

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

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

- - -

PROCEEDINGS

before Ms. Greta See and Ms. Sarah Parrot, Attorney  
Examiners, at the Public Utilities Commission of  
Ohio, via Webex, called at 9:01 a.m. on Wednesday,  
February 9, 2022.

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VOLUME VII

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On behalf of the Staff of the PUCO.

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8 On behalf of Ohio Energy Group.

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## 2 OCC EXHIBITS IDENTIFIED ADMITTED

3 35 E-mail String Dated VI-1726 1893  
 4 September 17, 2020, Subject:  
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 for 2018-2019

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## 7 OMAEG EXHIBITS IDENTIFIED ADMITTED

8 9 Excerpted E-mails from III-886 1895  
 OCC-RPD-01-004  
 9 Attachment 1

10 12 Excerpted E-mails from 1847 1895  
 OCC-RPD-01-004  
 11 Supplemental Attachment 2

12 - - -

## 13 AEP EXHIBIT IDENTIFIED ADMITTED

14 30A Excerpted E-mails from 1881 --  
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 15 Supplemental Attachment 2  
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1 Wednesday Morning Session,  
2 February 9, 2022.

3 - - -

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

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

11 Let's get started this morning with  
12 appearances, beginning with AEP Ohio.

13 MR. NOURSE: Thank you. Good morning.  
14 On behalf of Ohio Power Company, Steven T. Nourse,  
15 Michael J. Schuler, outside counsel Eric B. Gallon  
16 and Matthew S. McKenzie.

17 EXAMINER PARROT: Commission Staff.

18 MS. KERN: Thank you. On behalf of the  
19 Staff of the Public Utilities Commission of Ohio,  
20 Kyle Kern and Thomas Lindgren.

21 EXAMINER PARROT: OCC.

22 MR. FINNIGAN: Good morning, your Honor.  
23 On behalf of OCC, John Finnigan and Ambrosia Wilson.

24 EXAMINER PARROT: IEU-Ohio.

25 MR. McKENNEY: Good morning, your Honor.

1 On behalf of IEU-Ohio, Matthew Pritchard and Bryce  
2 McKenney from the law firm McNees, Wallace & Nurick.

3 EXAMINER PARROT: OEG.

4 MS. COHN: Good morning, your Honor. On  
5 behalf of the Ohio Energy Group, Jody Cohn and  
6 Michael L. Kurtz.

7 EXAMINER PARROT: OMAEG.

8 MS. BOJKO: Thank you, your Honor. On  
9 behalf of Ohio Manufacturers' Association Energy  
10 group, Kimberly W. Bojko and Thomas Donadio with the  
11 law firm Carpenter Lipps & Leland.

12 EXAMINER PARROT: Kroger.

13 MS. WHITFIELD: Good morning, your Honor.  
14 On behalf of The Kroger Company, Angela Paul  
15 Whitfield from the law firm Carpenter Lipps & Leland.

16 EXAMINER PARROT: OPAE.

17 MR. DOVE: Good morning, your Honor. On  
18 behalf of OPAE, Robert Dove with the law firm Kegler  
19 Brown Hill & Ritter. I also represent Natural  
20 Resources Defense Council along with my co-counsel  
21 Kristin Henry, Tony Mendoza, and Megan Wachspress.

22 EXAMINER PARROT: Thank you, everyone.

23 Is there anything we need to discuss  
24 before we get started with Mr. Windle today?

25 MR. NOURSE: No, your Honor.



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1 EXAMINER PARROT: All right. Mr. Windle,  
2 I will just remind you you are still under oath.

3 Counsel for NRDC, are you ready?

4 MS. HENRY: Yes, your Honor.

5 EXAMINER PARROT: All right. Go ahead,  
6 Ms. Henry.

7 MS. HENRY: Thank you.

8 - - -

9 RODNEY P. WINDLE

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

12 CROSS-EXAMINATION

13 By Ms. Henry:

14 Q. Good morning Mr. Windle.

15 A. Good morning.

16 Q. If I refer to Ohio Power Company as AEP  
17 Ohio, will you understand what I mean?

18 A. Sure.

19 Q. Okay. And if I refer to AEP Generation  
20 Resources Incorporated as AEP Generation, will you  
21 understand what I mean?

22 A. Sure.

23 Q. And if I refer to AEP Service Corporation  
24 or American Electric -- if I refer to American  
25 Electric Power Service Corporation as AEP Service

1 Corp., will you understand what I mean?

2 A. Sure.

3 Q. Thank you.

4 I am going to have you turn to your  
5 testimony on page 7. Let me know when you are there.

6 A. Yes.

7 Q. And if you look at question 14 and the  
8 answer, just take a moment to refresh yourself if  
9 that's okay.

10 A. Okay.

11 Q. You refer to a Commission order from  
12 November 3, 2016, from a rehearing in Case No.  
13 14-1693; is that correct?

14 A. Yes.

15 Q. Okay. And you have read that decision --  
16 I'm sorry. Go ahead.

17 A. Yes.

18 Q. Okay. And did you read that decision  
19 before you wrote your testimony?

20 A. Yes.

21 MS. HENRY: Ms. Kern, can I ask, does the  
22 witness have a copy of that order?

23 MS. KERN: Mr. Windle, do you have a copy  
24 of that? If not, I can provide one.

25 THE WITNESS: I can search it up on DIS.

1 MS. KERN: Do you mind if he looks at  
2 DIS, Ms. Henry, or I can e-mail it.

3 MS. HENRY: I don't understand the  
4 acronym DIS.

5 MS. KERN: Oh, I'm sorry. It's the  
6 PUCO's docketing system.

7 MS. HENRY: That works for me.

8 MS. KERN: Okay.

9 MS. HENRY: Thank you.

10 MS. KERN: Mr. Windle, let us know when  
11 you have the document open.

12 A. Just for clarification, the November 3  
13 document, correct?

14 Q. It's an order. That's -- the November 3,  
15 2016, it's an entry of -- it's an Entry on Rehearing  
16 of the case in 14-1693. It's referred to in your  
17 testimony.

18 A. Uh-huh. I was just making sure, yes, I  
19 have it open now.

20 Q. Okay. Would you do me a favor and could  
21 you turn to page 70, paragraph 178 of that order.

22 A. Okay.

23 Q. Now I have to get -- okay. The paragraph  
24 states that "The Commission emphasized, in the PPA  
25 Order, that we will conduct an annual prudency review

1 of any retail charges flowing through the PPA rider";  
2 is that correct?

3 A. Yes. That seems to be how it reads.

4 Q. Okay. So your understanding as the Staff  
5 witness is that there -- that the annual prudency  
6 review is of the retail charges flowing through the  
7 PPA Rider, correct?

8 A. One thing I would like to clarify is I'm  
9 the Staff witness on the process. Obviously our  
10 Staff witness on the audit is Dr. Fagan with LEI, but  
11 to answer your question, yes, it appears as though  
12 the annual prudency audit should be of any retail  
13 charges flowing through the PPA Rider.

14 Q. Thank you for that.

15 Now, in that sentence that we just looked  
16 at, sir, it says "the PPA Order." Do you see that --  
17 those words, "the PPA Order"?

18 A. Yes.

19 Q. Okay. And the PPA order referenced in  
20 that sentence is the March 31, 2016, Order issued by  
21 the Commission in Case No. 14-1693; is that correct?

22 A. I am left to speculate. That certainly  
23 could be.

24 Q. Okay. And is that the PPA order that was  
25 originally issued in this case that you are familiar

1 with and I believe you talked about it yesterday with  
2 Mr. Finnigan in some detail?

3 A. Yeah. That is one of the orders issued  
4 in this case that it is a very long case docket with  
5 multiple orders.

6 Q. Okay.

7 A. But yes, I would assume that would be the  
8 one.

9 Q. Okay. Can I have you -- oh, let's  
10 continue on looking at page 70, paragraph 178 of this  
11 November order. The paragraph states that "The  
12 Commission also addressed the annual audit process  
13 and set forth clear expectations, in response to  
14 certain intervenors' concerns, regarding a number of  
15 specific issues related to retail cost recovery, such  
16 as Capacity Performance penalties and bonuses, forced  
17 outages, and bidding behavior," correct?

18 A. Yes.

19 Q. Okay. So bidding behavior was called out  
20 as something that is subject to this audit review  
21 process; is that correct?

22 A. Yes.

23 Q. Okay. Now I am going to have you same  
24 pair -- same page, same paragraph, so again it's  
25 page 70, paragraph 178, and I am going to have --

1 it's going to go continue on to page 71. And this  
2 paragraph states that "We also directed that AEP Ohio  
3 will bear the burden of proof, in each annual audit,  
4 to establish the prudence 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"; is that correct?

8 A. Yes.

9 Q. Okay. So all of AEP Ohio's OVEC costs  
10 occurring during 2018 and 2019 are at issue here,  
11 correct?

12 A. Yes. All -- all AEP Ohio's OVEC costs  
13 that are flowing through the rider.

14 Q. Okay. Thank you for that, sir.

15 I want to take a minute to talk about  
16 possible findings that the Commission could issue in  
17 this audit docket. In any audit docket, it's  
18 possible that the Commission could find that AEP  
19 Ohio's actions were prudent, correct?

20 A. So I am -- I would go as far as to say  
21 that I will not -- I wouldn't personally, as a public  
22 servant, try to put limitations on the Commission, so  
23 I believe they could find whatever is reasonable to  
24 them and within the scope of their jurisdiction and  
25 law.

1 Q. Okay. So they could find that AEP's  
2 actions were prudent, correct?

3 A. They could.

4 MS. KERN: Objection. Sorry.

5 Q. And they could find that AEP Ohio  
6 failed -- that AEP Ohio's actions were imprudent,  
7 correct?

8 MS. KERN: Objection to the extent  
9 Mr. Windle is not testifying on behalf of the  
10 Commission. His scope of testimony is very narrow as  
11 far as Staff's role. Asking him to opine on the  
12 Commission's decisions and what they can determine  
13 is -- is beyond the scope.

14 MS. HENRY: Well, he does talk about what  
15 the scope of the proceeding is especially with regard  
16 to the audit, and I will connect the dots, your  
17 Honor. I just need to have a little bit -- if it's  
18 okay with you, your Honor.

19 EXAMINER PARROT: We will see where it  
20 goes. As to this question, go ahead and answer to  
21 the best of your ability, Mr. Windle.

22 THE WITNESS: Could you reread the  
23 question, please? I apologize.

24 (Record read.)

25 A. So I am not an attorney. I don't know

1     what they can find in any cases. But my assumption  
2     is that they could find something like that.

3             Q.     Okay. Thank you. But there -- there is  
4     something in between prudence and imprudence,  
5     correct? Do you think that it's possible that the  
6     Commission could find that AEP Ohio failed to prove  
7     prudence?

8             MS. KERN: Objection, your Honor.  
9     Mr. Windle is not an attorney. He was not tasked  
10    with auditing this case. He is not tasked with  
11    determining prudence or imprudence. He oversaw the  
12    audit per the Commission's order.

13            MR. NOURSE: The Company joins the  
14    objection. There is no point in this lay witness  
15    issuing any kind of legal opinion on the record.

16            EXAMINER PARROT: Overruled.

17            Mr. Windle, you are not an attorney,  
18    correct?

19            THE WITNESS: Correct.

20            EXAMINER PARROT: All right. With that  
21    understanding and clarification, let's go ahead.

22            THE WITNESS: And I apologize. Each time  
23    we do the objections, it's very early for me right  
24    now. I keep losing the question.

25            MS. HENRY: Mr. Windle, I'm in



1 California. It's very early for me too.

2 EXAMINER PARROT: We will reread the  
3 question.

4 (Record read.)

5 A. I would not put myself forward as an  
6 expert witness on the term "prudence." From a  
7 logical perspective, it seems as though either  
8 something is prudent or it isn't. Perhaps there  
9 could be some gray area I'm not aware of.

10 Q. So you are just not familiar with that;  
11 is that correct?

12 A. Correct. I base whatever I know of  
13 prudence, honestly, based on the 18-1003 audit.

14 Q. Okay. I am going to have you look at OCC  
15 Exhibit 9. And that is the Commission order in Case  
16 No. 14-1693 that was issued on March 31, 2016. And I  
17 know you looked at that yesterday with Mr. Finnigan.  
18 Just let me know when you have -- when you have that  
19 document, sir.

20 A. And to be clear, it's OCC 9?

21 Q. I -- that is what I have. Mr. Finnigan  
22 can correct me if I'm wrong.

23 EXAMINER PARROT: That's correct.

24 A. Okay. I have OCC 9 up.

25 Q. And is that -- is that document the

1 March 31 order, sir?

2 A. The exhibit isn't labeled as such but it  
3 looks like the March order to me.

4 Q. Okay. And you've -- and you've read this  
5 March order before, sir?

6 A. Yes.

7 Q. And did you read this order before you --  
8 and you are familiar with this order?

9 A. I have read the order.

10 Q. And you've discussed this order yesterday  
11 with Mr. Finnigan; is that correct?

12 A. Yes.

13 Q. Okay. I am going to direct you to  
14 page 89 of the order. And when I say 89, I mean 89  
15 based on the numbering at the top of the page as  
16 opposed to the PDF numbering. I don't know how you  
17 are looking at it.

18 A. There's two numbers at the top but I  
19 believe that you are probably referring to the one  
20 that stands alone, not the page 25 of 127 but the one  
21 below that?

22 Q. I am looking for the page number of the  
23 order. Page No. 89 of the order.

24 A. Okay. Let me see if I can get there.

25 Okay. So I'm on page 89. It starts with

1 "Further, we note that AEP Ohio has consented to this  
2 review"?

3 Q. That's the page I have. That sounds  
4 great. Thank you, sir. I am going to have you look  
5 at the paragraph that's the second full paragraph,  
6 sir, that begins "With respect." Do you see that  
7 paragraph, sir?

8 A. Yes.

9 Q. Okay. And I am going to have you look at  
10 the last sentence of that paragraph. Let me know  
11 when you are there, sir.

12 A. Yes.

13 Q. Okay. Actually I'm going to have you  
14 first look at the second-to-last paragraph [sic] and  
15 that states that "Retail cost recovery may be  
16 disallowed as a result of the annual prudence review  
17 if the output from the units was not bid in a manner  
18 that is consistent with participation in a broader  
19 competitive marketplace comprised of sellers  
20 attempting to maximize revenues"; is that correct?

21 A. Yes.

22 Q. Okay. And then let's refer to page 89 of  
23 the order, the second-to-last sentence of that  
24 paragraph, and it states that "AEP Ohio will bear the  
25 burden of proof in demonstrating that bidding

1 behavior is prudent and in the best interest of  
2 retail ratepayers," correct?

3 A. Yes.

4 Q. Okay. Now, you looked at the RFP  
5 yesterday with Mr. Finnigan. Do you have a copy of  
6 that available?

7 A. Yes.

8 Q. Okay. And that is OCC Exhibit 5 that you  
9 are looking at, sir?

10 A. I apologize. I got mixed up in my  
11 documents. Give me a second.

12 Q. Oh, take your time.

13 MR. NOURSE: For the record I have that  
14 as OMAEG Exhibit 5.

15 MS. HENRY: Oh, sorry. OMAEG Exhibit 5.  
16 Thank you for the correction, Mr. Nourse.

17 A. I do have it up. Of course, I don't have  
18 an official copy of OMAEG Exhibit 5 so.

19 Q. You have a copy of the RFP, correct?

20 A. Yes.

21 Q. Okay. And would you do me a favor.  
22 Could you look at page 4 of the RFP.

23 A. Uh-huh. I'm there.

24 Q. Okay. All right. So it states that "The  
25 Commission provided, in Case No. 14-1693-EL-RDR,

1 et al., for an annual prudency audit to establish the  
2 prudency of all costs and sales flowing through the  
3 PPA rider and to demonstrate that the Company's  
4 actions were in the best interest of retail  
5 ratepayers," correct?

