the
17 information that we got on capacity market bidding,
18 yes.

19 Q. You would agree that seasonal operations
20 of a plant would not relieve a plant of performing if
21 it is committed in the capacity market, correct?

22 A. My understanding of the PJM capacity
23 market is that it is -- it's a commitment for the
24 12-month period. I think it is a whole year
25 commitment.

1 Q. So if it's a whole year commitment --
2 strike that.

3 Since it's a whole year commitment, that
4 is not the same as seasonal, correct?

5 MS. WACHSPRESS: Objection, vague as to
6 what "seasonal" means in this context.

7 MR. SCHULER: I'll step back, your Honor.

8 Q. You -- Dr. Fagan, you understand that
9 seasonal operation to operate during certain seasons
10 of the year and to, I believe you previously said,
11 mothball or shut down during other seasons of the
12 year, correct?

13 A. That's my understanding from, for
14 example, what I've seen in ERCOT in Texas.

15 Q. So a plant that shifts to seasonal
16 operation, as you understand that meaning, would not
17 be relieved of its obligations as a capacity resource
18 if it is a 12-month annual obligation, correct?

19 A. I don't think PJM rules allow for that.
20 Subject to check, but my understanding of the RPM
21 rules, I don't think that's contemplated because it's
22 not a seasonal capacity market, so it's an annual
23 capacity market.

24 Q. Do you agree that capacity commitments
25 are generally made three years in advance in the PJM

1 market, correct?

2 A. In PJM the -- so the -- the first auction
3 for capacity three years -- it's a three-year forward
4 market. Then there's subsequent auctions as they get
5 closer to the delivery date where people can
6 reconfigure offers but -- but the longest time period
7 that you would plan for and commit is it's a
8 three-year forward market.

9 Q. You would agree that the concept of
10 seasonal operations for coal plants is a new concept?

11 MS. WACHSPRESS: Objection, vague as to
12 "seasonal operation."

13 MR. SCHULER: Well, your Honor, we just
14 had Dr. Fagan define "seasonal operation," so in
15 these questions I would ask Dr. Fagan to apply the
16 same definition we've been using for the last series
17 of questions.

18 EXAMINER PARROT: All right. Go ahead,
19 Dr. Fagan.

20 A. I don't know if it's new or not.

21 Q. Do you know of any plant -- strike that.

22 Do you know of any coal plants that have
23 shifted to seasonal operation in PJM?

24 A. I don't know offhand in PJM.

25 Q. Dr. Fagan, do you recall yesterday a

1 series of questions about the best interest of
2 customers?

3 A. There were many and varied, yes.

4 Q. Yes, there were. Do you recall saying
5 that there are a number of variables in determining
6 what would be in the best interest of customers in
7 this audit?

8 A. Yes.

9 Q. And you identified one of those variables
10 as customers may desire green power, for instance,
11 correct?

12 A. I did mention green power. I don't
13 recall if it was in the context of a -- I guess it
14 was in the context of something customers might want.
15 So if you want something, it's a benefit so okay.
16 All right.

17 Q. And it could be in their best interest
18 that they want it, correct?

19 MS. BOJKO: Objection, calls for
20 speculation. She can't speak to what customers
21 think. I also would object to relevance. OVEC
22 plants do not offer green power which the witness has
23 already testified to.

24 MS. WACHSPRESS: I would also object
25 there is no foundation for this question. I don't

1 believe green power was discussed in the audit, and
2 the witness has not previously testified to it in
3 this proceeding.

4 MR. MCKENNEY: And IEU-Ohio would join in
5 the objection. We just are getting to potentially
6 very close to friendly cross here.

7 MS. KERN: Staff would join.

8 MR. SCHULER: Your Honor, I will move to
9 another question.

10 EXAMINER PARROT: Okay.

11 Q. (By Mr. Schuler) We were talking about
12 variables that could be in the customers' best
13 interests. You would agree that a contract like the
14 ICPA could be one of those variables that would be
15 considered?

16 A. I don't know that a contract is a
17 variable. There's -- there's elements of contracts,
18 right? I don't know if I would characterize it -- a
19 contract that way. You want to know what's in it.

20 Q. You would agree that least-cost power is
21 not synonymous with best interests of customers,
22 correct?

23 A. Well, they sure figured that out in
24 Texas. Sorry. Not -- clearly not always but it's a
25 very important factor.

1 Q. But you would agree it's not the only
2 factor, correct?

3 A. It's clearly not the only factor.

4 Q. Is it your understanding that AEP Ohio
5 contracts with third parties to secure generation for
6 nonshopping customers through competitive auctions in
7 Ohio?

8 A. I don't have enough knowledge to comment
9 on that.

10 Q. Are you aware of the Standard Service
11 Offer process in Ohio?

12 MS. WACHSPRESS: Objection on relevance,
13 your Honor. I mean, Counsel may wish to make a
14 proffer, but I don't see where this is going with
15 respect to the auditor of OVEC.

16 MS. KERN: Staff would join the
17 objection.

18 MR. SCHULER: Your Honor, this rider
19 stems from an SSO for starters. There's also been an
20 incredible amount of testimony about fuel contract
21 clauses and how that relates to this audit and
22 least-cost assets. I'm trying to discern Dr. Fagan's
23 knowledge of whether that was a part of her audit
24 that she conducted in this matter.

25 EXAMINER PARROT: Overruled to the

1 question that's pending. We will see where we go,
2 Mr. Schuler, but go ahead, Dr. Fagan.

3 A. Would you restate the question?

4 Q. Sure.

5 Are you aware of the Standard Service
6 Offer process in Ohio?

7 A. Not in detail.

8 Q. Do you know if AEP Ohio serves customer
9 load directly or through third-party contracts in
10 Ohio?

11 A. I do not.

12 Q. You would agree that AEP Ohio does not
13 participate in the market to serve load, correct?

14 A. My understanding in Ohio is that there is
15 a retail shopping but -- but I don't know if I could
16 make that following conclusion. I'm not -- I can't
17 answer one way or the other.