6 A. Yes.

7 Q. So the RFP asked the auditor to examine  
8 the prudency of all the costs, correct?

9 A. Yes.

10 Q. All costs include variable costs such as  
11 fuel, correct?

12 A. I believe so.

13 Q. Okay. All costs include fixed costs like  
14 capital, correct?

15 A. Within the context of flowing through the  
16 rider, yes.

17 Q. Okay. Okay. Let's turn to page 6 of the  
18 RFP, sir.

19 A. Okay.

20 Q. Okay. Is it correct the auditor is  
21 expected to ensure that -- it states only the auditor  
22 is expected to ensure that only prudently-incurred  
23 costs are included for recovery, correct?

24 A. Yes.

25 Q. And the RFP asked the auditor to ensure

1 that only prudently-incurred fixed costs are  
2 included, correct?

3 A. Yes.

4 Q. Okay. So all costs include all fixed  
5 costs, correct?

6 A. Yes.

7 Q. Okay. I want to explore something that  
8 you talked about yesterday with Mr. Finnigan. And  
9 when you were talking with Mr. Finnigan, you stated  
10 that your understanding of the scope of the audit is  
11 to review AEP's actions and whether they were  
12 prudent. Do you remember that conversation that you  
13 had with Mr. Finnigan?

14 A. Yes. And, of course, there's two  
15 statements. There is the prudent costs flowing and  
16 sales flowing through the rider and whether or not  
17 the Company's actions were in the best interest of  
18 ratepayers. It's kind of two separate things.

19 Q. Okay. So this is what I want to unpack  
20 with you and I am trying to understand that. So AEP  
21 Ohio, do they control the OVEC plants?

22 A. No.

23 Q. Okay. Does AEP Ohio bid in the plants  
24 into the market?

25 A. I would go as far as to say that I did

1 not perform the audit. It's outside of my scope of  
2 my testimony to perform the audit. My job was  
3 oversight of an auditor. To my knowledge, that would  
4 depend on what you call a market.

5 Q. I think I am trying to understand -- let  
6 me take a step back.

7 What actions do you feel are subject of  
8 the audit in this case by AEP Ohio?

9 MS. KERN: Objection, your Honor. He did  
10 not --

11 MR. NOURSE: Objection.

12 MS. KERN: Yeah. He did not conduct --  
13 sorry. I apologize if I talk over. I think there is  
14 a little bit of a delay and it must be on my end. He  
15 did not conduct the audit. That was not his role.  
16 That is clear from his testimony.

17 MS. HENRY: Your Honor --

18 MR. NOURSE: Your Honor, I would just add  
19 to that and join the objection and, you know, he's  
20 clearly indicated that the orders speak for  
21 themselves. His intent was merely to incorporate the  
22 orders. There is nothing about the RFP that changes  
23 the prior orders so the whole -- the whole debate  
24 over that is -- is obviously a legal issue that  
25 parties can brief and argue about based on the orders

1 but obviously Mr. Windle is not intending to either  
2 expand or contract the Commission's prior orders.

3 MS. HENRY: Your Honor, let me -- let me  
4 take a step back. And let -- if that's okay and we  
5 will lay a little bit more foundation before we go  
6 there. Is that okay, your Honor?

7 EXAMINER PARROT: Go ahead.

8 Q. (By Ms. Henry) Okay. Mr. Windle, let's  
9 look at page 7 of your testimony. Make sure I am on  
10 the same page.

11 A. Okay.

12 Q. Okay. And you state that your  
13 "understanding is that questions as to whether there  
14 should be a Rider or the cost benefit metrics of the  
15 OVEC plants were litigated and resolved in Case  
16 No. 14-1693-EL-SSO and are outside the scope of the  
17 audit," correct?

18 A. Yes.

19 Q. Okay. And yesterday when you were  
20 speaking with Mr. Finnigan, you stated that AEP's  
21 action was that it sought approval of the rider,  
22 correct, that was something that was -- that was an  
23 AEP action that the Commission considered, correct?

24 A. In that case number, I believe that to be  
25 true, that they requested this rider that we're



1 auditing.

2 Q. Okay. And so what AEP actions do you  
3 think are subject to this audit?

4 A. Well, I believe any actions they took  
5 with regard to the rider are subject to the audit as  
6 far as the Company's actions.

7 Q. Let me ask, if -- if the OVEC units were  
8 bid into the marketplace which we have established --  
9 the orders talk about how the bidding practice is  
10 part of the audit review, correct?

11 A. Yes.

12 Q. Okay. And -- and AEP Ohio does not do  
13 the bidding, correct?

14 A. I don't know that to be true.

15 Q. If -- let's -- let's assume that AEP Ohio  
16 does not do the bidding. Can we make -- are you okay  
17 if we have a hypothetical that assumes that,  
18 Mr. Windle?

19 A. Okay.

20 MS. KERN: I am just going to interject  
21 with an objection here based on the same grounds  
22 previously raised. Mr. Windle is not a substantive  
23 witness. These are legal arguments. The auditor was  
24 the appropriate witness to ask these questions to.  
25 He did not conduct the audit. He is testifying about

1 the oversight of the audit.

2 MS. HENRY: Your Honor.

3 MR. NOURSE: Your Honor, I would first  
4 join and add to that objection that I think the  
5 question itself is confusing because there are two  
6 different streams of activity for capacity bidding  
7 and energy bidding and the assumption she asked the  
8 witness to make is, you know, there is a different  
9 answer for those two categories so I think it's  
10 confusing to the record without having a clear  
11 question.

12 MS. HENRY: And I can clear that up,  
13 Mr. Nourse. You're right. I was talking about the  
14 energy market.

15 And just so your Honor knows, there was a  
16 line that was in the original draft audit that  
17 said -- that was the subject of much debate of  
18 yesterday's cross-examination that Mr. Windle as the  
19 Staff -- as the Staff -- as the Staff member of the  
20 Commission who is overseeing the audit felt was  
21 outside the scope of the audit because -- because  
22 that was already decided through the original  
23 decision of the rider. So I am just trying to figure  
24 out as the Staff witness, what is the scope of the  
25 rider.

1 MS. BOJKO: Your Honor, may I -- the  
2 scope of the audit?

3 MS. HENRY: The scope of the audit.  
4 Sorry.

5 MS. BOJKO: Your Honor, may I briefly be  
6 heard because a lot of this was said yesterday and it  
7 bothered me and so I feel like I need to jump in. If  
8 you look at page 3 of Mr. Windle's testimony, he  
9 specifically says that "Staff performed its duty to  
10 ensure the Auditor fulfilled the terms of the  
11 contract and adhered to the scope of the audit.  
12 Staff must ensure an audit remains on schedule and  
13 within the scope as defined by the Commission."

14 So it absolutely, it's not just a process  
15 of overseeing that the Staff was supposed to do.  
16 Staff was supposed to ensure that the auditor and the  
17 audit was within the scope as defined by the  
18 Commission. He says that in his testimony. So I  
19 don't understand all the objections that they merely  
20 were overseeing the audit and they have no  
21 responsibility for what's in the orders. His  
22 testimony even admits that it does. So I think these  
23 questions are very appropriate.

24 MR. NOURSE: Your Honor, I would say  
25 that's beside the point. You know, what the question

1 being asked is about, you know, specific actions and  
2 whether they were prudent or not and that's the  
3 objection that I had.

4 EXAMINER PARROT: I think questions asked  
5 of the scope of the audit are reasonably put to the  
6 witness, but Ms. Henry, I am not sure that's what's  
7 being accomplished through your question so let's try  
8 to go about it through another way.

9 MS. BOJKO: Thank you, your Honor.

10 Q. (By Ms. Henry) Mr. Windle, are you  
11 stating your role does not entail a legal  
12 understanding of the scope of the audit?

13 MS. KERN: Objection to the extent that  
14 you used "legal understanding." I am not sure how  
15 you are meaning that. He is not a lawyer but if you  
16 can explain that.

17 Q. We talked about the prior orders and then  
18 we were having a discussion about what is appropriate  
19 to consider in this audit so I am just trying to  
20 understand. Are you stating that your role -- your  
21 role does not entail a legal understanding of the  
22 scope of the audit? He is not a lawyer, he's told  
23 me he doesn't -- and I am asking him, are you stating  
24 that your role does not entail a legal understanding  
25 of the scope of the audit?

1           A.     So I am a regulator by position at PUCO.  
2     We are more or less practitioners of orders around  
3     rules and regulations and things like that. We are  
4     not necessarily interpreters nor -- of law nor do we  
5     necessarily write law like a legislator would. So  
6     that's how I would answer that.

7           Q.     There was a line in the draft audit  
8     report that Ms. Fagan drafted, correct? That talked  
9     about the public interest of the cost flowing through  
10    the riders. Do you remember that was the subject of  
11    much debate yesterday.

12          A.     I believe that you are talking about the  
13    draft line that said something about plants running  
14    seems to not be in the public -- the ratepayers'  
15    interest or something like that. Is that what you  
16    are talking about, ma'am?

17          Q.     Yes, sir. And you are familiar with  
18    that?

19          A.     Yes.

20          Q.     Okay. And your understanding is that the  
21    basis of that opinion was because of the costs  
22    flowing through the rider, that was why that was in  
23    the original draft report, because the costs flowing  
24    through the rider that the ratepayers were paying  
25    for, correct?

1           A.     That was my understanding.

2           Q.     Okay.  Now my question is, now the costs  
3     flowing through the rider, part of the costs flowing  
4     through the rider are the energy costs associated  
5     with the OVEC plants, correct?

6           A.     Yes.

7           Q.     Okay.  And the energy costs -- in  
8     Ms. Finnigan's [sic] audit report -- or  
9     Dr. Finnigan's [sic] audit report, there was an  
10    analysis of several months where she -- where  
11    Dr. Fagan looked at whether the variable cost of  
12    production was higher than the revenue earned,  
13    correct?

14          A.     Yes, I believe that happened.

15          Q.     Okay.  And so those -- the bidding  
16    practice that led to those plants being bid when it  
17    costs more to run them than they earned on the  
18    market, correct?

19          A.     That's my recollection of what Dr. Fagan  
20    wrote but she's the most appropriate person to answer  
21    questions about this.

22          Q.     Okay.  Now, AEP Ohio does not bid into  
23    the energy market; is that your understanding, sir?

24          A.     Yes.

25                 MS. KERN:  Objection.

1           Q.     So if the Commission finds that those  
2 bidding practices were imprudent or, alternatively,  
3 that AEP failed to prove they were prudent, could the  
4 Commission issue -- could the Commission make those  
5 costs not recoverable even though AEP Ohio was not  
6 the party that did the bidding?

7           MS. KERN:  Objection, your Honor.  He is  
8 not testifying on behalf of the Commission or what  
9 they can do.  His role was limited to oversight of  
10 the audit which he did not conduct.  This question is  
11 way outside the scope of his testimony and expertise.

12           MR. NOURSE:  The Company joins.

13           MS. HENRY:  Your Honor, he -- he -- the  
14 reason that line was struck that he -- the reason  
15 that there was a lot of discussion about how in the  
16 draft report there was this finding that the -- that  
17 the rider was not in the public interest of  
18 ratepayers.  The basis of that was the costs flowing  
19 through the riders.  Mr. Windle, as the Staff  
20 overseeing the auditor and the audit process, said  
21 that this was beyond the scope of the audit.  So I am  
22 trying to figure out why in -- in the Staff's opinion  
23 is this outside the scope of the audit.  It makes  
24 it -- I'll cut to the chase.  What is the purpose of  
25 the audit if not to question all the costs flowing

1 through it?

2 MS. KERN: I would briefly respond that  
3 the line -- the line was cut from the audit report  
4 due to Dr. Fagan's discretion to delete that line, so  
5 questions about why it was deleted ultimately go to  
6 her. But questions about Staff's recommendation, I  
7 don't have an issue with that being asked to the  
8 witness, but that question -- the last question went  
9 way outside of that.

10 MR. NOURSE: Right. And, your Honor, my  
11 reason for joining the objection, what Ms. Henry just  
12 stated about the, you know, calling that a finding  
13 when it was a preliminary draft and the auditor  
14 already disavowed the statement on the record and  
15 said she decided to take it out. And further, saying  
16 that the revenue analysis was the only basis for  
17 saying that is speculative. It's certainly a  
18 question that could have been asked to the auditor.  
19 I believe it was asked and explained. Obviously it's  
20 an argumentative -- it's an argumentative point. The  
21 auditor itself and, you know, apparently the Staff  
22 viewed that statement as going beyond the scope of  
23 the audit and that does not change the fact that the  
24 audit looked at, and had subject to review, all the  
25 costs, all the revenues that went through the rider



1 for these two years during the entire audit period.

2 MS. BOJKO: Your Honor, may I respond?

3 EXAMINER PARROT: Go ahead.

4 MS. BOJKO: I appreciate now Mr. Nourse's  
5 testifying today. He said Mr. Finnigan was  
6 yesterday. Now he is today.

7 The questions being raised are about  
8 Mr. Windle's testimony yesterday and his written  
9 testimony. His testimony yesterday was he made this  
10 suggestion because it was beyond the scope of the  
11 audit. We are trying to understand why he believes  
12 it's beyond the scope of the audit when this very  
13 thing is contained in the Commission orders. This is  
14 exact testimony following up on both his written  
15 testimony as well as his live testimony yesterday and  
16 I have similar questions so I think that this is very  
17 appropriate to determine when -- when Staff was  
18 supposed to determine and ensure that the audit was  
19 within the scope as defined by the Commission, why  
20 they believe that this wasn't within the scope as  
21 defined by the Commission. And what was in the  
22 Commission orders makes this all very relevant and  
23 that's where the questions go.

24 EXAMINER PARROT: Ms. Henry, I am going  
25 to ask you to rephrase.

1 MS. HENRY: Okay. Any guidance? Just  
2 rephrase the --

3 EXAMINER PARROT: You are framing your  
4 questions in terms of what the Commission can or  
5 cannot find in this case and the witness has already  
6 I think done his best to say that he's not in a  
7 position to speak for the Commission, and my words,  
8 not his, but let's go about it a different way,  
9 please.

10 MS. HENRY: Okay.

11 Q. (By Ms. Henry) Do you think --  
12 Mr. Windle, is part of the scope of the audit is --  
13 is the bidding practice -- is the bidding practice  
14 used by OVEC part of the audit, the scope of the  
15 audit?

16 A. Yes.

17 Q. And if the Commission -- and as part of  
18 the scope of the audit, it has to be proven that the  
19 bidding practice was prudent in order for those costs  
20 to flow through the rider.

21 A. I believe so.

22 Q. So failure to prove that those bidding  
23 practices were prudent could lead to a disallowance;  
24 that's within the scope of the rider.

25 A. I believe so.

1           Q.    And if capital costs were incurred  
2   imprudently or if -- if it's failed -- if AEP Ohio  
3   fails to prove that certain capital costs or fixed  
4   costs as they are sometimes called, that flow through  
5   the rider were not -- if they failed to prove they  
6   were prudently incurred, there could be a  
7   disallowance for those costs, correct?

8           A.    I believe that's possible.

9           Q.    Okay.  And even though AEP Ohio is not  
10  the party that has exclusive decision-making power  
11  with regard to those costs, there can still be a  
12  disallowance, correct?

13           MS. KERN:  Objection to the extent that  
14  Mr. Windle is not the witness who can explain what  
15  the Commission will ultimately do.

16           Q.    Within the scope of the audit.  Within  
17  the scope of the audit, the Commission can find that  
18  if AEP Ohio fails to prove the prudence of the fixed  
19  and capital costs incurred during the audit period,  
20  they can issue a -- a disallowance is subject to this  
21  audit.

22           MS. KERN:  Again, I object.

23           MR. NOURSE:  Your Honor, I am just going  
24  to object again.  This is obviously asking about the  
25  Commission's authority.  It doesn't have anything to

1 do with Mr. Windle's testimony or what his view about  
2 the scope of the audit was that was performed by the  
3 auditor in connection with issuing the audit report.  
4 Those are two different things and it's pointless to  
5 have a lay witness or any witness try to address  
6 that. That's a matter for briefing.

7 MS. KERN: I would add it's improper to  
8 ask Mr. Windle to speculate on what the Commission  
9 can, might, could, should, would do. That's not his  
10 role here.

11 MS. HENRY: I am asking about the scope  
12 of the audit and whether those -- whether the review  
13 of those costs, the fixed costs, whether they were --  
14 if they failed to prove prudence, whether that's  
15 within the scope of this audit.

16 EXAMINER PARROT: All right. Mr. Windle,  
17 answer that question.

18 THE WITNESS: Could you ask that last  
19 question again because there was a lot of discussion  
20 in the objections.

21 EXAMINER PARROT: Ms. Henry, try again.

22 MS. HENRY: Okay.

23 Q. (By Ms. Henry) Fixed costs that were  
24 incurred at the discretion of OVEC as opposed to AEP  
25 Ohio that are failed -- that AEP Ohio fails to prove

1 were prudently incurred are a subject of this audit,  
2 correct?

3 A. Yes.

4 Q. Okay. What is your understanding of the  
5 scope of the audit with regard to AEP Ohio's actions?  
6 Your general understanding.

7 A. The actions that AEP took with regard to  
8 costs and sales that were balanced into the rider  
9 were to be examined and to be opined upon in a way as  
10 to whether or not AEP's actions in that regard were  
11 the best they could be for ratepayers.

12 Q. Before you -- before when we were  
13 talking, you talked about how you think that the  
14 Commission has broad authority. Do you remember that  
15 discussion about the broad authority of the  
16 Commission that you offered, that statement that you  
17 offered, sir?

18 A. I offered the statement that I'm not an  
19 attorney; and within its realm of jurisdiction and  
20 what is lawful for it, I think it has broad authority  
21 within those confines.

22 Q. So they have broad authority -- that is  
23 what you are saying. They have broad authority.

24 MR. NOURSE: Object, your Honor. Again,  
25 the Commission's authority is a different topic.

1 It's a legal matter than what Staff's view of the  
2 scope of the audit was for the auditor and issuing  
3 the audit report and performing the audit. You know,  
4 that's a different topic and it's not the topic  
5 addressed in his testimony.

6 MS. HENRY: Well, the topic addressed in  
7 his testimony was about the process of overseeing the  
8 audit and part of the process was about the scope of  
9 the audit. Now, one of the elements that was -- that  
10 Mr. Windle thought was outside the scope of the audit  
11 was a line that was in the draft testimony of  
12 Dr. Fagan that said -- that said that the rider was  
13 not in the interest of ratepayers because Mr. Windle  
14 thought that was outside the scope of the audit.  
15 Now, if you will allow me -- if he can answer the  
16 question, my follow-up question will connect all  
17 those dots, your Honor.

18 MR. NOURSE: My point, your Honor, is  
19 that the Commission's authority is a completely  
20 different topic than the scope of the audit and what  
21 the auditor could have or should have looked at or  
22 what the Staff's view of the scope of the audit was.  
23 That's part of his testimony. What the Commission  
24 does in response to the audit, what they could do,  
25 you know, that's a matter for legal debate in the

1     briefs and the Commission decision based on subject  
2     to review by the Supreme Court of Ohio, it's a legal  
3     issue.

4                   MS. HENRY:   But they are linked because  
5     the --

6                   EXAMINER PARROT:   All right.   The witness  
7     has already given his understanding as to the  
8     Commission's authority, so next question, Ms. Henry.

9                   Q.     (By Ms. Henry) So, Mr. Windle, I mean,  
10    if -- does -- you think that -- with this broad  
11    authority that the Commission has, they could -- they  
12    have the authority to provide AEP Ohio with notice  
13    that the Commission is unlikely to extend the Power  
14    Purchase Agreement Rider?

15                   MR. NOURSE:   Objection.

16                   MS. KERN:   Objection, outside the scope  
17    of his testimony.

18                   MS. HENRY:   Again, Mr. Windle took -- in  
19    overseeing the audit had a -- you know, talked with  
20    Dr. Fagan and there was a line removed from the  
21    draft -- of the draft audit report that talked about  
22    whether the ongoing nature of the rider was in the  
23    public interest of the ratepayers.   In Mr. Windle's  
24    opinion, that was outside the scope of the audit.  
25    But I am saying that with -- when the Commission

1 takes up the audit on -- is considering the audit, do  
2 they have the broad authority to advise AEP Ohio that  
3 while -- that this going forward is not going to be  
4 in the public interest of ratepayers.

5 MS. KERN: Your Honor --

6 MR. NOURSE: Your Honor.

7 MS. KERN: -- my issue is that  
8 Ms. Henry's questions are not relating to the line  
9 that was in question and also relate to what the  
10 Commission may do which repeatedly as expressed is  
11 not Mr. Windle's responsibility here.

12 MR. NOURSE: And, your Honor, again, she  
13 is trying to leverage a statement he made when he was  
14 declining to address the Commission's authority. And  
15 everybody can agree the Commission has broad  
16 authority as a general proposition. That does not  
17 turn the question here for a witness into give me  
18 your legal opinion on what the Commission can do or  
19 not. Whether or not you call it a legal opinion, it  
20 is one. And that is a completely different topic  
21 about what witnesses could say, what an auditor could  
22 say, what they could recommend, what they could  
23 include in their report, what they could include in a  
24 draft and then delete it. It doesn't matter.  
25 Whatever -- you know, that's the scope of the audit.



1 That's a different topic than what the Commission's  
2 authority is.

3 EXAMINER PARROT: I agree, Mr. Nourse.  
4 Go ahead and rephrase, if you like, Ms. Henry.

5 MS. HENRY: I'll move on, your Honor.

6 Q. (By Ms. Henry) On page -- on page 3,  
7 line 21, going on to page 4 of your testimony, sir.

8 A. Page 3, line 21?

9 Q. Yes, sir.

10 A. I'm there.

11 Q. You state that "After reviewing the draft  
12 audit report, and speaking with the Staff project  
13 lead, Staff had concerns that some portions of the  
14 draft were outside of the scope of the audit"; is  
15 that correct?

16 A. Yes.

17 Q. Okay. Who is the Staff project lead,  
18 sir?

19 A. Mahila Christopher.

20 Q. Okay. Now you state in here that Staff  
21 had concerns; is that correct?

22 A. Yes.

23 Q. Okay. Who are the Staff members who had  
24 concerns?

25 A. Mahila Christopher and myself.

1           Q.    And who did -- do you know who Mahila  
2 Christopher -- between Mahila Christopher and you,  
3 who else did you talk to on Staff about this?

4           A.    I expressed my concerns to my boss, Lori  
5 Sternisha.

6           Q.    And Lori Sternisha, do you know who Lori  
7 Sternisha talked to about this draft report?

8           A.    I do not.

9           Q.    Did you discuss the draft audit report  
10 with anybody from AEP Ohio?

11          A.    No.

12          Q.    Did you discuss the draft audit report  
13 with anybody from AEP Service Corp.?

14          A.    No.

15          Q.    Did you discuss the draft audit report  
16 with anybody from OVEC?

17          A.    No.

18          Q.    Did you talk to Commissioner Randazzo  
19 about this audit generally?

20          A.    No.

21          Q.    Did you hear of any concerns of  
22 Commissioner Randazzo about this audit report?

23          A.    No.

24          Q.    Do you know if any of the commissioners  
25 weighed in on the draft audit report?

1           A.    No.

2           Q.    Do you know if Mahila Christopher or Lori  
3 Sternisha talked to any of the commissioners about  
4 the draft audit report?

5           MR. NOURSE:  Objection, asked and  
6 answered.

7           MS. HENRY:  I don't believe I asked that  
8 direct question, your Honor.

9           MR. NOURSE:  You asked whether he knew  
10 whether Lori talked to anybody and he said he didn't  
11 know.  That includes any specific person you want to  
12 go through the list.

13          EXAMINER PARROT:  Overruled.  The  
14 question also asked about Ms. Christopher as well, so  
15 go ahead, Mr. Windle.

16          THE WITNESS:  I am not aware, no.

17          MS. HENRY:  That's all the questions I  
18 have at this time, your Honor.

19          EXAMINER PARROT:  Thank you, Ms. Henry.  
20 Mr. Dove, any questions on behalf of  
21 OP&E?

22          MR. DOVE:  OP&E has no questions, your  
23 Honor.  Thank you.

24          EXAMINER PARROT:  Kroger?

25          MS. WHITFIELD:  No questions, your Honor.

1 Thank you.

2 EXAMINER PARROT: OEG?

3 MS. COHN: No questions, your Honor.

4 Thank you.

5 EXAMINER PARROT: IEU-Ohio?

6 MR. MCKENNEY: No questions. Thank you,  
7 your Honor.

8 EXAMINER PARROT: OMAEG?

9 MS. BOJKO: Yes, your Honor. Thank you.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Bojko:

13 Q. Good morning, Mr. Windle.

14 A. Good morning.

15 Q. I am going to try not to repeat all the  
16 questions from yesterday but I need to do a couple  
17 just for foundation so if you could bear with me,  
18 that would be great. But try to get through this  
19 quickly, sir.

20 Mr. Windle, you stated that your position  
21 resides in the Office of the Federal Energy Advocate;  
22 is that correct?

23 A. Yes.

24 Q. And does the Federal Energy Advocate's  
25 office typically conduct or oversee prudency audits?

1 A. No.

2 Q. And does the Office of the Federal Energy  
3 Advocate typically conduct or has it ever conducted a  
4 prudency audit for the OVEC plants?

5 A. Prior to the audit in this case?

6 Q. Yes.

7 A. Yes.

8 Q. It doesn't do any other kind of prudency  
9 audits, just OVEC; is that correct? Excuse me, let  
10 me rephrase that question.

11 The Federal Energy Advocate's office does  
12 not typically conduct any other prudency audits other  
13 than the OVEC prudency audit, correct?

14 A. Currently, yes.

15 Q. And my understanding is that the -- that  
16 LEI conducted the audit in this case that resulted in  
17 the September 16, 2020, audit report from March 11,  
18 2020, through September 1, 2020; is that correct?

19 A. Subject to check, yes.

20 Q. And I think Mr. Finnigan asked you this  
21 yesterday but you have the same position today  
22 that's -- that's in your testimony that you had  
23 during that 2020 period; is that correct?

24 A. Oh, the same --

25 MS. KERN: Yeah. Can you clarify? Do

1     you mean job position?

2                   MS. BOJKO: Sure. I'll rephrase. My  
3     apologies. I am trying to abbreviate things and  
4     that's probably not wise.

5                   MS. KERN: No problem.

6                   Q.     (By Ms. Bojko) Yes. You had the same  
7     Public Utilities Administrator II job title and  
8     position that's stated in your testimony during the  
9     audit period March 11, 2020, through September 1 --  
10    not audit period, excuse me, during the time period  
11    that the audit was conducted by LEI; is that correct?

12                  A.     Yes.

13                  Q.     And I was a little confused by your  
14    response yesterday so I am going to reask the  
15    question. Who was the Chairman of the Commission  
16    during the period that LEI conducted the audit?  
17    March 11, 2020, to September 1, 2020.

18                  A.     Let me answer this way to help you  
19    understand better, I don't recall specifically when  
20    Mr. Randazzo's term began and ended. And to -- in  
21    order to compare that to the audit period to say oh,  
22    yeah, he was here the whole time or he wasn't. So I  
23    struggle answering that definitively.

24                  Q.     Okay. But I didn't ask you about  
25    Mr. Randazzo. I am just asking you, you told us who

1 the Chief of Staff was during this period yesterday.  
2 So who do you believe was the Chairman during this  
3 period?

4 A. Oh, the Chief of Staff did not change  
5 roles during that period so that was an easy answer.  
6 You are asking me to try to remember exactly whose  
7 term was what and I can do my best to lay out who the  
8 chair-people were in the last few years but I don't  
9 recall exactly their tenures and when they were --  
10 when they left and when they started.

11 Q. Okay. And that's the part I don't  
12 understand. So do you believe that Chairman Randazzo  
13 was -- former Chairman Randazzo was the Chairman of  
14 the Commission at some point during this time period,  
15 March 11, 2020, through September 1, 2020?

16 A. I believe so.

17 Q. Okay. And I guess I really don't  
18 understand your response because are you testifying  
19 today that you don't know that there was a huge  
20 scandal and Mr. Randazzo resigned November 20, 2020?

21 A. My answer to that is that I don't  
22 understand what that has to do with the case. And I  
23 knew that there was some allegations made. And I, to  
24 be honest, haven't been paying close attention to the  
25 dates and timelines to memorize all of that. I don't

1 know why I would.

2 Q. Okay. That wasn't my question. You  
3 don't know why you wouldn't pay attention to when  
4 the -- your boss, the head of an agency, resigns  
5 under a cloud of scandal dealing with improprieties  
6 as being a commissioner? You wouldn't have paid  
7 attention to that?

8 MS. KERN: Objection, your Honor.

9 MR. NOURSE: Objection.

10 MS. KERN: This is way outside the scope.  
11 Mr. Windle didn't report to the former chair. He has  
12 testified to the best of his knowledge, Mr. Randazzo  
13 was the chair at the time. He doesn't remember the  
14 tenures. And outside of that, I don't understand  
15 this line of questioning.

16 MS. BOJKO: Well, it's very relevant,  
17 your Honor. First of all, with all due respect, it  
18 goes to the credibility of the witness and the  
19 testimony. It also goes to some of the answers he's  
20 provided, who has talked to who and the -- one of the  
21 main issues in this case was whether the audit report  
22 was changed or not changed and by who and at whose  
23 suggestion and we are allowed to argue that it was  
24 imprudently done and that there was some kind of  
25 impropriety about the auditor's independence because



1 the Commission order said they needed to be  
2 independent and this all goes to those issues.

3 MR. FINNIGAN: Your Honor.

4 MR. NOURSE: Your Honor, my objection  
5 was --

6 EXAMINER PARROT: No. It's  
7 argumentative. Try again, Ms. Bojko.

8 MS. BOJKO: Okay.

9 Q. (By Ms. Bojko) Are you -- I guess the  
10 head of an -- were you familiar with -- are you  
11 familiar with HB 6 scandal?

12 MS. KERN: Objection, your Honor.  
13 Outside the scope of the testimony.

14 MS. BOJKO: It's not, your Honor. It's  
15 directly during the period of the audit and when the  
16 report was released.

17 EXAMINER PARROT: Overruled as to this  
18 question. Go ahead, Mr. Windle.

19 A. Yes, I read the newspapers so I saw that  
20 there has been some -- something to do with some  
21 misconduct with House Bill 6.

22 Q. Right. And that misconduct has been  
23 allegedly linked in both court filings as well as  
24 newspaper reports to the former chair of the Public  
25 Utilities Commission, correct?

1 MS. KERN: Objection, your Honor. This  
2 is outside the scope of this proceeding, this  
3 testimony. There's no relevance that's been  
4 established here or that the witness is testifying on  
5 any of this.

6 MS. BOJKO: Your Honor, I'm laying  
7 foundation because you asked me to step back and  
8 reask my questions so I was trying to lay some  
9 foundation to draw the connection.

10 MS. KERN: There's been no connection  
11 that anyone -- about the former chair's involvement  
12 with this case. Those questions have been asked.

13 MR. McKENNEY: It's in his testimony at  
14 page 4, line 12.

15 MR. FINNIGAN: Your Honor, if I may, I  
16 support Ms. Bojko's position on this. This goes to  
17 the issue of who made or contributed to the Staff  
18 Report and that's a relevant line of inquiry in this  
19 case.

20 MS. KERN: Well, then those questions  
21 could be asked but those aren't the questions that  
22 are being asked. In fact, you did ask those  
23 questions yesterday and there were more of those  
24 questions this morning. So --

25 EXAMINER PARROT: I agree, Ms. Kern.

1                   Try again, Ms. Bojko.

2                   Q.     (By Ms. Bojko) Well, you reference on  
3     page 4, line 12 of your testimony, thank you,  
4     Mr. McKenney, the HB 6 scandal, correct?

5                   A.     I reference that there were references to  
6     HB 6 in the draft audit report and we were confused  
7     as to why in an audit that was prescribed by the  
8     Commission, why we were referencing the legislative  
9     audit for OVEC in the -- in the audit report. We  
10    didn't feel it was necessary for the audit.