18 Q. You would agree that the output of the
19 ICPA is not used to serve AEP Ohio retail load,
20 correct?

21 A. As far as I know, no. It's, excuse me,
22 offered into the PJM market as we discussed in the
23 audit.

24 Q. You are not aware of any reason for AEP
25 Ohio to secure other load in the market -- strike

1 that.

2 You are not aware of any reason for AEP
3 Ohio to secure other generation in the market to
4 serve load, correct?

5 MR. MCKENNEY: Objection, your Honor. I
6 am not sure how this is relevant to the load in the
7 OVEC units or the generation of these particular
8 plants or, quite frankly, at all with this case.

9 MS. KERN: Staff would join the
10 objection.

11 MS. WACHSPRESS: NRDC joins and says it
12 calls for speculation as to AEP's gen -- load needs.

13 EXAMINER PARROT: If you are able to
14 answer, Dr. Fagan, go ahead.

15 A. I am not able to answer.

16 MR. SCHULER: I am coming to the end
17 here, everyone, so hopefully only a couple more
18 minutes.

19 Q. (By Mr. Schuler) Yesterday we repeatedly
20 discussed an amount of the PPA Rider for years 2018
21 and 2019. Do you recall that, Dr. Fagan?

22 A. I do. I do recall. I can find the
23 table. Give me a moment, the figure.

24 Q. Oh, I don't need you to check that. My
25 question won't go to the actual figure, but I want to

1 make sure you complete your answer.

2 A. Yes, I recall.

3 Q. And you recall that the number that was
4 being discussed yesterday, the 74.5 million, was
5 subject to check, correct?

6 A. Correct. I didn't -- I didn't do all the
7 sums in my head for Figure 16, that's correct.

8 Q. Right. So you did not do that check in
9 your head on the stand yesterday, correct?

10 A. That's correct.

11 Q. And you did not have an opportunity to do
12 that during the breaks yesterday either, correct?

13 A. I did not.

14 Q. And you have not done that check since
15 then, correct?

16 A. That's correct.

17 MR. SCHULER: Your Honor, at this time I
18 would like to have a document marked as AEP Ohio
19 Exhibit 29. This is a document that was just
20 circulated to all the parties, I believe, in an
21 e-mail from Steven Nourse --

22 MS. WACHSPRESS: Your Honor, we --

23 MR. SCHULER: -- we referenced
24 previously.

25 MS. WACHSPRESS: Your Honor, this is

1 Megan Wachspress from NRDC. Unsurprisingly, we are
2 going to object to the admission of this exhibit.
3 The parties had agreed to --

4 EXAMINER PARROT: Hold on. That's
5 getting a little ahead of ourselves. Let him finish
6 identifying it, please.

7 Go ahead, Mr. Schuler.

8 MR. SCHULER: Your Honor, I'm identifying
9 as AEP Ohio Exhibit 29, an e-mail chain dated
10 September 11, 2020, between AEP Ohio and Dr. Fagan.
11 And I will submit that this has been previously
12 provided in discovery, and the parties will see in
13 the upper right-hand corner the labeling indicates
14 where it was provided in discovery.

15 MS. BOJKO: Your Honor, this document is
16 also identified as confidential. Is the Company now
17 waiving that confidentiality? Selectively?

18 MR. SCHULER: You read my mind,
19 Ms. Bojko. Yes, we are for this document.

20 MS. BOJKO: Well, your Honor, we object
21 to --

22 EXAMINER PARROT: Sorry, Ms. Bojko.

23 MS. BOJKO: And, your Honor, I have
24 another question for clarification. This is an
25 excerpt. It's not the full production of documents,

1 and it appears to be a supplemental response,
2 page 154 of 1145. Could counsel clarify this -- that
3 that's the case, A? B, when this was produced? We
4 have the original production, and we are searching
5 still for this additional production.

6 MS. WHITFIELD: Kim, this is Angie. I
7 would just note you cut out whenever you first
8 started to object so you might want to --

9 MS. BOJKO: I apologize. I didn't know
10 if you were ready to hear objections, your Honor.

11 EXAMINER PARROT: I'm not.

12 MS. BOJKO: I was noting it was
13 confidential before any questions were asked, and I
14 was trying to ask a point of clarification on the
15 document itself. I wasn't doing my full objection
16 yet.

17 EXAMINER PARROT: Okay. Mr. Schuler, as
18 to Ms. Bojko's clarification question, do you have a
19 response?

20 MR. SCHULER: Well, the Company controls
21 what is confidential, and we are -- what we
22 determined to be confidential in our records we have
23 deemed this to be nonconfidential. Part of the
24 reason why it was confidential is this is, as you can
25 see, part of a discovery response. It was 1145

1 pages. It was a very large request for all
2 communications. At the time this was discussing
3 draft information which I think we have littered the
4 record publicly of draft conversations between the
5 Staff and the auditor as related to the draft audit
6 report.

7 EXAMINER PARROT: I'm sorry, Mr. Schuler.
8 I think she was asking though when was this produced,
9 correct, Ms. Bojko? Go back to your questions first
10 before we get in this.

11 MR. SCHULER: I am happy to answer all
12 the questions. I am not sure I got them all.

13 MS. BOJKO: Thank you, your Honor. The
14 problem here is this is an excerpt of a larger
15 production and this appears to be a supplemental
16 production of an original Data Request, so I was
17 trying to confirm, A, that it's just an excerpt of a
18 larger production; B, I was trying to understand when
19 it was produced because we believe that we have the
20 right to review the entirety of the document that AEP
21 is now selectively pulling out a piece that it is
22 changing its confidential status. We actually can't
23 rely on documents in the public record if AEP deemed
24 them to be confidential. So now AEP is selectively
25 undeeming something confidential, and I think it's

1 only fair to allow us to look at the entirety of the
2 document to determine if we have objections to that
3 or not.