11                  Q.     And at the point in time on line 12 that  
12    you sought clarification from the auditor about HB 6,  
13    there was what I will term the HB 6 scandal. There  
14    had been reports and court filings issued about  
15    improprieties regarding HB 6; is that correct?

16                  MS. KERN:  Objection, your Honor.  When  
17    he is referencing HB 6 in his testimony is different  
18    than the meaning that's being given to it through  
19    this line of questioning with respect to a scandal.

20                  MS. BOJKO:  I respectfully disagree,  
21    Ms. Kern.  There is language in the audit report  
22    directly addressing this.  Staff made -- in the  
23    e-mail dated 9/8, Staff made a comment about the  
24    reference in the audit report.  The auditor  
25    referenced this because they believed it was

1 important and contextual in the audit during the  
2 audit period of March 11, 2020, through September 1,  
3 2020. And Staff asked them to remove it or sought  
4 clarification on it, I don't see a clarification, but  
5 they asked them to remove it and to reduce the  
6 subjectivity and level of detail specifics regarding  
7 HB 6 and two subsidies for two large nuclear power  
8 plants. It's very relevant.

9 MR. NOURSE: Your Honor, I think the  
10 Staff's position all along has been consistent that  
11 House Bill 6 and the scandal and the nuclear  
12 subsidies, all of that was extraneous and irrelevant  
13 and, you know, it was in the draft but it was  
14 excluded by the auditor through her decision based on  
15 this record and there is no basis to -- to allege  
16 when these questions have already been asked and  
17 answered that anyone other than the Staff personnel  
18 involved and the auditor personnel involved made that  
19 decision. So that's what his testimony says. That's  
20 what Staff's position has always been. And, you  
21 know, that's the extent of it. It's not the same as  
22 saying now we get to insert all of these House Bill 6  
23 supposition, speculation about, you know, somebody  
24 acting in the background, the invisible hand in this  
25 situation. That's -- there's no basis to go there.

1 MS. BOJKO: Your Honor, now Mr. Nourse is  
2 testifying. I disagree with all of his points. I  
3 disagree with his position of Staff. I don't think  
4 he should know Staff's position or speak to it. And  
5 I think he's wrong. The Staff e-mail specifically  
6 references a federal bribery investigation. That  
7 makes this relevant. It's an e-mail from Staff in,  
8 just for the record, NRDC Exhibit 2.

9 EXAMINER PARROT: Well, let's maybe get  
10 the exhibit in front of the witness then, Ms. Bojko.

11 MS. BOJKO: All right.

12 Q. (By Ms. Bojko) Do you have NRDC Exhibit 2  
13 in front of you, sir, or available to you?

14 A. I'm working on it.

15 Q. If it helps, it was originally passed  
16 around as OMAEG Exhibit 4 as well if that helps you.

17 A. I was just clicking on the wrong window.  
18 I apologize. Okay. I have NRDC Exhibit 2 in front  
19 of me.

20 Q. Okay. I mean, does this appear to be a  
21 true and accurate copy of an e-mail exchange that you  
22 referenced throughout? I don't have any question of  
23 the authenticity of this e-mail exchange, do you?

24 A. No.

25 Q. Okay. This e-mail that you have

1 referenced throughout the testimony is -- was sent on  
2 behalf of the Staff lead, Ms. Christopher, and you  
3 are copied and it goes to the auditor, Ms. Fagan,  
4 correct?

5 A. Yes.

6 Q. And I'm sorry, sir. I am referencing the  
7 top e-mail that's dated September 8, 2020, 2:59 p.m.  
8 Is that the one you are looking at?

9 A. Yes.

10 Q. Okay. So in this e-mail, Staff has two  
11 bullets under "main observation regarding the tone of  
12 the draft." Do you see that?

13 A. Yes.

14 Q. And the second one says, "Reduced  
15 subjectivity and level of detail/specifics would be  
16 required such as the language on page 26,  
17 paragraph 2," and that language is, and I quote,  
18 "HB 6 also provides subsidies for two large nuclear  
19 power plants in Ohio, and for that reason is the  
20 center of a federal bribery investigation.  
21 FirstEnergy Corp. and the company's political action  
22 committee, and Generation Now, a 501(c)(4) non-profit  
23 group are charged with paying \$60 million to  
24 advocate -- advocate for the passage of HB 6. The  
25 case has led to federal charges against Ohio House

1 Speaker Larry Householder and four associates." Did  
2 I read that correctly?

3 A. Yes.

4 Q. And so you have highlighted the second  
5 sentence that I read, the sentence that starts  
6 "FirstEnergy Corp. and the company's political action  
7 committee"; is that correct?

8 A. The second sentence is highlighted.

9 Q. And it's highlighted because you were  
10 stating that that sentence should be removed or  
11 reconsidered in the audit report; is that correct?

12 A. Yeah. That sentence was highlighted  
13 because we didn't understand its relevance to this  
14 case.

15 Q. Right. And the first sentence you didn't  
16 highlight, and were you suggesting that you remove  
17 that sentence as well or the auditor remove that  
18 sentence?

19 A. I think that -- and it was a while ago  
20 but I think that our bigger issue was probably why  
21 are we talking about nuclear plants in an audit of a  
22 coal plant. That was -- that was one of our issues.  
23 I mean, the coal plant was in House Bill 6 so  
24 mentions of that would be relevant but it was just  
25 confusing why we would highlight nuclear power plants

1 in a coal plant audit. It just didn't seem to make  
2 sense to us.

3 Q. Okay. But you were aware during this  
4 e-mail, because you wrote it, that there was a  
5 federal bribery investigation going on surrounding  
6 HB 6; is that correct?

7 MR. NOURSE: Objection.

8 MS. KERN: Objection.

9 MS. BOJKO: I'm sorry. Can I rephrase?  
10 He didn't write it. Thank you.

11 Q. (By Ms. Bojko) Staff, during this e-mail  
12 you were copied on, and I believe you said you were  
13 aware -- well, let's ask. You were aware that  
14 Ms. Christopher was going to send this e-mail,  
15 correct?

16 A. I was aware that she was going to contact  
17 Dr. Fagan to let her know what the topics of our  
18 meeting was going to be about. This was the meeting  
19 to which Mahila Christopher chose to contact her.

20 Q. Okay. And so when you received this  
21 e-mail, you -- you were aware at the time that there  
22 was a federal bribery investigation going on  
23 surrounding HB 6, correct?

24 A. Yes.

25 Q. And you also, as you just mentioned, HB 6



1     dealt with the OVEC plants as well, correct?

2             A.     Yes.

3             Q.     And I'm sorry. I didn't hear -- I know  
4     Mr. Finnigan asked you this yesterday but I did not  
5     hear your answer. Who is the PUCO admin referenced  
6     in this e-mail?

7             A.     As said yesterday, our department, the  
8     admin in our department which was in charge of  
9     working on these audits is myself and Lori Sternisha.  
10    That would be who I would expect the admin to be.

11            Q.     Oh, so you believe she was referring to  
12    her management, so to speak, that management needed  
13    final sign-off; is that what you understand this to  
14    mean?

15            A.     That's -- when I was copied on this  
16    e-mail, that was -- that was my understanding.

17            Q.     Okay. Thank you.

18                    But you did have discussions with  
19    Ms. Christopher and your boss before -- about the  
20    tone, right?

21            A.     Yes. Yes. About her concerns that found  
22    its way as described as tone.

23            Q.     Sure. And what -- and did those  
24    discussions occur prior to this e-mail being sent?

25            A.     Well, I certainly had that discussion

1 with Mahila Christopher, and I believe, as I've  
2 testified, that I had that discussion with Lori  
3 Sternisha as well.

4 Q. And Lori Sternisha's called the "Federal  
5 Energy Advocate"; is that correct?

6 A. That I believe is her title.

7 Q. Okay. And in this e-mail, can you find  
8 for me or -- isn't it true that the word  
9 "clarification" is not in this e-mail?

10 A. The word "clarification" is not in this  
11 e-mail from what I can tell.

12 Q. To your knowledge, did any other Staff  
13 member send e-mails to the auditor?

14 A. I'm sorry. I have to narrow you to  
15 clarification. In this case?

16 Q. Oh, I'm sorry. Yes, of course.

17 A. No. I am not aware of anyone -- any  
18 other Staff members in this case sending e-mails to  
19 LEI.

20 Q. And I am not going to take you through  
21 each of these e-mails because they've been discussed  
22 at length yesterday, but did you send any e-mails to  
23 the auditor directly? I see you are copied on these  
24 e-mails. Did you send any e-mails directly to the  
25 auditor?

1           A.    You know, as we sit here, I don't recall  
2    doing that. I think most of the communication was --  
3    was through Mahila Christopher.

4           Q.    Okay. So now that we've seen the  
5    reference to the bribery scandal, I am going to reask  
6    my one question which is do you believe that  
7    Chairman -- that Mr. Randazzo was the Chairman of the  
8    Commission from the period of March 11, 2020, through  
9    September 1, 2020, with his resignation occurring on  
10   November 20, 2020?

11          A.    If you're asking me his -- his  
12    resignation was in November of that year, I have no  
13    reason to say that you're wrong.

14          Q.    Okay. So you believe that he was for at  
15    least some portion of this -- this audit period,  
16    March 11, 2020, through September 1, 2020, he was the  
17    Chairman of the Commission; is that correct?

18          A.    Yeah. I testified earlier as to saying  
19    at least some portion of this audit he was the  
20    Chairman. As stated, I could not remember what --  
21    when his resignation was.

22          Q.    Okay. Thank you. And I am going to  
23    switch away from Exhibit NRDC 2.

24                So it's my understanding that after LEI  
25    was selected, then Ms. Christopher became the primary

1 point of contact; is that correct?

2 A. Yes.

3 Q. Okay. And so were you the one or was  
4 Ms. Christopher the one who was responsible for  
5 overseeing the audit and ensuring that the auditor  
6 and the audit remained within the scope of the audit  
7 as defined by the Commission?

8 A. I will phrase it this way, Mahila  
9 Christopher oversaw the audit under my direction. So  
10 many of the decisions that were made were made by me.

11 Q. Who had overall responsibility for  
12 ensuring that the audit remains on schedule? Let's  
13 ask that question first.

14 A. Due to the fact that I was supervising  
15 the leads, I believe that would be myself. But the  
16 person that was a practitioner was Mahila  
17 Christopher.

18 Q. And now with respect to ensuring that the  
19 audit was within the scope as defined by the  
20 Commission, who had overall responsibility for that?

21 A. I believe that would also be me but,  
22 again, anything that Staff would look at to say oh,  
23 wow, this needs to be looked at by Rod, their  
24 supervisor, that's why it would be me.

25 Q. Okay. And I was a little confused with

1 your testimony yesterday and I stated this this  
2 morning but I need to hear you testify to it, you  
3 believe that Staff's job included ensuring the  
4 auditor was in compliance with the Commission's  
5 orders, correct?

6 A. I believe that they needed to follow the  
7 RFP and they were not out of compliance with the  
8 Commission's orders.

9 Q. Okay. You believe that was Staff's  
10 responsibility to ensure that, both of those things  
11 occurred, correct?

12 A. My belief is that was what the oversight  
13 meant that the Commission ordered.

14 Q. Okay. And that oversight is on -- is  
15 listed and your understanding is listed on page 3,  
16 and for the record this has been marked as Staff  
17 Exhibit 3, Staff Exhibit 3, page 3, lines 5 through  
18 8, here you are confirming that Staff's duty or job  
19 is to ensure that the auditor fulfilled the terms of  
20 the contract and adhered to the scope of the audit;  
21 is that correct?

22 A. That's -- that's more or less a  
23 paraphrasing of my testimony.

24 Q. Okay. And then -- okay. And the last  
25 sentence of that paragraph states that "Staff must

1 ensure an audit remains on schedule and within the  
2 scope as defined by the Commission," correct?

3 A. Yes.

4 Q. Okay. You discussed yesterday with  
5 Mr. Finnigan, page 3, line 10 through 13, that you  
6 had a video conference with Ms. Finnigan -- or with  
7 Ms. Fagan.

8 A. Yes.

9 Q. Other than -- sorry. Other than that  
10 video conference, between the time LEI was selected  
11 and the final audit report was filed with the  
12 Commission on September 16, 2020, how many other  
13 meetings did Staff have with the auditor?

14 A. So I don't have an exact number but I  
15 know there were at least four.

16 Q. Okay. And were those four in person or  
17 virtual, because you said they were the same  
18 yesterday, so were those in person or virtual?

19 A. Yes.

20 Q. Okay. So when did those four meetings  
21 occur? You tell us about one, the video conference.  
22 When did that video conference occur? I'm sorry.  
23 You said September 2020, is that right, on page 3,  
24 line 12?

25 A. Yeah. I could not remember the exact

1 date. As you've noticed throughout this, exact dates  
2 are not my forte. But September, early September is  
3 when we had that video conference.

4 Q. Okay. So that was one. So then there  
5 were four more after that. When were those four,  
6 were they after that or before that? When were the  
7 other four that you referenced?

8 A. Okay. So I know that we had one to begin  
9 the audit.

10 Q. So March.

11 A. Sometime in March. Sometime around the  
12 midpoint we had a meeting partially to discuss site  
13 visitation issues during COVID. And then I believe  
14 we had one towards the end after the draft meeting  
15 for the final -- for the final report. So that's --  
16 that's four.

17 Q. Okay. I'm sorry. Was the video one of  
18 the four? So there were only three others other than  
19 the video conference?

20 A. Yeah, yeah. If I said there were four  
21 others, I misspoke. I thought I said there were  
22 four, but for clarification of the record, I am aware  
23 of four total.

24 Q. Okay. Thank you for that.

25 So one was in March. One was in

1 mid-September, the video conference. One was at the  
2 end, so I am assuming you mean around September 15 or  
3 16 before the audit report was filed?

4 A. Sometime around then.

5 Q. Okay. And then how about the fourth one?

6 A. Like I said, sometime around the  
7 midpoint, I believe, we had a meeting with Dr. Fagan.

8 Q. Okay. And when you say "midpoint," you  
9 mean sometime between March 2020 and September 2020?

10 A. Yeah. In the RFP there is a schedule for  
11 reimbursement of funds and it just seemed to make  
12 sense to meet with the auditor as they were nearing  
13 that reimbursement period.

14 Q. Okay. And were those four meetings all  
15 virtual?

16 A. Yes. We could not meet in person because  
17 of COVID restrictions.

18 Q. Okay. Between the time LEI was selected  
19 and the final audit report was filed, did the Staff  
20 also have telephone conversations with the auditor?

21 A. I believe all of the conversations we  
22 tried to have with the auditor was through Teams  
23 which would be the virtual platform. There may have  
24 been a telephone call. I just don't recall if there  
25 was. Again, it was a while ago.



1 Q. And I think you said that Ms. Christopher  
2 may have picked up the phone and called the auditor  
3 without your presence; is that correct?

4 A. I don't recall stating that but if you  
5 are asking me that now, she would have done that  
6 perhaps after consulting me.

7 Q. And I don't think I asked you. You were  
8 involved in all of the four virtual meetings we just  
9 walked through, were you? Weren't you?

10 A. I believe I was present in all of them.

11 Q. And as we've discussed already and you  
12 discussed yesterday, there obviously were exchange of  
13 e-mail correspondence between Staff and the auditor,  
14 correct?

15 A. Yes.

16 Q. And is it fair to say that you were not  
17 involved in all of that correspondence?

18 A. If you're saying my level of involvement  
19 is being copied, then the answer is yes, I was not  
20 copied on every e-mail.

21 Q. Okay. Could you please turn to your  
22 testimony -- to your testimony, page 3, line 19. I  
23 just have a couple more questions on -- on line 19  
24 where you state, after reviewing the draft audit  
25 report and speaking with the Staff project lead,

1 Staff raised various concerns with the auditor  
2 concerning the scope and tone of the audit. Do you  
3 see that?

4 A. Yes. Starting on page 3, line 21,  
5 through page 4, line 1?

6 Q. Correct.

7 A. Yes.

8 Q. Here, when you referenced "draft audit  
9 report," which draft audit report were you  
10 referencing here?

11 A. As --

12 Q. The date?

13 A. As -- oh, the date. September 1 draft  
14 audit report. As explained earlier, I believe a  
15 draft is a working document based on a point in time  
16 as to what it changes and evolves to.

17 Q. Sure. I just wondered which date.  
18 Because there were a couple of drafts you were  
19 referencing here in your testimony. So September 1,  
20 right?

21 A. Yes.

22 Q. Okay. I think you've answered all my  
23 other questions about those two sentences so we'll  
24 skip. And the September 1 date, that was the date  
25 that Staff first received a draft audit report; is

1     that right?

2             A.    No.  It's the first time we took the time  
3     to go through and review a draft audit report.

4             Q.    Oh, so you received a different draft  
5     audit report before September 1?

6             A.    My understanding is that we may have been  
7     sent a complimentary version earlier that we didn't  
8     really take time to review.

9             Q.    When would that have been?  I didn't --

10            A.    I honestly, until speaking with Staff,  
11     didn't even recall receiving it, so I can't remember  
12     the exact date.

13            Q.    Would it have been in August since this  
14     one was -- that we just referenced was September 1?  
15     Would it have been in August?  June?

16            A.    I might -- I'm led to believe that it was  
17     only a couple of weeks preceding this and it was a  
18     rather incomplete document.

19            Q.    And who -- who did you speak with at  
20     Staff to refresh your recollection that you just  
21     explained to me?

22            A.    Mahila Christopher.

23            Q.    And when did that conversation happen?

24            A.    Probably three weeks ago.

25            Q.    So it's your understanding that Staff did

1 not provide comments or feedback on that earlier  
2 draft?

3 A. No.

4 Q. Okay. And just to confirm, I know I told  
5 you I was moving away from NRDC 2, but we talked  
6 about the second bullet under NRDC 2. Can we talk  
7 about the first bullet? Do you still have that  
8 document pulled up?

9 A. I may. Give me a minute. Yes, I have it  
10 pulled up.

11 Q. Okay. So, again, looking at the top  
12 e-mail dated 9-8, time stamp 2:59, the first bullet  
13 says, "Milder tone and intensity of language would be  
14 recommended such as the language on page 10,  
15 paragraph 3," and the quote is, "Therefore, keeping  
16 the plants running does not seem to be in the best  
17 interests of the ratepayers." Did I read that first  
18 bullet correctly?

19 A. Yes.

20 Q. Okay. And that bullet, that sentence  
21 that is quoted, "Therefore, keeping the plants --  
22 keeping the plants running does not seem to be in the  
23 best interests of ratepayers," is not in the  
24 September 16, 2020, final audit report, correct?

25 A. Correct.

1           Q.    Okay.  So -- so it's my understanding  
2   that some point after September 8 when this e-mail  
3   was sent to the auditor and before the report was  
4   filed on September 16, the quote that you referenced  
5   in the e-mail was removed from the audit report,  
6   correct?

7           A.    Yes.

8           Q.    Did you state yesterday that you  
9   instructed Ms. Christopher to provide the comments in  
10  this e-mail or you just discussed the comments in the  
11  e-mail before she sent the e-mail?

12          A.    Ms. Christopher and I discussed the  
13  comments within the e-mail and then I suggested to  
14  Ms. Christopher that she provide for a meeting to  
15  discuss these comments with the auditor and to  
16  contact her to let her know that we warrant this kind  
17  of a meeting and that more or less what the meeting  
18  is going to be about.

19          Q.    Okay.  And the meeting you are  
20  referencing you -- you testified occurred on  
21  September 9 as stated in the first sentence of this  
22  September 8 e-mail, it says, "The comments can be  
23  discussed further at tomorrow's meeting"?

24          A.    Yeah.  Logically that seems to be when  
25  the meeting occurred.

1 Q. Okay. And this is the e-mail  
2 September 8, 2020, 2:59 p.m. where Staff attached  
3 comments and sent it to the auditor; is that correct?

4 A. Yes.

5 Q. So who else or who at Staff provided the  
6 initial comments that were attached to this e-mail  
7 besides you, I'm assuming, and Ms. Christopher? Were  
8 there any other Staff members involved in providing  
9 the initial comments on this draft?

10 A. No.

11 Q. Now I want to go back to your testimony,  
12 page 4. And yesterday you talked about the top of  
13 this, lines 1 through 5. And you stated that the  
14 context here that you were referring to was the  
15 context of the rider approval; is that fair?

16 A. You're back to my testimony?

17 Q. Yes, page 4, lines 1 through 5.

18 A. Beginning with "To this end"?

19 Q. Sure. That's the whole sentence.

20 A. Okay.

21 Q. Okay. Here, the context that you  
22 reference on line 3, the context you are talking  
23 about is the rider approval which happened in 2016;  
24 is that correct?

25 A. Yes.

1           Q.    Okay.  And just to be clear, the audit  
2 period was -- we've been talking about 2020 a lot  
3 today, the actual audit period was 2018 to 2019,  
4 correct?

5           A.    Yes.

6           Q.    And not running the plants does not  
7 necessarily affect the existence of the rider, does  
8 it?

9           A.    It could.

10          Q.    Well, the rider is established by the  
11 Commission and the costs flow through the rider,  
12 correct?

13          A.    The plants running develop a cost and  
14 revenue which then goes into the rider which was  
15 established by the Commission.  So if the Commission  
16 allowed for a rider for those costs themselves to be  
17 going into it, it would logically go that if there  
18 were no plants, i.e., plants not running, then you  
19 would be saying that the rider was unnecessary.

20          Q.    Well -- oh, sorry.  I'm sorry.  I didn't  
21 mean to cut you off.  Were you finished?

22          A.    I can be, yes.

23          Q.    Do you want to talk?  I don't have to  
24 stop.  I mean that's -- okay.  So you said no plants.  
25 Nobody is suggesting no plants.  Is it your

1 understanding, I think you have been here, I've seen  
2 you participate throughout this hearing, it's your  
3 understanding that the plants have costs even when  
4 they are not running; is that fair? If they are shut  
5 down for maintenance, they still have costs; is that  
6 right?

7 A. Yes.

8 Q. So, again, with that understanding, if  
9 the plants aren't running, they might not have costs  
10 to run but they still might have other costs; is that  
11 correct?

12 A. Yes.

13 Q. So the rider may still have costs even if  
14 the plants are not running or the rider might  
15 still -- strike that.

16 The plants might still have costs even if  
17 they are not running and those costs are also passed  
18 through the rider, correct?

19 A. Yes.

20 Q. And you understand that there are  
21 multiple ways to run the plants, right?

22 A. Yes.

23 Q. And you also understand that the rider  
24 can be set at zero and it actually has in the past  
25 been set at zero, right?



1           A.    Whenever the Commission approved the  
2 rider, it was set at zero.

3           Q.    Right. And if the Commission decides to  
4 disallow all the costs under the rider, the rider  
5 itself could also be set at zero, right?

6           A.    If that's what the Commission decides to  
7 do, then I don't know that I would have any say so  
8 one way or the other.

9           Q.    Okay. And it is your understanding that  
10 the multiple ways to run the plants, whatever  
11 decision is made of how to run the plants, that  
12 decision comes with a cost, right?

13          A.    Yes.

14          Q.    And it's those costs and that decision  
15 that you are reviewing in this audit or the auditor  
16 reviewed in this audit that you oversaw to ensure  
17 that it complied with Commission orders, right?

18          A.    Yes.

19          Q.    Okay. So now back to my original  
20 question. Not running the plants does not affect the  
21 existence of the rider; is that correct?

22          A.    Again, I believe that the not running the  
23 plants was a criticism of the Commission decision  
24 that she was suggesting that the Commission should  
25 have never given them the rider. Upon meeting with

1 Dr. Fagan, I was led to believe that that could be  
2 what her intentions were. Later, through the course  
3 of this hearing, I've learned that she at some point  
4 changed the language to say the contract was not,  
5 which leads me to believe even firmer that her  
6 criticism was of the Commission order and, therefore,  
7 should have at least taken into account the other  
8 merits that were provided within the order whenever  
9 she spoke to this.

10 Q. I understand your belief but what I am  
11 asking you is, if not running the plants affects the  
12 existence of the rider, if the plants do not run,  
13 would the rider immediately disappear?

14 A. Oh.

15 Q. Because the rider could still collect  
16 other costs even if the plants aren't running,  
17 correct?

18 A. Yes.

19 Q. And just so we're clear, the costs, even  
20 the costs not associated with running or not running  
21 the plants, those other costs are also reviewed by  
22 the auditor as well as Staff's oversight to determine  
23 the prudence of those costs; is that right?

24 A. I'm sorry. Could you repeat the question  
25 or have it read back?

1 Q. Yes.

2 We talked about costs for running the  
3 plants and then we talked about other costs. The  
4 other costs are also reviewed for prudence in this  
5 audit proceeding that's been discussed here today and  
6 reviewed by Staff to determine whether it's in the  
7 scope of the Commission's decisions, right?

8 A. Yes.

9 Q. Okay. All right. If we now go back to  
10 your testimony on page 4, line 7, the next paragraph,  
11 you said, "I explained to the Auditor that there was  
12 a 'tone issue'...." When you said "I," are you  
13 referring to the e-mail that Ms. Christopher sent to  
14 the auditor?

15 A. No.

16 Q. Okay. So you independently called the  
17 auditor and explained the tone issue to her?

18 A. No. In the e-mail there was reference to  
19 a meeting that we had with the auditor and during  
20 that meeting is where I explained what was meant by  
21 the word "tone issue."

22 Q. Okay. So it was the meeting after the  
23 e-mail was sent where you did the explaining to the  
24 auditor; is that correct?

25 A. Correct.

1           Q.   And on page 3, lines 21, starting at the  
2 bottom of line -- on line 21, through page 4, going  
3 all the way through line 15, you provide an  
4 explanation here of why the Staff believed including  
5 the sentence was not appropriate; is that right?

6           A.   Yes.

7           Q.   And isn't it true that that explanation  
8 is not contained in that September 8 e-mail  
9 correspondence sent by Ms. Christopher?

10          A.   Yes.

11          Q.   Now, let's turn to page 4, line 12, the  
12 referenced clarification. Is your reference to  
13 clarification -- strike that. You answered that.

14               All right. Besides the two bullet points  
15 that we talked about that were contained in the  
16 e-mail when you had your meeting on September 9, were  
17 there other portions of the draft audit report that  
18 you asked the auditor to reconsider or modify?

19          A.   Yes.

20          Q.   Okay. What were those changes that you  
21 asked the auditor to make or reconsider?

22          A.   I asked the auditor to make sure that  
23 they robustly included a description of their  
24 environmental compliance analysis.

25          Q.   Okay. Anything else?

1           A.     Within that meeting on September 9, other  
2     than the minor typos that may have been discussed at  
3     the time, I'm not real sure that all the typos were  
4     discussed, only ones that may have been confusing,  
5     no.

6           Q.     Okay.  So what other issues after that  
7     meeting did you ask the auditor to reconsider or  
8     modify?

9           A.     I don't recall asking her to -- to take  
10    anything else into context or modify anything after  
11    that point.  During that meeting we suggested to her  
12    that the report needed to be -- have its confidential  
13    portions redacted but that was, I believe, a  
14    reminder.  I believe she already knew that needed to  
15    be done.

16          Q.     Okay.  Anything else?

17          A.     No.

18          Q.     Do you know whether Ms. Christopher asked  
19    the auditor to modify or remove any other portions of  
20    the draft audit report or reconsider any issues?

21          A.     I don't recall her asking for anything  
22    else to be considered.

23          Q.     I am going to go to what's been marked as  
24    OMAEG Exhibit 5.  It's the audit report.  I think you  
25    just have it pulled up on your system from DIS -- or

1 not the audit report, I'm sorry, the request for  
2 proposal.

3 A. The RFP?

4 Q. Yes.

5 A. Yes.

6 Q. Okay. I just want to clarify a couple of  
7 things you said yesterday. You used the words  
8 "plagiarized the RFP." So my understanding is --  
9 hopefully no legal people get ahold of that, no, in  
10 your -- what you called "plagiarizing," how I  
11 understand it is you took a prior RFP and you  
12 modified that RFP to be applicable to this audit; is  
13 that fair?

14 A. Yeah. There was very little changes that  
15 I made between the 18-1003 RFP and this one, and then  
16 I sent it to legal for them to modify and get ready.

17 Q. Okay. I didn't understand that  
18 yesterday. So you took the prior OVEC audit for AEP  
19 Ohio and modified the prior OVEC audit.

20 A. Yeah, primarily I changed the technical  
21 lead to my name.

22 Q. And you would have had to change some of  
23 the historical background, wouldn't you have?

24 A. I believe I'm the one who changed some of  
25 the background, but it may have been further modified

1 because some -- some of our attorneys are more  
2 familiar with the case law involved in this than I  
3 am.

4 Q. Sure. And who drafted the 18-1003 RFP  
5 that you referenced and took and plagiarized, in air  
6 quotes?

7 A. I believe that Staff within FEA wrote it.

8 Q. But you don't know who -- were you not  
9 in -- just for the record, "FEA," you are referring  
10 to the Federal Energy Advocate's office; is that  
11 right?

12 A. Yeah. And I apologize. I get really  
13 squirrly about calling people out any more with all  
14 the professional doxing that's been done recently but  
15 Tim Benedict with FEA is the person who worked on --  
16 I believe he had some involvement with the RFP.

17 Q. Okay. Were you in the Federal Energy  
18 Advocate's office for the last audit?

19 A. Yes.

20 Q. Okay. Did you work on the audit, the  
21 last OVEC audit?

22 A. No.

23 Q. And are you also responsible for other  
24 OVEC audits such as the Duke OVEC audit that's  
25 pending before the Commission?

1 A. Yes.

2 Q. Okay. And were you responsible for the  
3 prior Duke OVEC audit?

4 A. I apologize. I only recall one Duke OVEC  
5 audit in this -- this time frame.

6 Q. Okay. And -- but you are the Staff  
7 person that's responsible for supporting the RFP that  
8 was actually issued; is that right?

9 A. For?

10 Q. For this case, thank you.

11 A. Yes.

12 Q. Okay. Okay. Let's turn to that audit  
13 now, please, sir. I am not going -- I am going to  
14 dispense with the foundation questions because I'm  
15 pretty certain that you're familiar with OMAEG  
16 Exhibit 5, both the entry and the audit; is that  
17 right?

18 MS. KERN: I'm sorry, Ms. Bojko. Are you  
19 referring to the RFP?

20 MS. BOJKO: Yeah. There's -- what did I  
21 say? Yeah. I will rephrase.

22 MS. KERN: Audit. I just wasn't sure if  
23 you meant the audit report or RFP.

24 MS. BOJKO: I'm sorry. I am talking  
25 about OMAEG Exhibit 5. I was going to dispense with



1 the foundation questions because I think that's  
2 pretty well established that he's familiar. I just  
3 asked him one. He is familiar with OMAEG Exhibit 5  
4 which is the entry that set forth the RFP.

5 THE WITNESS: Yes.

6 Q. (By Ms. Bojko) Okay. Now, let's -- if  
7 you could change -- turn, excuse me, to the audit  
8 itself -- or the -- I keep doing that -- RFP itself  
9 attached to the entry, and looking at page 4, are you  
10 there?

11 A. Yes.

12 Q. Okay. Paragraph No. 2 under the  
13 "Purpose" section is "II.A. Prudency and Performance  
14 Audit." Do you see that?

15 A. Yes.

16 Q. It states that the Commission ordered the  
17 audit of Rider PPA to establish the prudency of all  
18 costs and sales flowing through Rider PPA and to  
19 demonstrate that the Company's actions were in the  
20 best interest of ratepayers, correct?

21 A. So changing the words, which may be the  
22 same, of "ordered" to "provided," yes, that was an  
23 accurate reading of that sentence.

24 Q. My apologies. Yes, it says the  
25 Commission provided for -- for -- and it actually put

1 the Case No. 14-1693-EL-RDR, for an annual prudency  
2 audit to establish the prudency of all costs and  
3 sales flowing through the PPA Rider; is that correct?

4 A. Yes.

5 Q. Okay. And isn't it true that the auditor  
6 initially concluded that based on the information she  
7 had before her during the audit period, keeping the  
8 plants running was not in the best interest of  
9 customers?