4 MR. SCHULER: Your Honor, if I can
5 respond to those questions as you asked and provide
6 Ms. Bojko with some further information.

7 This was obviously provided, as you can
8 see in the upper right-hand corner, part of a
9 discovery response that is much larger. The question
10 is a very broad question that asked for all
11 communications between the Company and the Staff.
12 It's supplemental because, under the rules of
13 discovery, we had an obligation to supplement this
14 over the course of it. And as you can see from the
15 date of the e-mail, September 11, 2020, we provided
16 it shortly thereafter. We could not have provided it
17 previously to that.

18 With respect to the confidentiality, it
19 had been marked confidential because at the time it
20 was still a draft audit report which has subsequently
21 been produced to all parties as part of a public
22 records request.

23 MS. BOJKO: Your Honor.

24 MS. WACHSPRESS: Your Honor, just a
25 clarification, the full draft has not been produced

1 to all parties. A selected excerpt has been moved
2 from confidential to nonconfidential.

3 MR. SCHULER: It was produced in
4 discovery. I am not referring to the exhibits that
5 were produced in advance of this hearing.

6 MS. BOJKO: I think you are missing the
7 point. It's all confidential, so it hasn't been
8 released to all parties because it's deemed to be
9 confidential. Only two pages have been undeemed
10 confidential. I think that's the point I was trying
11 to make, but I still don't have the question answered
12 of when this was produced. There is no date on the
13 document as to production and we are trying to locate
14 the entirety of the document because it wasn't
15 provided ahead of time as we were instructed to do.
16 I think it's only fair to at least let us look at the
17 document and try to find it.

18 MR. SCHULER: Yeah. This supplemental
19 discovery response that it was a part of was produced
20 on September 10, 2021, I believe in the iManage site
21 that we share documents in.

22 MR. FINNIGAN: Your Honor, could I be --

23 MS. BOJKO: Can you say that date again?

24 MR. SCHULER: Sure, September 10, 2021.

25 MS. BOJKO: Oh, okay.

1 EXAMINER PARROT: Go ahead, Mr. Finnigan.

2 MR. FINNIGAN: Thank you, your Honor.

3 Your Honor, as I understand it, the test for whether
4 new exhibits can come in --

5 EXAMINER PARROT: Hang on. Sorry. Hold
6 on. I am still trying to get through preliminary
7 stuff. I don't want to hear your objections yet. Is
8 that the end of the clarification kind of questions
9 before we --

10 MS. BOJKO: I don't know. Can you just
11 confirm, Mr. Schuler, that this is -- you've only
12 produced an excerpt. You have not produced
13 additional e-mail strings that go along with this
14 excerpt?

15 MR. SCHULER: This is -- well, this
16 entire discovery response of 11 -- 1145 pages was not
17 all related to this issue, as you can see from the
18 e-mail chain, a finite e-mail that is in there.

19 MS. BOJKO: Right. Your Honor, this is a
20 string of e-mails. There are only two e-mails, and I
21 am trying to ask if there are -- it looks -- if you
22 look at the bottom, there is another line. It
23 appears that there would be more of this string of
24 e-mails and we don't have that and that's what I am
25 trying to ascertain because I think it's only fair to

1 let us see the entire discussion.

2 MR. SCHULER: Your Honor, I understand
3 Ms. Bojko's question now. I'm checking on it really
4 quickly. One second, your Honor.

5 MS. BOJKO: And, your Honor, I don't know
6 if it's possible if they can resend it because we
7 cannot find this in the files.

8 MR. DOVE: It is -- I can help if you
9 need. I just found it.

10 MR. SCHULER: Alternatively, your Honor,
11 I know it is -- it is a late hour. This is the last
12 line of questioning but I do understand that Staff
13 has indicated potential redirect, and then we also
14 have to handle admission of exhibits, so if the
15 parties would like the evening to look this over and
16 we can resume with this line of questioning in the
17 morning and attend to the other matters. AEP Ohio is
18 amenable to that as well.

19 MS. BOJKO: Your Honor, I think that's an
20 excellent idea. It may eliminate all of our
21 objections. I just don't know.

22 MR. FINNIGAN: Your Honor, I -- you know,
23 I don't object to that, but one thing that could save
24 time is that this document raises questions as to
25 related documents and maybe AEP could supply us with

1 those related documents this evening and we could all
2 review them before tomorrow morning's session.

3 But this goes to a point that Ms. Bojko
4 raised in her questioning of Dr. Fagan earlier today
5 and that is that there are -- there were multiple
6 drafts of this audit report and there are questions
7 as to this language of being in the best interest of
8 retail ratepayers which drafts exactly it was in.

9 This e-mail is a partial communication. It appears
10 as part of the chain of communications where a draft
11 report is sent to AEP, and then AEP responds either
12 by e-mail or either by some draft report that might
13 be redlined with changes to take out objectionable
14 language.

15 And so just to give all the parties a
16 fair understanding of the full scope of
17 communications, we would ask that this evening AEP go
18 back to their files and they produce a copy of any
19 draft audit reports where they submitted proposed
20 changes to the auditor, along with any
21 communications, in addition to this one by e-mail,
22 where AEP was asking the auditor to make any changes
23 or sending any redline drafts of the audit report.
24 That way we could all look at those and then be in a
25 position to properly object tomorrow and maybe ask

1 for admission of these additional comments and/or,
2 you know, how to respond at all.

3 And so these -- that's all I would ask
4 that this evening if AEP could review the documents,
5 produce those to us, they could be under a
6 confidential basis for anyone who has a protective
7 order. The parties could review them this evening,
8 and then we would all be in a position to address
9 that tomorrow. Otherwise, it seems like there could
10 be another delay as soon as we get together tomorrow
11 morning.