10 A. That is what she had in the draft report.

11 Q. And isn't it true that the auditor also  
12 concluded on page 9 of the audit report that during  
13 the audit period the OVEC plants cost customers more  
14 than the cost of energy and capacity that could be  
15 bought on the PJM wholesale markets?

16 A. Yes.

17 Q. And it's your understanding that the  
18 plants lost money during the audit period resulting  
19 in a net cost or a charge passed on to customers  
20 through Rider PPA, correct?

21 A. My understanding was there was a net  
22 charge to customers throughout the audit period.

23 Q. So if -- if the information from --  
24 during the audit period demonstrated that keeping the  
25 plants running was not in the customers' best

1 interest, then wouldn't AEP's actions taken -- taken  
2 during the audit period to keep the plants running at  
3 a loss also not be in the customers' best interest?

4 MR. NOURSE: Objection. This is asking  
5 ultimate questions from the purpose of the audit and  
6 not -- it's beyond the scope of this witness's  
7 testimony. It doesn't relate to the process or the  
8 scope of the audit.

9 MS. BOJKO: It actually does, your Honor.  
10 I am using the language in his testimony, it's  
11 page 4, line 8, and asking him a question about  
12 whether he believes keeping the plants running was in  
13 the best interest of customers.

14 MR. NOURSE: Well, that wasn't the  
15 question, your Honor.

16 MS. KERN: Staff would interject that's  
17 asking his opinion on the ultimate conclusion and  
18 that was not his role.

19 EXAMINER PARROT: Go ahead and rephrase,  
20 Ms. Bojko.

21 Q. (By Ms. Bojko) Sir, would you agree with  
22 me that if the audit demonstrates that keeping the  
23 plants running was not in the best interest for  
24 customers, then wouldn't AEP's actions taken during  
25 that audit period to keep the plants running at a

1 loss also not be in the customers' best interest?

2 MR. NOURSE: Again, your Honor, this is  
3 the same -- same question. She's asking this witness  
4 to apply a finding that the auditor made when she  
5 reviewed those issues and she did not determine  
6 imprudence occurred, and now she is asking this  
7 witness who is addressing the scope of the audit and  
8 the process to essentially second guess the auditor.

9 MS. BOJKO: I didn't ask him to second  
10 guess the auditor. I asked him in his opinion.

11 EXAMINER PARROT: I am not seeing how  
12 it's tied to the scope of the audit, Ms. Bojko. So I  
13 will give you another chance here. Go ahead and try  
14 again to rephrase.

15 Q. (By Ms. Bojko) Well, sir, on page 4,  
16 lines 7 through 11, you talk about a tone issue and  
17 you explained to us why you thought it was not within  
18 the scope, but I am asking you a question that if --  
19 if the -- if there was a determination that keeping  
20 the plants running was not in customers' best  
21 interest, then wouldn't that flow through that AEP's  
22 actions taken during that same time period to keep  
23 those plants running is a prudence issue within the  
24 scope of the audit?

25 MR. NOURSE: Objection. I don't

1 understand the question.

2 EXAMINER PARROT: I don't think it was a  
3 question. Sorry, Ms. Bojko. Try again.

4 MS. BOJKO: Try again.

5 EXAMINER PARROT: I know you're trying.

6 Q. (By Ms. Bojko) You reference that you  
7 believed -- or you testified, I guess more so, you  
8 testified that you believed that the phrase "running  
9 the plants is not in the best interest of ratepayers"  
10 was beyond the scope of the audit, but isn't it true  
11 if a company decided to run the plants when it wasn't  
12 in the best interest of the ratepayers, that that  
13 would be a prudence issue that the Commission needs  
14 to decide and is within the scope of the audit?

15 MR. NOURSE: Your Honor, I object. I  
16 think that -- the first part of the question  
17 mischaracterizes his testimony.

18 MS. BOJKO: I think that was a really  
19 good question, your Honor.

20 EXAMINER PARROT: Yeah. We are getting  
21 there. So I am going to allow the question, but,  
22 Mr. Windle, to the extent you feel Ms. Bojko maybe  
23 mischaracterized something there, go ahead and  
24 clarify that please in your response.

25 MS. KERN: Would we have the question

1 reread?

2 EXAMINER PARROT: Yes.

3 MS. BOJKO: I am going to need Karen's  
4 help on that one.

5 (Record read.)

6 A. Okay. So this is, in a sense, requiring  
7 a compound answer.

8 So if the Commission agreed that running  
9 the plants is not in the best interest of ratepayers,  
10 I think that we could say that I would agree with  
11 that.

12 The problem is that the Commission  
13 allowed for, through the rider, these plants to run,  
14 accrue costs, and to populate that into the rider.  
15 So once again, my belief is that this statement runs  
16 somewhat contrary to that because it was only looking  
17 at, as I testified yesterday, at the cost portion of  
18 the Commission's decision and not to the full merits  
19 and weight of that finding and order.

20 Q. Well, let's unpack that a little bit  
21 because I think you said a couple of things in there.  
22 I want to break it out. The Commission did not order  
23 the plants to run, did it? It didn't say they have  
24 to run 24/7 at any cost. The Commission didn't order  
25 that, did it?

1           A.    The Commission provided for a rider that  
2   the Company could populate with costs and sales; and  
3   it's implied that in order to have costs and revenue  
4   to populate a rider, that it would run.

5           Q.    Well, we just discussed ways costs are  
6   created even if it doesn't run, didn't we?

7           A.    We did, but I don't believe the  
8   Commission imagined that they would simply accrue  
9   fixed costs into a rider that customers would pay for  
10  without any opportunity for revenue.

11          Q.    Right, because you believe the Commission  
12  order anticipated that revenue would maybe offset the  
13  costs and be a benefit to customers, right?

14          A.    There was those discussions in the  
15  findings and orders if that's what you are asking.

16          Q.    And didn't the last audit you were  
17  involved in already point out that the Commission --  
18  or that the companies should reconsider their  
19  must-run strategy and didn't the Commission adopt  
20  that auditor's recommendation in the last case?

21          A.    Again, Ms. Bojko, you're  
22  mischaracterizing me and it may be incidental so I  
23  apologize. But I testified earlier that I was not  
24  involved in the Vantage audit. I was in the same  
25  department of the people who worked on it. I think

1 we established that. I wasn't involved in that  
2 audit, but as far as that case, I believe it's still  
3 an open case before the Commission. I don't know  
4 that any -- the Commission ruled on anything in that  
5 case.

6 Q. Okay. Fair enough. My apologies and I  
7 wasn't trying to imply you were involved. I assumed  
8 that you -- so I will just read it or -- you didn't  
9 review the prior case before taking on the  
10 responsibility of this case and drafting this RFP  
11 then? Is that what you are telling me? I assumed  
12 you had and my apologies for that assumption.

13 A. And we might be conflating "reading" and  
14 "involvement" and my understanding just isn't there,  
15 but I did read it.

16 Q. Okay.

17 A. I didn't understand that to mean I was  
18 involved and part of that audit process.

19 Q. Okay. And I apologize. I didn't mean to  
20 say that you said that you were.

21 So let's go back to the statement you had  
22 made previously. I still don't think you answered my  
23 question. You said it was implied but I am asking if  
24 the Commission actually stated that the units must  
25 run. They did not say that; is that fair?



1           A.     That's fair.

2           Q.     And the Commission also established a  
3 prudency process and the prudency process is to  
4 determine if there were any actions taken by a  
5 company or if any expenses expended by a company were  
6 imprudent, right; isn't that the point of a prudency  
7 audit?

8           A.     Yeah. The -- and again, I believe that  
9 this process is a two-part process and that is the  
10 prudency of the costs and sales, I believe was the  
11 other word associated to the rider, and that the  
12 Company's actions were in the best interest of the  
13 ratepayers, and I believe those were separated by  
14 "and" for a reason.

15          Q.     I'm sorry. What are you referring to,  
16 separated by "and"?

17          A.     I believe that the audit encompassed both  
18 of those concepts, prudency and the actions of the  
19 Company being in the best interest of ratepayers.

20          Q.     Sure. Okay. But you are agreeing with  
21 me that both of those things were supposed to be  
22 reviewed per the RFP in this proceeding, right?

23          A.     Yes.

24          Q.     Okay. And you -- you would agree with me  
25 that running the plants at a loss could be determined

1 to be an imprudent business decision.

2 MS. KERN: Objection, your Honor.

3 MR. NOURSE: Objection.

4 MS. KERN: This goes beyond the scope of  
5 his testimony and his role as a Staff member.

6 MS. BOJKO: He is --

7 MR. NOURSE: The Company joins and would  
8 add that, again, Ms. Bojko is trying to get this  
9 witness who did not perform the audit and did not  
10 opine on prudency issues to second guess the auditor  
11 who did review these issues and found no imprudence  
12 and was the proper witness to ask such a question.

13 MS. BOJKO: That wasn't my question, your  
14 Honor. I think he answered but that wasn't my  
15 question. My question is about prudency and what he  
16 believes is the decision that should be made in a  
17 prudency decision. Nobody asked what the auditor did  
18 or didn't do in this proceeding. I asked if running  
19 the plants at a loss would be a prudency decision  
20 that needed to be made by the Commission in a  
21 prudency audit.

22 MR. NOURSE: Again, that question, I  
23 would object that asking about what the Commission  
24 should do is not related to this witness's testimony.  
25 He is talking about the scope of the audit and the

1 process of the audit and how the auditor's actions  
2 were within the scope of the audit, not the  
3 Commission.

4 MS. BOJKO: And I didn't use the word  
5 "Commission" in the first question, your Honor.

6 EXAMINER PARROT: You did not, but I  
7 still think you need to rephrase it, so let's do  
8 that.

9 MS. BOJKO: Sure.

10 Q. (By Ms. Bojko) Wouldn't running the  
11 plants at a loss be a business decision that should  
12 be reviewed in the scope of a prudency audit?

13 A. My answer to that is I am not, nor have I  
14 ever, worked for a utility, and that we hired a  
15 consultant to look into what would be prudent and not  
16 prudent, and that person, I believe, reviewed  
17 these -- these matters.

18 Q. Well, but you -- you state in your  
19 testimony that you decided the sentence "running the  
20 plants is not in the best interest of ratepayers" was  
21 beyond the scope of the audit and that's why you  
22 asked her to remove that language, and I am asking  
23 you if running the plants at a loss would be  
24 something that should be considered in a  
25 prudency-determination audit.

1 MR. NOURSE: Objection. I think the  
2 first part of the question mischaracterized the  
3 witness's testimony.

4 EXAMINER PARROT: Overruled.

5 Mr. Windle, go ahead and respond, and if  
6 you need to address any --

7 THE WITNESS: Yes.

8 EXAMINER PARROT: -- mischaracterizations  
9 that you feel you need to, go ahead.

10 MS. BOJKO: I didn't think I  
11 mischaracterized. I thought I was reading the  
12 sentence right from the testimony.

13 A. You certainly did not, and I apologize.  
14 I got completely focused on the mischaracterization  
15 and kind of lost the forest within the trees, but  
16 we -- we have never testified, because it never  
17 happened, that we asked the auditor to remove --

18 Q. Oh, okay. Let me rephrase. I'm sorry.  
19 I did not mean to misstate your testimony. I  
20 apologize.

21 The -- in your testimony you -- you state  
22 that you asked the auditor to reconsider or modify  
23 the tone of language regarding running the plants not  
24 being in the best interest of ratepayers. Is that  
25 fair?

1           A.     Yes.

2           Q.     Okay.  So with that understanding, you  
3     determined that was beyond the scope of the audit,  
4     and I am asking you that if running the plants at a  
5     loss should also be a decision that's actually looked  
6     at in a prudency audit?  I am not saying something  
7     was or wasn't imprudent.  I am saying shouldn't that  
8     decision be looked at in an audit.

9           MR. NOURSE:  And I object again, your  
10    Honor.  I think saying that the witness said running  
11    the plants was not in the best interest of  
12    ratepayers, is beyond the scope, is not what he said  
13    in his testimony.  He's explained it several times.  
14    And it goes on to say "without acknowledging overall  
15    context" and that was the whole, you know, discussion  
16    with the auditor.  So she's paraphrasing it and  
17    misstating it and then trying to leverage that into  
18    an opinion to second guess the auditor.

19          MS. BOJKO:  I didn't say anything about  
20    what the ultimate decision was.  I am asking him if  
21    that is an issue that should be within the scope of  
22    the audit and considered by an auditor in a prudency  
23    audit.

24          MS. KERN:  Staff will just interject that  
25    I think he has consistently testified the scope of

1 the audit was set by the RFP. I think outside of  
2 that he's testified that he didn't have an opinion.

3 MS. BOJKO: I disagree. I think that  
4 mischaracterizes his whole testimony. I mean, he  
5 specifically stated the reason why he asked the  
6 auditor to reconsider this language was because he  
7 believed it was beyond the scope of the audit. And I  
8 am asking him if a decision of running the plants at  
9 a loss should be a decision that is within the scope  
10 of the audit and determined whether it is prudent or  
11 not.

12 EXAMINER PARROT: Go ahead and answer  
13 that, Mr. Windle.

14 A. So I kind of answered this question  
15 earlier. The statement "running the plants at a  
16 loss," we can dissect that one again if we choose to,  
17 but the implication of saying to try to go to the  
18 affirmative instead of the negative, the costs and  
19 the charges are certainly part of the audit and  
20 should be expressed to the Commission, and the  
21 Commission should weigh in on that.

22 The plants running, as I mentioned  
23 earlier, I discussed this with the auditor, and I  
24 believe that the intention was to say, listen, this  
25 rider is unnecessary, and I suggested to the auditor

1 to take the cost issue in context with the entire  
2 finding and order and to -- and consider that when  
3 she drafts her final audit report.

4 Q. So I think you are agreeing with me that  
5 this issue should have been reviewed by the auditor  
6 and a recommendation should be made of whether there  
7 is any imprudency or not.

8 A. I don't know how I agreed with you but  
9 what I said was that the cost and the charges should  
10 be communicated to the Commission as part of a  
11 report. And I believe that the auditor did do that.  
12 But we are talking specifically also about the  
13 statement of "running the plants" and why we had a  
14 concern with that. I believe that's what your  
15 question is. I might misunderstand it.

16 And I'm going back to saying that my  
17 belief was and later in my opinion confirmed by the  
18 auditor and through various means was that she was  
19 criticizing the rider in general and, by extension of  
20 that, the Commission's decision to allow for a rider,  
21 and I felt as though that that would not be  
22 appropriate without considering the context of the  
23 greater finding and order. And so our suggestion to  
24 the auditor was to simply go back and read that. At  
25 that time I felt again and to consider that in what

1 she was writing for a final report.

2 Q. Okay. So you keep saying explain to the  
3 Commission. The auditor is the one that gives a  
4 recommendation to the Commission of whether something  
5 is imprudent or not; is that right?

6 A. Yes.

7 Q. So the report --

8 A. The auditor would make a recommendation.

9 Q. Right. So the auditor first determines  
10 whether the auditor believes that something is  
11 imprudent or not. They make that recommendation to  
12 the Commission, and the Commission makes a finding of  
13 whether they believe something was imprudent or not,  
14 right?

15 A. Yes.

16 Q. Okay. So it's your opinion sitting here  
17 today that you believe -- or is it your opinion that  
18 costs associated with running the plants, all costs,  
19 should be considered by the auditor and a prudency  
20 recommendation should be given to the Commission  
21 regarding whether they believe the costs to run the  
22 plants is prudent or not prudent, correct?

23 A. Yes.

24 Q. Okay. And if the running of the plants  
25 costs more than the revenue derived from the plants,



1 you think the auditor should have considered that and  
2 made a recommendation to the Commission, right?

3 A. I believe that the auditor should have  
4 reported under the terms of prudence whether there  
5 were charges or credits, yes.

6 Q. Okay. And it's your understanding that  
7 AEP has the burden of proof in this case to establish  
8 the prudence of all costs and sales flowing through  
9 the PPA Rider and to demonstrate that the Company's  
10 actions were in the best interest of retail  
11 ratepayers, correct?

12 A. Yes.

13 MS. BOJKO: Okay. Your Honor, I am at a  
14 good breaking point. He has been on the stand over a  
15 couple of hours, if now would be convenient to take a  
16 break.

17 EXAMINER PARROT: So you still have a  
18 ways to go, Ms. Bojko?

19 MS. BOJKO: Yeah. I have a couple of  
20 documents to go through.

21 EXAMINER PARROT: Okay. Let's take a  
22 short recess.

23 (Recess taken.)

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

1                   Go ahead, Ms. Bojko.

2                   MS. BOJKO: Oh, I was on mute when I was  
3 talking. My apologies. What I said on mute was I'm  
4 going to be referring to OMAEG Exhibit 9. If I could  
5 ask the witness to locate that document.

6                   THE WITNESS: I apologize. It's not in  
7 our OMAEG folder, so could you --

8                   MS. BOJKO: It's a grouping of e-mails.  
9 Both 9 and 12 are going to be the ones I am going to  
10 be discussing going forward.

11                  Ms. Kern, I believe --

12                  MS. KERN: That was Locigno? Is it the  
13 Edward Locigno e-mail?

14                  MS. BOJKO: Yes.

15                  MS. KERN: I believe you used those  
16 yesterday, Mr. Windle, with Mr. Finnigan.

17                  MS. BOJKO: No, no. These are two OMAEG  
18 exhibits we debated for length at the last hearing  
19 day, and then we sent around new copies marked, that  
20 weren't confidential.

21                  MS. KERN: Okay. We will make sure that  
22 you get them. Rodney, I will have to e-mail them to  
23 you if you are not locating it in the file.

24                  THE WITNESS: Yeah. I'm not.

25                  MS. KERN: Okay.

1 MS. BOJKO: It would have been an e-mail  
2 from Thomas Donadio.

3 MS. KERN: Can you just provide us with a  
4 few minutes? We will make sure he has them.

5 MS. BOJKO: Sorry. I did say this off  
6 the record, but I was on mute.

7 MS. KERN: All right.

8 EXAMINER PARROT: All right. Let's go  
9 off the record.

10 (Discussion off the record.)

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

13 MS. BOJKO: Thank you, your Honor.

14 Q. (By Ms. Bojko) Mr. Windle, do you have in  
15 front of you what has been marked as OMAEG Exhibit 9?

16 A. I just opened it and I am trying to click  
17 to the 9 because I just opened both because it was my  
18 theory you are going to ask me questions about both.

19 Q. Good assumption.

20 A. Okay. I have Exhibit 9 open.

21 Q. Okay. Great. Okay. So just a little  
22 bit of foundation first here. On page 3, line 5 of  
23 your testimony, you state that LEI conducted the  
24 review as an extension of Staff; is that right?

25 A. Give me a second to go back to my

1 testimony, please.

2 Q. Oh. Sorry. It was just a foundation  
3 question.

4 A. Page 3, line 5? Yes.

5 Q. Okay. And you also have stated that  
6 Staff personnel shall be informed of all  
7 correspondence between the auditor and AEP or OVEC;  
8 is that right?

9 A. Yes, I believe that was what was in the  
10 RFP.

11 Q. Okay. Okay. So is it -- well, do you  
12 know who Edward Locigno is? Did I pronounce that  
13 correctly?

14 A. I assume, based upon the e-mail, he is an  
15 employee or once was an employee of AEP; but, no, I  
16 don't know Mr. --

17 MS. BOJKO: Could you correct me,  
18 Mr. Nourse? I see you trying to say something.

19 MR. NOURSE: I'm sorry. Are you asking  
20 for the pronunciation? It's Locigno.

21 MS. BOJKO: Locigno, thank you.

22 EXAMINER PARROT: Hold on a moment. Hold  
23 on.

24 Let's go off the record.

25 (Discussion off the record.)

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

3 Q. (By Ms. Bojko) Mr. Windle, I think you  
4 agreed with me that Mr. Locigno is an AEP employee or  
5 at least was in July of 2020?

6 A. What I said was that based upon the  
7 e-mail address, it appears as though he was.

8 Q. Okay. So are you telling me you are not  
9 familiar with Mr. Locigno, you didn't deal with him  
10 during the audit period?

11 A. I did not have any interaction with him.

12 Q. Okay. Do you know if Ms. Christopher  
13 did?

14 A. I believe she e-mailed him. I'm not  
15 aware of any other correspondence other than the  
16 e-mail.

17 Q. Okay. So what's been marked os OMAEG  
18 Exhibit 9 is -- appears to be an e-mail from the  
19 auditor, that you oversaw in this case, to AEP; is  
20 that correct?

21 A. Yes.

22 Q. And Staff is not copied on this e-mail,  
23 is it?

24 A. And you are talking about page 1 of 99,  
25 correct?

1           Q.    Yes.  I'm sorry.  I was talking about --  
2   good point.  For the record I was talking about the  
3   top e-mail on OMAEG Exhibit 9, it's page 1 of 99, and  
4   it is dated Monday, July 27, 2020, 2:30 p.m.

5           A.    Staff is not copied.

6           Q.    And in this e-mail the auditor, Ms. Fagan  
7   of this case, is talking about what you termed  
8   earlier SV, meaning site visit; is that correct?

9           A.    Yes.

10          Q.    Okay.  And in this e-mail the auditor  
11   tells AEP that we should not include the other  
12   company being audited; is that correct?

13          A.    Yes.

14          Q.    And the other company being audited, is  
15   it your understanding that would be Duke Energy Ohio?

16          A.    Per Dr. Fagan's context, yes.

17          Q.    Because Dr. Fagan is also awed -- is also  
18   auditing Duke Energy Ohio during the same period and  
19   you are on that case, correct?

20          A.    Yes.

21          Q.    In fact, your name is referenced in this  
22   e-mail that the virtual SV, so site visit, would be  
23   your folks and the OVEC team, the LEI team, it lists  
24   some individuals, and then Mahila Christopher and  
25   Rodney Windle from the PUCO; is that correct?

1 A. Yes.

2 Q. And if you look down at the bottom of  
3 page 1 of 99 of OMAEG Exhibit 9, there is another  
4 e-mail from Ms. Fagan to Mr. Locigno which is AEP's  
5 representative, dated July 22, 2020, at 10:46 a.m.  
6 Do you see that?

7 A. Yes.

8 Q. And that e-mail also did not include any  
9 PUCO Staff members on the e-mail, did it?

10 A. No.

11 Q. And in this e-mail, Dr. Fagan is talking  
12 about reaching out to the other company, and is it  
13 your understanding that other company would have been  
14 Duke Energy Ohio?

15 A. As you have mentioned, I wasn't on the  
16 e-mail chain so knowing for sure is difficult, but I  
17 speculate based on what is reasonable that, yes, that  
18 probably was Duke.

19 Q. And is it your understanding that at some  
20 point Dr. Fagan contemplated or suggested doing a  
21 joint site visit between AEP Ohio and Duke Energy  
22 Ohio regarding the OVEC plants and the audit of those  
23 since they were occurring simultaneously?

24 A. Yes, that -- based upon my foggy  
25 recollection of discussions, that is something that

1 she was considering at one time.

2 Q. And then in the middle of the page, still  
3 on page 1 of 99, OMAEG Exhibit 9, there is another  
4 e-mail from the AEP representative, Mr. Locigno, to  
5 Dr. Fagan and it also does not include Staff, does  
6 it?

7 A. No.

8 Q. And in this e-mail the AEP representative  
9 is contemplating or suggesting setting up a meeting,  
10 and I put it in air quotes because it might be a  
11 virtual meeting, I'm assuming; is that what you  
12 believe that that means?

13 A. Yes.

14 Q. And he's discussing setting up a meeting  
15 with the auditor; is that correct?

16 A. Well, I think the intention was always  
17 the meeting would include Staff for a site visit.

18 Q. Okay. So you believe that e-mail is  
19 about the site visit?

20 A. That's my belief but, again, you would  
21 have to ask Dr. Fagan to be sure.

22 Q. Okay. And let's turn to the next page  
23 which is page 2 of 99. There is an e-mail from  
24 Dr. Fagan to the AEP -- multiple representatives this  
25 time and this time there are two PUCO representatives



1 copied on the e-mail dated July 21, 2020, 3:37 p.m.;  
2 is that correct?

3 A. The 3:37 p.m. e-mail, is that what you  
4 are asking is before me?

5 Q. Yes.

6 A. Yes.

7 Q. Okay. And who is, I guess, Farhan Butt?

8 A. Farhan Butt, he is a member of PUCO's  
9 Staff that works -- is one of my direct reports.

10 Q. Okay. And here in this e-mail they again  
11 are talking about another participant in the OVEC  
12 ICP, and that, to your understanding, would have been  
13 Duke and the same conversation about whether they  
14 would have a dual site visit with both AEP and Duke;  
15 is that correct?

16 A. That's what makes sense.

17 Q. Okay. Now let's turn to the third page  
18 of this document which is now page 13 of 99 at the  
19 top right-hand corner. Do you see that?

20 A. I'm sorry. They are not in order. There  
21 we go. Yes.

22 Q. Okay. Let's start -- this is kind of  
23 hard and I apologize. These are strings of e-mails,  
24 so they're often not in chronological order but let's  
25 start now at the bottom e-mail which is dated

1844

1 Wednesday, July 22, 2020, and it's at 12:41 p.m. Do  
2 you see that e-mail?

3 A. Yes.

4 Q. And this e-mail is from Dr. Fagan, the  
5 auditor, to an AEP representative; is that correct?

6 A. Based upon the e-mail address, I believe  
7 that to be an AEP representative.

8 Q. Okay. And this is Dr. Fagan asking the  
9 AEP representative, Michael McCulty, if Dr. Fagan can  
10 call him at 1:00 p.m. eastern; is that correct?

11 A. That appears to be correct.

12 Q. And Staff is not included on this e-mail,  
13 is it?

14 A. No.

15 Q. And then go up to the top e-mail on the  
16 page. It's dated July 22, 2020, 12:42 p.m. Do you  
17 see that?

18 A. Yes.

19 Q. And that is Michael McCulty responding  
20 "That works"; is that correct?

21 A. Yes.

22 Q. And Staff is not included on that e-mail,  
23 is it?

24 A. No.

25 Q. And do you know what that telephone

1 conversation between the auditor and AEP was about?

2 A. I cannot say for certain.

3 Q. And you don't know, since you weren't  
4 copied on this e-mail, you don't know if you were  
5 informed about this e-mail that happened at 1:00 p.m.  
6 eastern on July 22, 2020, do you?

7 A. I don't recollect whether I was informed  
8 or not informed.

9 Q. And if you were forwarded an e-mail, you  
10 would have had documentation of that and produced it  
11 in this case, wouldn't you?

12 A. Yes.

13 Q. Can you now turn to the fourth page of  
14 OMAEG Exhibit 9 which is marked page 28 of 99.

15 A. Okay.

16 Q. I am going to again try to do it more  
17 chronologically, so I am going to start at the bottom  
18 e-mail string. And at the bottom of this page this  
19 e-mail is from Dr. Fagan to an AEP representative,  
20 Michael McCulty. Do you see that?

21 A. Yes.

22 Q. And that e-mail subject matter is "Can we  
23 chat again?" Do you see that?

24 A. Yes.

25 Q. And Staff is not copied on that e-mail,

1 is it?

2 A. No.

3 Q. And then there's another e-mail a few  
4 minutes later, July 15, 2020, at 12:03 p.m. that's on  
5 page 28 of 99 in the middle. Do you see that?

6 A. Yes.

7 Q. And that's correspondence between  
8 Dr. Fagan and AEP representative McCulty; is that  
9 correct?

10 A. Yes.

11 Q. And Staff was not included on that  
12 e-mail, was it?

13 A. No.

14 Q. And look at the top e-mail a few minutes  
15 later, this is also dated July 15, 2020, and at  
16 12:19 p.m. and this is an e-mail from Michael  
17 McCulty, an AEP representative, to Dr. Fagan; is that  
18 correct?

19 A. Yes.

20 Q. And here, this e-mail, Staff is not  
21 copied on it, is it?

22 A. No.

23 Q. And in this e-mail -- oh, let me strike  
24 that. Okay.

25 Let's turn to -- I guess that's it.

1 Those are all the e-mails in OMAEG Exhibit 9. So now  
2 let's turn to OMAEG Exhibit 12.

3 MS. BOJKO: At this time, your Honor, I  
4 don't believe it's been formally marked. I would  
5 like to mark OMAEG Exhibit 12. And OMAEG Exhibit 12  
6 is a series of e-mails and document cover sheets that  
7 were produced in discovery. For identification  
8 purposes I will note at the top it says Ohio Power  
9 Company, Case No. 18-1759-EL-RDR, OCC RPD-01-004,  
10 Supplemental Attachment 2.

11 EXAMINER PARROT: It is marked OMAEG  
12 Exhibit 12.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. BOJKO: Thank you, your Honor.

15 Q. (By Ms. Bojko) Mr. Windle, do you have in  
16 front of you what has been marked as OMAEG  
17 Exhibit 12?

18 A. Yes.

19 Q. And does this appear to be some -- a  
20 packet of e-mail correspondence with some  
21 attachments, I guess, partial attachments?

22 A. Yes.

23 Q. Okay. Okay. If you could turn to  
24 page -- it's part -- I am going to use the page  
25 number in the upper right-hand corner because I think

1 that's the easiest, Mr. Windle. If at any time you  
2 don't understand what I am referring to, please let  
3 me know. At the top of page 159 of 1145, do you see  
4 that page?

5 A. Yes.

6 Q. This appears -- does this appear to be a  
7 cover sheet of a draft audit report dated  
8 September 9, 2020?

9 MR. NOURSE: Your Honor, I am going to  
10 insert an objection here. We had a lot of discussion  
11 earlier in this proceeding about the reasons against  
12 using any excerpt from the draft audit reports, and  
13 I'll leave it at that. I object to the use of  
14 this -- this page.

15 MS. BOJKO: Your Honor, I thought you  
16 already made a ruling on this document and the use of  
17 just the cover sheets versus the entirety of the  
18 draft audit report. We were happy to provide the  
19 entirety of the draft audit report, but I thought we  
20 decided to just use cover pages for -- because it was  
21 going to be used for timeline purposes, not for  
22 substantive nature of the draft, which was what was  
23 objected to previously and the rulings were based  
24 upon.

25 MR. NOURSE: Just to clarify my

1 objection, I'm not saying a full draft is better than  
2 the excerpt. I am saying we objected to any excerpt  
3 including the cover page only as being part of the  
4 draft. It wasn't the final. And I am not going to  
5 repeat all my arguments, but I am registering my  
6 objection to the use of this page. I believe, quite  
7 frankly, when the Examiner ruled on this before, she  
8 referenced the reliance on OCC Exhibit 17 being  
9 admitted which, with all due respect, was incorrect.  
10 And that was not included in the record.

11 EXAMINER PARROT: And I clarified that on  
12 the record that it was not. The questions though as  
13 to the draft cover page that was part of OCC  
14 Exhibit 17, the questions were permitted.

15 So go ahead and respond, Mr. Windle.

16 A. I believe the question was whether or not  
17 it's before me, this page 159, and my answer to that  
18 is yes, I am looking at it.

19 Q. Okay. I think I asked an additional  
20 question which was, does this appear to be the cover  
21 page of the draft audit report that Staff received on  
22 September 9, 2020?

23 A. I believe so.

24 Q. And you stated this morning that this  
25 would have likely -- to your recollection this was

1 the second draft audit report that you had received;  
2 is that correct?

3 A. Yeah. That would be the second.

4 MS. BOJKO: Actually, can I withdraw that  
5 question, your Honor? I think I misspoke.

6 Q. I believe you said that there was a draft  
7 audit report in August and then there was another one  
8 provided to Staff on September 1, so this would be  
9 the third audit report, draft audit report on  
10 September 9; is that correct?

11 A. Yes. It's the third working document  
12 that we've seen from a timestamp basis.

13 Q. And then if you go forward to the page --  
14 prior page, I am going to try to do this  
15 chronologically again, if you look at page 158 of  
16 OMAEG Exhibit 12, there's an e-mail from Dr. Fagan to  
17 AEP representative Locigno, and on this e-mail dated  
18 9-9-2020 at 12:10 p.m., Staff is copied; is that  
19 correct?