12 MR. SCHULER: Your Honor, if I may
13 briefly. AEP is not going to agree to additional
14 discovery during the hearing when there is a cutoff
15 two weeks before the hearing. What we are willing to
16 agree to, and what I believe Ms. Bojko has indicated,
17 we found common ground, which should be telling, is
18 that the parties be able to review this entire
19 discovery response in its entirety tonight, and we
20 can resume with this line of questioning tomorrow and
21 entertain whatever objections they may have at that
22 time.

23 And it was already produced in discovery
24 is what we are saying. You have the discovery cite.
25 You all have this document and all of the documents

1 that go along with the other 1144 pages.

2 MR. FINNIGAN: Your Honor, that's not
3 very helpful because it's putting the parties of
4 trying to look for a needle in a haystack to review a
5 1100 documents -- or 1100 pages of documents this
6 evening. As a practical matter, that's just not
7 doable. It seems like AEP is in a position that it
8 knows where the documents are and could easily get
9 its hands on them and then produce the ones that are
10 related to this e-mail and that's all that we are
11 asking that they do.

12 MR. MCKENNEY: I would just briefly, your
13 Honor, without raising my objection, point out the
14 fact that if there are good objections to this
15 document, and they were to be granted, it would moot
16 this entire point of finding the document.

17 MR. SCHULER: Your Honor, we attempted to
18 do that with other documents at the beginning of the
19 hearing, and we waited until, you know, actual
20 questions were posed on it.

21 You know, and with respect to this one,
22 the purpose for it is there are issues in this case
23 about AEP Ohio's influence on the auditor -- on the
24 auditor and the audit. We are entitled to ask
25 questions about that. And like we said, this has

1 been disclosed in discovery. This is not a needle in
2 a haystack. It's a very specific cite where this was
3 provided.

4 MS. WACHSPRESS: Your Honor, I don't know
5 if you want to hear people further, but I will just
6 say one basis of NRDC's objections will be the
7 untimeliness of production. It is highly
8 inappropriate after the parties have agreed to a
9 deadline to produce exhibits for which there is only
10 an exception for good cause for the party to
11 introduce an exhibit that is clearly responsive --
12 clearly an attempt to introduce new evidence on a
13 subject that was -- they should have been well aware
14 of before the proceedings began.

15 This topic of the discussions around
16 these draft copies of the audit was the -- was the
17 subject of an entire prefiled testimony by a Staff
18 member. There is absolutely no reason why AEP was
19 not able to circulate this document in a timely
20 manner as agreed to. Nothing has come up in this
21 hearing thus far that was not well anticipated by the
22 prefiled testimony, and it's simply sandbagging of
23 the parties to introduce an exhibit at this late
24 date, especially one that is selectively excerpted
25 and de-confidentialized from a longer document.

1 MR. SCHULER: Your Honor, just so you
2 understand where the Company is coming from, this
3 came up as a result of after 17 hours of
4 cross-examination of the witness. This is a new
5 issue that came up. And, you know, there are rules
6 that we all agreed to and there is an exception to
7 producing documents.

8 Mind you, in a typical hearing we would
9 be able to just surprise the witness with any
10 document at any time, so we should not be trying to
11 turn these remote hearings into prejudicial
12 circumstances. Everybody had an opportunity to do
13 this if something came up during the
14 cross-examination or the testimony of the witness,
15 and it did here, and that was when we learned of this
16 issue and that's why we are producing this document
17 now and we are also affording the parties the evening
18 to look it over.

19 MR. MCKENNEY: And Mr. Schuler is leading
20 into the argument this is only going to be used for
21 permissible purposes to rehabilitate the witness on
22 cross-examination.

23 MS. BOJKO: Your Honor --

24 MR. SCHULER: It was brought up, your
25 Honor, because the auditor could not recollect

1 certain things. It is to refresh her recollection as
2 well.

3 MS. BOJKO: Well, that's improper cross
4 but, your Honor, I'm --

5 EXAMINER PARROT: Hang on a minute. Hang
6 on a minute.

7 I'm sorry. Go ahead, Ms. Bojko.

8 MS. BOJKO: I am just trying to get the
9 document. I know you don't want to hear our motions
10 to strike.

11 EXAMINER PARROT: Well, you have already
12 started. So we are going to do it and we are going
13 to finish, so.

14 MS. BOJKO: Well, I am just trying to
15 get --

16 EXAMINER PARROT: Go ahead.

17 MS. BOJKO: The attorney for AEP, and I'm
18 not trying to dispel this, but we have looked at
19 e-mails from September 10. We are trying -- we are
20 looking at the shared file. We cannot physically
21 find this document. So all I was asking was can he
22 send it to us again so that we all have the same
23 document and could be on the same page.

24 And then I would also argue that no one
25 is asking for additional discovery. All these things

1 were already asked to be produced including all
2 drafts of the audit report. So I am not asking for
3 additional. I am trying to get what they claim they
4 have already provided me, and I am not saying they
5 didn't.

6 MR. SCHULER: I understand that.

7 MS. BOJKO: I just can't access it, and I
8 am asking if he can help on that.

9 MR. SCHULER: Yeah. We are trying to
10 help you find it, Ms. Bojko. I'm sorry, your Honor.

11 EXAMINER SEE: And I also believe that
12 Mr. Dove offered to help Intervenor -- Counsel for
13 Intervenors to find the document. He was able to
14 find it; is that correct, Mr. Dove?

15 MR. DOVE: Yes, your Honor. I did a
16 little digging. I can kind of explain the file path
17 names to the extent that would be helpful to anyone.

18 EXAMINER PARROT: All right. Let's go
19 off the record.

20 (Discussion off the record.)

21 EXAMINER PARROT: All right. I believe
22 the Company has provided some additional information
23 to all of the parties at this point. I had started
24 to hear objections. And just for clarity, is the
25 Company proposing to move forward with what's been

1 marked AEP Ohio Exhibit 29 already? Or the document
2 that was just circulated and appears to be marked as
3 AEP Ohio Exhibit 30?

4 MR. SCHULER: Just 29.

5 EXAMINER PARROT: Okay.

6 MR. SCHULER: Are we on the record?

7 EXAMINER PARROT: We are.

8 MR. SCHULER: And I don't know if we got
9 through -- I believe I asked to have OCC Exhibit 29
10 identified, your Honor. I don't know if you ever
11 did.

12 MS. WHITFIELD: I don't mean to
13 interrupt, Mike, did you copy me on that e-mail? I'm
14 sorry. I didn't get what you now marked as
15 Exhibit 30, the larger portion.

16 MR. SCHULER: One second. We're
17 checking. My apologies. For cleaning up the record,
18 your Honor, I meant AEP Exhibit 29. I believe it
19 needs to be added.

20 EXAMINER PARROT: And the exhibit is so
21 marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. SCHULER: Ms. Whitfield, I believe
24 Steve is sending that over to you now. Make sure you
25 have it, the subsequent document we sent for the

1 parties to have context of the discovery response.

2 MS. WHITFIELD: Got it. I don't know if
3 that's the first one or the second one, but it looks
4 like I was on the first one that went through. Thank
5 you.

6 EXAMINER PARROT: All right. Are there
7 other objections from the Intervenors?

8 MR. MCKENNEY: Your Honor, I can't recall
9 if my objection was heard, but I will raise it at
10 this time, if it is appropriate.

11 EXAMINER PARROT: Go ahead.

12 MR. MCKENNEY: Your Honor, this document
13 would be -- I can see no reason why it would be
14 offered in this case other than to improperly attempt
15 to rehabilitate the witness on cross-examination.
16 Now, this is friendly cross but also improper cross
17 if that is the purpose for which this exhibit is
18 intended to be used by the Company. So for that
19 reason, I would object. That's all that I have.
20 Thank you.

21 EXAMINER PARROT: All right. Thank you.

22 MS. WHITFIELD: Just for the record,
23 Kroger would join on IEU's objection. I think
24 Dr. Fagan testified in -- earlier about she couldn't
25 exactly recall, but she ultimately was the one who

1 made the determination to remove that and so this
2 document is just purely an incident of friendly cross
3 and an attempt to redirect or rehabilitate her and
4 some of the admissions she had made earlier and
5 that's not proper for purposes of cross-examination.
6 Thank you.

7 MS. BOJKO: OMAEG would join in that
8 objection about friendly cross and the purposes of
9 the cross to rehabilitate the witness.

10 I would have two further objections, if I
11 could be heard at this time.

12 First of all, your Honor, the Exhibit 29
13 is incomplete. There is a page 2 as I expected and
14 as I noted and the Company did not include that in
15 Exhibit 29. There are also additional e-mails in
16 this string that were not provided in Exhibit 29.

17 So under the rule of completeness, it's
18 Evidence Rule 106, the standard in Ohio courts have
19 long recognized the rule of completeness. This rule
20 states that if one party moves to introduce parts of
21 a document, the opposing party can request that the
22 entire document be immediately submitted. And it's
23 State versus Holmes, 77 Ohio App. 3d 582. The rule
24 allows the party against whom the statement is
25 offered to require that the adverse party introduce

1 any otherwise admissible part of the statement which
2 ought, in fairness, be considered by the jury at this
3 time or the court. And that's State versus Barno.
4 The purpose of the rule is to prevent adverse parties
5 from taking statements out of context and distorting
6 them and that's exactly what AEP is trying to do in
7 this instance.

8 So under the rule of completeness, the
9 excerpt that AEP has provided of partial e-mail
10 strings in a production that is -- a document that is
11 much larger should be rejected, or, at a minimum, the
12 rule of completeness shall allow the entire e-mail
13 string with attachments to be admitted into the
14 record, your Honor.

15 My next objection is the confidential
16 status of this document. AEP has deemed it to be
17 confidential and it is inherently unfair. We've been
18 trying to keep -- only have a hearing on the public
19 record based on public information. AEP now has done
20 it twice during this hearing when it seems to benefit
21 them, they waive the confidential status of a
22 particular document and then we have no ability to
23 then use that document in the public forum or to ask
24 the witnesses questions on a public document that has
25 recently been released or information that has been

1 released by AEP's selective releasing of the
2 information. So we object on those three I guess
3 causes or arguments. Thank you.

4 MR. FINNIGAN: Your Honor, this is John
5 Finnigan for OCC. We join in that objection, and
6 also it seems like this raises a question of what is
7 reasonable grounds to determine whether this issue
8 should have been anticipated and could have been --
9 this document could have been provided with the
10 original cross-examination exhibit exchange.

11 For OCC, when we filed our direct
12 testimony of Mike Haugh on December 29, his
13 attachments included the e-mails that we've talked
14 about, that have been marked as NRDC, that go back
15 and forth between Ms. Fagan and the Staff and
16 Mr. Locigno that discuss this whole issue of taking
17 language out of the draft audit report. So that
18 should have been a clear signal to AEP that this
19 issue would come up in the hearing, and they had
20 plenty of time to prepare for this from the date when
21 that testimony was filed until the date that they
22 exchanged these cross-examination exhibits.

23 So to produce new exhibits now that go to
24 this issue of what language Staff asked to be taken
25 out is -- violates the ground rules for what -- what

1 you laid out in terms of exchanging the
2 cross-examination exhibits in advance of the hearing.

3 MS. WACHSPRESS: Your Honor, this is
4 Ms. Wachspress from NRDC. We have already raised our
5 procedural objections to the admission of the
6 untimely admission of this exhibit and its
7 production. And we join in the objections on the
8 grounds of -- of friendly cross and completeness.
9 I'll -- I'll note that one -- that counsel -- one of
10 the counsel here for AEP is actually a recipient of
11 the e-mail so there is an added complication here
12 that he is a percipient witness to what this e-mail
13 is about.

14 And I will only -- only add that if your
15 Honor chooses to admit this document, that in the
16 interest of fairness the other parties be allowed a
17 very limited recross with regard to this document and
18 with respect to the witness.

19 MR. SCHULER: Your Honor, if I could try
20 to respond to those as briefly as I can and I think I
21 can.

22 EXAMINER PARROT: Go ahead.

23 MR. SCHULER: For starters we have not
24 sought to admit this document into evidence. We
25 haven't even asked a question about it of the

1 witness. So really what we are talking about right
2 now are the procedural issues which really boil down
3 into two things. It is this concept of friendly
4 cross which I will state that there are serious
5 allegations in this case about AEP Ohio's influence
6 over the auditor. The parties have been afforded
7 hours of time to discuss these issues. And during
8 the course of those hours of cross-examination,
9 Dr. Fagan said she did not recollect certain
10 conversations with AEP Ohio.

11 Given the gravity of these allegations
12 that the parties have routinely made throughout these
13 proceedings, this is certainly something that AEP
14 Ohio should be allowed to explore. It's something we
15 could not have anticipated Dr. Fagan's lack of
16 knowledge on this that we just learned about in the
17 last few hours. That is why we are having this
18 conversation here now.

19 I will also mention to the form of
20 completeness, I understand it's late at night and
21 people are just getting some of these -- these
22 documents, although they have had them the whole
23 time, but I would respectfully disagree with Dr. --
24 excuse me, Ms. Bojko's suggestion that this is not
25 the entire e-mail chain. The documents that have

1 been produced around it are separate e-mails so
2 those -- you know, we've been doing this a long time.
3 The way the e-mails show up in discovery is they
4 will -- they will -- they have a beginning and an end
5 and sometimes when we're producing e-mails, we'll
6 have different e-mail strings back to back with one
7 another and that's precisely the document we produced
8 here.

9 I will concede that actually the one
10 piece that is missing from this -- this -- excuse me,
11 this e-mail thread is actually the boilerplate
12 language that goes with LEI e-mails that the parties
13 can see on page 155 of 1145, so it's nothing
14 material. It's just part of the signature block of
15 Dr. Fagan but that is that whole e-mail. If everyone
16 looks at those carefully what has been provided in I
17 believe Exhibit 30 -- 30 is the one that has it.

18 Finally, with respect to confidentiality,
19 I would also respectfully disagree with Ms. Bojko on
20 that issue. The parties received this information
21 confidentially. If they have issues with the
22 confidentiality, they can request the Company to take
23 a closer look at it. They could have done that at
24 any time over the last year and a half. In fact,
25 they have. OCC did, and we even did that for

1 purposes of this hearing, so it is not only when it
2 benefits AEP Ohio.

3 May I proceed with my questions, your
4 Honor?

5 EXAMINER PARROT: Yes. I will say for
6 the record your objections, they are noted on the
7 record. We did have an agreement -- it's my
8 understanding there was an agreement among the
9 parties that, you know, parties were not to be
10 precluded from presenting exhibits that had not been
11 previously circulated as potential exhibits provided
12 that the party offers a reasonable explanation as to
13 why it was not disclosed in advance.

14 I think Mr. Schuler has just done that.
15 I agree with his point that the Commission will be
16 entertaining quite a bit of testimony that's already
17 been heard from Dr. Fagan on matters related to the
18 drafting process. I allowed you to ask your
19 questions, and I think it's fair to the Company to
20 allow them to offer this exhibit. If we were in
21 person, they would be able to do that.

22 And with that, we are going to proceed so
23 go ahead, Mr. Schuler.

24 MS. WACHSPRESS: Your Honor, if I may
25 ask, we -- there were also objections raised as to

1 completeness and potential recross. Are you holding
2 those rulings for later or?

3 EXAMINER PARROT: We are at just a
4 threshold question here, which was just purely
5 whether he is allowed to proceed with his questions
6 which he is. So go ahead, Dr. -- I'm sorry.
7 Dr. Fagan, are you ready? I should have asked that
8 first. Thank you for your patience.

9 All right. Go ahead, Mr. Schuler.

10 MR. SCHULER: Thank you, your Honor.

11 Q. (By Mr. Schuler) Dr. Fagan, do you have
12 before you what has been labeled as AEP Exhibit 29?

13 A. Yes, I do.

14 Q. Do you recognize that to be an e-mail
15 chain started by you on September 11, 2020, at
16 2:18 p.m.?

17 A. Yes.

18 Q. And you are familiar with this document,
19 correct?

20 A. Yes.

21 Q. Do you recall earlier today some
22 questions about the sequencing of when you decided to
23 eliminate certain sentences from your draft audit
24 report?

25 A. Yes. I -- I don't think I was precise.

1 I recall I don't think I was precise as to the date.

2 Q. Does this e-mail refresh your
3 recollection that you removed certain portions of
4 your audit report prior to any feedback from AEP
5 Ohio?

6 MS. WACHSPRESS: Your Honor, the question
7 is vague and -- objection, vague and misstates
8 testimony. There is actually two separate sentences
9 and two separate drafts.

10 MS. KERN: Staff --

11 MS. BOJKO: I think it is -- I would also
12 object that it assumes facts not in evidence.
13 There's been nothing said that there wasn't a prior
14 e-mail where AEP sent a redlined document. And it
15 also is friendly cross and you haven't ruled on this
16 specific question as to friendly cross.

17 MR. SCHULER: Your Honor, I merely asked
18 if this refreshes Dr. Fagan's recollection.

19 EXAMINER PARROT: All right. I think I
20 heard another objection. Ms. Kern?

21 MS. KERN: Oh, I was trying to join on
22 the grounds of vagueness, you know, when
23 Mr. Schuler -- can you hear me?

24 EXAMINER PARROT: Yes. And I am going to
25 ask Mr. Schuler if you could be a little more

1 specific.

2 MR. SCHULER: Sorry. Was that the
3 Attorney Examiner? I couldn't tell if that was the
4 Attorney Examiner or Ms. Kern.

5 EXAMINER PARROT: Yes. I'm saying go
6 ahead and rephrase. Let's try to direct the witness
7 more specifically to what you are trying to refresh
8 here.

9 MR. SCHULER: Sure, your Honor.

10 Q. (By Mr. Schuler) Dr. Fagan, do you now
11 recollect that you sent a draft audit report --
12 strike that.

13 Dr. Fagan, you testified earlier that you
14 sent a draft audit report to AEP Ohio on September 9,
15 correct?

16 A. That's right.

17 Q. Do you recall sending an e-mail that is
18 contained in AEP Exhibit 29 that indicates additional
19 edits to that document that you provided to AEP Ohio
20 on September 9?

21 A. You are referring to 29 that we are
22 looking at?

23 Q. Correct.

24 A. Yes, yes. It was an additional edit that
25 I hadn't put in the doc I sent them. And rather than

1 send a whole new document, I flagged it just in an
2 e-mail.

3 Q. You were not prompted to send that e-mail
4 by anyone at AEP Ohio, correct?

5 A. I don't think so.

6 Q. Does this refresh your recollection that
7 you decided to do that edit before you received
8 feedback from AEP Ohio?

9 MS. BOJKO: Objection, mischaracterizes
10 the e-mail and her prior testimony.

11 MR. SCHULER: I just asked if it
12 refreshed her recollection, your Honor. She can
13 speak to her recollection.

14 EXAMINER PARROT: Go ahead, Dr. Fagan.

15 A. I don't recall specifically.

16 Q. Would you agree that you sent this e-mail
17 to AEP Ohio on September 11, 2020, at 2:18 p.m., the
18 e-mail that is labeled as AEP Ohio Exhibit 29?

19 A. Agree.

20 Q. And in that e-mail you indicate that you
21 realize that you wanted to make an edit to the LEI
22 audit report, draft audit report, correct?

23 MR. MCKENNEY: Objection, your Honor, as
24 to form. First, it characterizes the -- the exhibit.
25 But, beyond that, the problem you have with asking

1 leading questions on friendly cross is you end up
2 with the attorney ultimately testifying for the
3 witness. So we would ask that either the attorney be
4 warned on giving friendly -- or doing friendly cross
5 or that the questions be in a form such as not to
6 lead the witness into a friendly answer. That is not
7 the purpose of cross-examination.

8 MR. SCHULER: Your Honor, I believe we
9 established this is not friendly cross. That's why I
10 was allowed to proceed.

11 EXAMINER PARROT: Go ahead, Dr. Fagan.

12 A. Would you -- I'm sorry. Would you repeat
13 the question?

14 Q. Yeah.

15 The question pending was, in this e-mail
16 you indicate that you realize you wanted to make an
17 edit to the draft LEI audit report, correct?

18 A. Correct. I wrote "I just realized there
19 was an edit I wanted to make to page 10."

20 Q. Would you agree you had already missed it
21 and previously decided to do it before sending this
22 e-mail?

23 MS. BOJKO: Objection.

24 MR. MCKENNEY: Join as to form.

25 MR. SCHULER: I am simply asking her

1 knowledge at the time. Her present sense impression.

2 EXAMINER PARROT: Overruled.

3 A. So the question is, did I realize it and
4 then send the e-mail?

5 Q. Correct, yes. Did you -- did you -- yes.

6 A. Yeah. I mean, logically I couldn't have
7 sent the e-mail until I realized it so, yes, what I
8 said there, I realized there is an edit I wanted to
9 make, and I sent it to them in an e-mail because they
10 had already -- I had already sent them a draft so
11 this was going to be different. So rather than send
12 a whole other draft, I said I am going to change
13 this. So I made the decision and then sent the
14 e-mail.

15 Q. And you did that before receiving any
16 feedback from AEP Ohio, correct?

17 A. You know what? If I sent them the draft
18 on the 9th, which I'm nearly positive, and I sent
19 this on the 11th, I don't know if maybe it was back
20 on the 10th. I am not saying there was or wasn't. I
21 just don't know if there was feedback from them on
22 that day or just in between sending the draft and
23 sending this, so I don't know.

24 Q. You would agree that you did not decide
25 to delete that language at the request of AEP Ohio,

1 correct?

2 MS. WACHSPRESS: Objection, asked and
3 answered. The witness has already testified that she
4 cannot recall whether she got any feedback from AEP
5 during the intervening days between sending the draft
6 and this e-mail.

7 MS. WHITFIELD: Join in the objection.

8 MS. BOJKO: OMAEG joins.

9 MR. SCHULER: Your Honor, she did testify
10 I think she was talking about the logic involved that
11 she must have done it on her own which is why she
12 sent this e-mail, so I would disagree with the
13 objection.

14 MR. FINNIGAN: Your Honor.

15 MS. BOJKO: The question was already
16 asked and answered by other parties.

17 MR. FINNIGAN: Your Honor, I am going to
18 object to this entire line of questioning. The
19 premise here is that there is some memory to be
20 refreshed. And the witness has testified that she
21 has no memory so there's nothing to refresh with this
22 line of questioning.

23 What Mr. Schuler is trying to do, he is
24 trying to create a memory that doesn't exist. So
25 it's obvious from her answers, too, that she looked

1 at the document and she says, well, this must have
2 happened because I read the document.

3 This line of questioning would only be
4 proper if she would be -- started at the very
5 beginning by saying, yes, I recall something, but I
6 don't recall all the details. She didn't say that.
7 She said I don't recall anything about it. So there
8 is no memory to be refreshed. This entire line is
9 improper.

10 EXAMINER PARROT: I am not sure that's
11 what she said. Overruled.

12 Go ahead, Dr. Fagan.

13 A. And the question again?

14 Q. Would you agree you did not decide to
15 delete the language at the request of AEP Ohio?

16 A. I don't remember if there was a request
17 or not, but the decision to edit or delete in the
18 final report is mine.

19 Q. Would you agree that, as indicated in
20 this e-mail as AEP Ohio Exhibit 29, that you did not
21 expect -- on the date of September 11, 2020, you did
22 not expect to get the document, referring presumably
23 to the audit report, back from AEP until next week?

24 MS. WACHSPRESS: Objection. I mean, to
25 follow up on Mr. Finnigan, he's more or less reading

1 the exhibit into testimony by way of a purported
2 refreshing of the witness's recollection without
3 proper -- moving -- I mean, it's improper. He is
4 not -- he is trying to get the document in without
5 having to admit it, more or less, by reading it
6 into -- into the witness's testimony.

7 EXAMINER PARROT: And isn't that what
8 we've done with other e-mail exchanges through this
9 whole process so far? I think it is. So overruled.

10 THE WITNESS: I should answer?

11 EXAMINER PARROT: Yes.

12 A. So I don't recall all the details of
13 everything, but I wrote -- I definitely wrote,
14 because we have a record here, that I will "edit it
15 when we get the doc back from you next week." So
16 next week was when I expected their comments. But
17 the reason I know that is because it is written here.
18 But so, yeah, I will verify that, when I wrote that,
19 that's what I was expecting.

20 Q. Those are your words though, correct,
21 Dr. Fagan?

22 A. Yeah, this is -- this is my writing.
23 This is my -- this is how I communicate. Yeah, I
24 wrote that.

25 Q. And you don't believe you would have said

1 something untruthful in this e-mail, correct?

2 A. Well, I could have been wrong about
3 getting it back on the date, but I expected -- I
4 expected it the next week and so that's what I wrote.
5 I am --

6 Q. Would you -- I'm sorry.

7 A. No. I just don't know how else to answer
8 that.

9 Q. You would -- you wouldn't have written
10 that had you already received the document back from
11 the Company, correct?

12 MS. BOJKO: Objection. What document are
13 you talking about? Are you talking about a redline
14 document from AEP? Are you talking about an e-mail?
15 I guess I don't think it's clear what document you
16 were talking about in your question.

17 MS. KERN: Staff would join that
18 objection.

19 EXAMINER PARROT: Go ahead and rephrase,
20 Mr. Schuler.

21 Q. (By Mr. Schuler) Dr. Fagan, would you
22 agree the doc, the word the "doc" that you are
23 referring to in here, would be the draft audit report
24 that was circulated to AEP Ohio?

25 A. So in substance, yes, but the document I

1 get back, it could be a redline, it could be a PDF
2 with handwriting. So the "doc" doesn't refer to --
3 like folks were mentioning here, what kind. You
4 know, is it a Word doc? Is it a PDF? But in my
5 mind, the document is however they send it back,
6 however they decide to indicate what actions or
7 whatever it might be. I hope that's clear.

8 Q. You would agree the title of this e-mail
9 is "edit proposed to AEP Ohio OVEC audit report,"
10 correct?

11 A. Yes, "edit." Singular.

12 Q. And like we talked about earlier today,
13 audit reports are often provided to Staff and then
14 the Company that is the subject of the audit,
15 correct?

16 A. That's correct.

17 Q. And that is the document that you are
18 referring to in this e-mail that you expect to
19 receive back from the Company, correct?

20 MS. BOJKO: Objection. I still don't
21 know from the question what document you are
22 referring to. You said that is the document. I
23 don't think it's clear which one you are referring
24 to.

25 MR. SCHULER: Your Honor, I believe the

1 question was clear. It was following up on the
2 previous two questions about a document of feedback
3 on the audit report.

4 MS. BOJKO: No, your Honor. He actually
5 put in a new word. If you read the question back, he
6 said Staff and said you sent it to Staff first, and
7 then he goes and then that's the document, so it
8 isn't clear what document.

9 EXAMINER PARROT: Dr. Fagan, if you
10 followed, go ahead and answer.

11 A. The document we sent to the Company as
12 ultimately some or all of the edits that we got from
13 Staff that we decided to include. So then that's
14 what's going to the Company.

15 Q. And this e-mail is indicating that you
16 had another edit that you wanted to add to that
17 document that you provided to the Company, correct,
18 that you missed?

19 A. That's correct.

20 Q. And that is the deletion that is the
21 subject of this e-mail, correct?

22 A. That's correct.

23 MR. SCHULER: Your Honor, I have no
24 further questions. Thank you, Dr. Fagan, for your
25 time.

1 At this time, AEP Ohio would move for the
2 admission of AEP Ohio Exhibit 22 and AEP Ohio
3 Exhibit 29.

4 EXAMINER PARROT: And we will table those
5 motions until we finish with Dr. Fagan's testimony,
6 Mr. Schuler, so table that for now.

7 MR. SCHULER: Thank you, your Honor.

8 EXAMINER PARROT: All right. Thank you,
9 Dr. Fagan, for hanging in with us.

10 We will see everyone at 9:00 a.m.

11 (Thereupon, at 8:27 p.m., the hearing was
12 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, January 13, 2022, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7213)

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in

Case No(s). 18-1004-EL-RDR, 18-1759-EL-RDR

Summary: Transcript in the matter of the Ohio Power Company hearing held on 01/13/22 - Volume II electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.