20 A. Yes.

21 Q. And this e-mail to the AEP representative  
22 states "Please find the audit for your review"; is  
23 that correct?

24 A. Yes.

25 Q. And attached was the September 9, 2020,



1 version of that audit report, correct?

2 A. That is my assumption.

3 Q. Then if you turn to page 157 of OMAEG  
4 Exhibit 12, there are two more e-mails. Let's start  
5 with the bottom. Chronologically there is an e-mail  
6 dated 9-10-2020, 4:07 p.m.; is that correct?

7 A. Yes.

8 Q. And on this e-mail it's from  
9 Ms. Christopher from Staff, and it's directed to the  
10 AEP representative, Ed Locigno, correct?

11 A. Yes. It appears to be directed to both  
12 Dr. Fagan and Mr. Locigno or -- I apologize for  
13 mispronouncing his name.

14 Q. Sure. But if you look at the body of the  
15 e-mail, it says "Good afternoon Ed," so it appears  
16 the e-mail itself is drafted to just the AEP  
17 representative, Mr. Locigno, correct?

18 A. Yes.

19 Q. Okay. And here, Staff is confirming that  
20 AEP received the draft audit report yesterday at noon  
21 so that would have been September 9, 2020; is that  
22 correct?

23 A. Yes.

24 Q. Okay. And here, Staff is requesting that  
25 the Company complete its review and return the draft

1 by close of business tomorrow which would have been  
2 September 11, 2020; is that correct?

3 A. Yes.

4 Q. Okay. And then the e-mail at the top of  
5 page 157 of OMAEG Exhibit 12, Mr. Locigno responds  
6 that again confirming they just received the draft on  
7 September 9, 2020, at noon; is that correct?

8 A. Yes.

9 Q. And he states that -- that they still  
10 have much of the document to review and that it takes  
11 time to review the information, the accuracy, and  
12 confidentiality; is that correct?

13 A. Yes.

14 Q. And he is stating that the absolute  
15 earliest that AEP could provide a markup of the  
16 confidential information and corrections to any  
17 inaccuracy would be close of business Monday,  
18 September 14, correct?

19 A. Yes.

20 Q. And then if we can turn to page 156 of  
21 OMAEG Exhibit 12, again going chronologically,  
22 Ms. Christopher sends another e-mail to the AEP  
23 representative on September 14, 2020, at 11:53 a.m.  
24 Do you see that?

25 A. Yes.

1           Q.   And you are copied on this e-mail; is  
2   that correct?

3           A.   Yes.

4           Q.   And in this e-mail, Staff is touching  
5   base with AEP to seek when they can receive a  
6   redacted version of the draft back; is that correct?

7           A.   Yes.

8           Q.   Okay. And then if we look at the top  
9   e-mail, this was dated 9-14, 3:00 p.m. It's from AEP  
10   representative Locigno and it is addressed to  
11   Ms. Christopher, and you are copied on it; is that  
12   correct?

13          A.   Yeah. It's to Mahila Christopher and  
14   Dr. Fagan, and I am copied on it.

15          Q.   Okay. And in this e-mail AEP states,  
16   "Please find the attached AEP reviewed document." Do  
17   you see that?

18          A.   Yes.

19          Q.   And -- and it also says, "I've  
20   highlighted confidential information in yellow"; is  
21   that correct?

22          A.   Yes.

23          Q.   And then the last sentence he explains  
24   the highlighting, but then he says, "There are also  
25   comments throughout." Do you see that?

1 A. Yes.

2 Q. So isn't it true that the version that  
3 AEP sent back to Staff and the auditor, as you've  
4 noted, was a redlined document of the 9-9-2020 draft  
5 audit report, correct?

6 A. I don't recall. And let me explain that  
7 a second because I am sure we are going to explore  
8 that. I don't recall if their comments were redlined  
9 or simply comments throughout the document like you  
10 can do in a Word document.

11 Q. You just don't recall.

12 A. Yes.

13 Q. You wouldn't be surprised if they were  
14 strikeouts and actual redlining, would you?

15 MR. NOURSE: Objection. Calls for  
16 speculation. He just answered he didn't recall.

17 EXAMINER PARROT: Overruled.

18 A. Yeah. There -- I would not be surprised  
19 if there were redline strikeouts regarding typos. As  
20 I testified yesterday, Staff sometimes doesn't catch  
21 all typos.

22 Q. So you're saying that you would be  
23 surprised if there were substantive changes made in  
24 redlined form from AEP?

25 A. Well, I would be surprised if there

1 were -- if there was substantive changes that were  
2 not just simply correcting factual inaccuracies that  
3 the auditor just missed.

4 Q. Well, that goes beyond typos, doesn't it,  
5 correcting what they claim to be inaccuracies?

6 A. Well, it depends on the intention of the  
7 auditor, I believe. If the auditor just misstated a  
8 number or something like that, that in my mind would  
9 be a typo, or they didn't list all of the things that  
10 they were considering whenever they looked at it and  
11 somehow through the course of the interrogatories in  
12 this case AEP knew that they looked at more and they  
13 were just reminding her of what she looked at. I  
14 don't know that that is a significant factual  
15 difference. To me that would fall closer in line  
16 with typos.

17 Q. Okay. But you don't recall -- you don't  
18 recall the redline -- you don't recall even if there  
19 was a redline, so sitting here today, you don't  
20 recall or can't recall what exactly AEP put or didn't  
21 put in the redline, correct?

22 A. Yes, if there was a redline.

23 Q. Okay. Fair enough.

24 So let's break down this e-mail then.  
25 This e-mail says in it that AEP did three things. It

1 says they reviewed the document and attached a  
2 reviewed document which, to me, makes it sound like a  
3 redline, but you said it could be a redline or  
4 bubblecons or something?

5 A. Well, I know that when we sent comments  
6 to LEI, we did the comment annotations. I don't -- I  
7 don't recall us having any redlines, but we may have.

8 Q. Okay. So AEP states in its e-mail that  
9 it attached the AEP reviewed document, correct?

10 A. Uh-huh.

11 Q. And then -- I'm sorry. You have to say  
12 yes or no for the court reporter.

13 A. Yes.

14 Q. Secondly, it states that they've  
15 highlighted confidential information, correct?

16 A. Yes.

17 Q. And the third thing AEP states that it  
18 did was they provided comments throughout the  
19 document, correct?

20 A. Yes.

21 Q. Okay. Now, let's turn to -- okay. I'm  
22 sorry. Just to clarify, I'm not sure if I said the  
23 date. And the date AEP provided a reviewed document  
24 back to Staff and the auditor was Monday, September  
25 14, 2020; is that correct?

1 A. Yes.

2 Q. Now, can we turn to page 285 of OMAEG  
3 Exhibit 12. In the right-hand corner it's 285 of  
4 1145. Are you there?

5 A. What exhibit? 12?

6 Q. This is the same one we were just on,  
7 Exhibit 12.

8 A. Okay.

9 Q. You go to page 285 of 1145.

10 A. Okay. Yes.

11 Q. Here on this page it appears that there  
12 is a copy of what's called "Final Report," cover  
13 sheet, and it's dated September 15, 2020; is that  
14 correct?

15 A. Yes.

16 Q. So the auditor -- or I'm sorry. AEP sent  
17 changes back on September 14, and then is it your  
18 understanding the auditor sent what she called a  
19 "Final Report" with a cover sheet dated September 15,  
20 2020?

21 A. It would make sense that there would be a  
22 final report worked on around September 15, 2020.

23 Q. Okay. So my understanding of the  
24 chronology here of what you have explained to me is  
25 this -- this September 15 report would have been the

1 fourth version of the audit report, correct?

2 A. I guess those are your words, not mine.

3 Q. Oh, I thought you told me the 9-9 we  
4 agreed was the version 3 or the -- you didn't want to  
5 call it the third draft. I thought you said it was a  
6 version. I'm sorry. I am trying to use your words  
7 so.

8 A. Yeah. It seems as though there were  
9 three versions provided to us of the draft report by  
10 timestamp and this appears to be a version of the  
11 final report. But if you tally those together, I  
12 guess that would be four versions.

13 Q. Okay. So let's -- let's look at the  
14 e-mails that's attached to this report to set some  
15 foundation here. If you look at page 284 of 1145.

16 A. Okay.

17 Q. This is an e-mail directly preceding the  
18 audit report draft -- or, excuse me, final report  
19 dated September 15, and this is a series of e-mails  
20 that start with September 9 and then goes to  
21 September 10 and this is the -- starts the same  
22 e-mail string we just went through before. I don't  
23 want to repeat all of that but there's back and forth  
24 about when AEP will get a draft back to the auditor  
25 and Staff; is that fair?



1           A.     And this -- the e-mail on page 284, which  
2     says page 4 at the bottom of the page, is Wednesday,  
3     September 9, 2020, at 12:00 p.m. It reads "Please  
4     find the audit for your review."

5           Q.     That's the e-mail we just talked about.  
6     There is a string of e-mails here. I have to -- I  
7     just wanted you to walk through the string, but I  
8     didn't want to repeat all the e-mails we have talked  
9     about previously. Does this appear to be a string of  
10    e-mails starting September 9 when Dr. Fagan sent the  
11    report to AEP and then the back and forth on  
12    September 14 -- 10 and 14 between Staff and AEP about  
13    receiving edits back or comments back, and then we go  
14    to page 281 where there is an e-mail dated  
15    September 15 at the bottom, 1:27 p.m. Is that a fair  
16    representation, sir?

17          A.     Page 281?

18          Q.     Yes.

19          A.     Yes. This looks like a chain building up  
20    to a final version that was probably attached to the  
21    page 281 document.

22          Q.     Okay. Fair enough. Thank you.

23                 So if you look at the e-mail at the  
24    bottom of page 281, it's from Dr. Fagan to AEP,  
25    Mr. Locigno; is that correct?

1 A. Yes.

2 Q. And in that e-mail Dr. Fagan is saying  
3 we'll send this to you a bit later today, thanks for  
4 your patience, and she's referring to later today,  
5 Mr. Locigno's September 14 e-mail asking to review  
6 one more time after redactions to ensure everything  
7 is captured; is that correct?

8 A. That's my understanding.

9 Q. Okay. And then her -- the next e-mail is  
10 from AEP to Dr. Fagan; is that correct?

11 A. The e-mail dated September 15 at  
12 1:44 p.m. appears to be from AEP to Dr. Fagan.

13 Q. And Staff is not copied on that e-mail or  
14 the preceding e-mail with the same date at 1:27, are  
15 they?

16 A. No.

17 Q. Okay. And then we have another e-mail at  
18 the top of page 281, this is from Dr. Fagan to AEP  
19 and it's dated September 15, 2020, at 2:31 p.m.; is  
20 that correct?

21 A. Yes.

22 Q. And this e-mail also doesn't have Staff  
23 copied, does it?

24 A. No.

25 Q. And this e-mail is from Dr. Fagan to AEP,

1 the representative Mr. Locigno, and then also copies  
2 other -- four other individuals from AEP; is that  
3 correct?

4 A. Yes, there are four copies of I believe  
5 AEP employees. There's no -- there's no e-mail  
6 suffix attached so I'm taking your word for it.

7 Q. Okay. Well, Staff isn't copied; is that  
8 right? So presumably they are all AEP  
9 representatives?

10 A. Staff is not copied.

11 Q. Okay. And here is when Dr. Fagan  
12 attaches a redacted version of the report and she  
13 says it's for your review with your edits  
14 incorporated, so do you see that?

15 A. Yes.

16 Q. So "edits incorporated" implies that AEP  
17 actually made edits to incorporate; is that a fair  
18 assumption?

19 A. It looks as though Dr. Fagan took their  
20 suggestions for edits and put those into the  
21 document.

22 Q. Okay. She didn't say we took your  
23 suggestions and I made edits. She said "with your  
24 edits incorporated," correct?

25 A. Well --

1 MS. KERN: Objection to the extent  
2 Dr. Fagan would be the best witness to answer these  
3 questions. Mr. Windle can read what's there but.

4 EXAMINER PARROT: Go ahead and rephrase,  
5 Ms. Bojko.

6 MS. BOJKO: Sure.

7 Q. (By Ms. Bojko) Does the e-mail from  
8 Dr. Fagan state, "Here is the redacted version for  
9 your -- for you [sic] review, with your edits  
10 incorporated"?

11 A. Yes. Her language in this e-mail is  
12 "with your edits incorporated."

13 Q. Okay. Now, let's -- so that -- just so  
14 I'm clear, that edits -- that e-mail was dated  
15 September 15, 2020, at 2:31 p.m.; is that correct?

16 A. Yeah, the e-mail we are discussing is  
17 September 15, 2020, at 2:31 p.m.

18 Q. Okay. And --

19 MS. BOJKO: I'm sorry. Is someone  
20 talking or am I just hearing feedback?

21 THE COURT REPORTER: Examiner See's mic  
22 is open.

23 Q. Okay. And this e-mail -- presumably  
24 this -- what Dr. Fagan attached was the redacted  
25 version dated the September 15, 2020, cover sheet

1 that we just looked at; is that correct?

2 A. Yeah. That would make sense. What was  
3 that, page 286 or 287?

4 Q. 285.

5 A. 285?

6 Q. Yes.

7 A. That would make sense to me.

8 Q. Okay. And then if we look, there is  
9 another string of e-mails, it's a chain again so I  
10 don't want to repeat all the ones we have talked  
11 about so I apologize for that. But if we look,  
12 turning to -- okay. Let's turn to page 405.  
13 Page 405. It looks like 405 and 406 and 407 appears  
14 to be the same e-mail chain we just discussed,  
15 doesn't it? Does it not?

16 A. 405?

17 Q. Yes. It's the e-mail from Dr. Fagan to  
18 AEP. Oh, hold on.

19 A. I'm sorry. You'll have to help me match  
20 those. I don't see where that is.

21 Q. Right. My apologies. I'm sorry. It's a  
22 new chain so let's look at this chain. It starts on  
23 page 405 and it's another e-mail from Dr. Fagan and  
24 this e-mail is dated also September 15, 2020, but  
25 it's at 3:09 p.m. so it's subsequent to the one we

1 were just discussing, and this e-mail also is  
2 addressed to two AEP representatives and then copies  
3 three AEP representatives, correct?

4 A. Yes.

5 Q. And in this version -- this e-mail,  
6 Dr. Fagan says here's the final confidential version  
7 for your review -- for your review, with your edits  
8 addressed by LEI, and Staff's edits, and she  
9 clarifies that Staff's edits were grammatical and no  
10 substantive changes; is that correct?

11 A. Yes.

12 Q. She doesn't make that same parenthetical  
13 clarification after AEP's edits, does she?

14 A. No.

15 Q. And then she states she'll incorporate  
16 them into the confidential version and get it back to  
17 AEP; is that correct?

18 A. That is what the e-mail says.

19 Q. Okay. And then the e-mail after that  
20 which came just a few minutes prior on September 15,  
21 2020, at 2:57 p.m., was from AEP asking for a PDF  
22 file; is that correct?

23 A. Yes.

24 Q. And then the next e-mail on that same  
25 page, page 405, OMAEG Exhibit 12, it says -- it's the

1 September 15, 2:37 p.m. e-mail we already talked  
2 about saying here is the redacted version for your  
3 review with your edits incorporated, correct? And  
4 then it continues that same e-mail thread?

5 A. I can say that, yes, there is an e-mail  
6 sitting before me, September 15, 2020, at 2:31 p.m.  
7 from Dr. Fagan to AEP.

8 Q. Okay. And that's the same e-mail we just  
9 discussed in a different e-mail thread, correct?

10 A. I would like to compare those before  
11 saying yes or no, so do you recall what --

12 Q. Sure. Yes. It was page 281. You can  
13 easily tell it has "with your edits incorporated," so  
14 page 405, the bottom e-mail is dated 9-15-2020 at  
15 2:31 p.m., and page 281, the same e-mail is dated  
16 September 15, 2020, at 2:31 p.m.

17 A. Okay. Yes. That e-mail seems to be  
18 similar to one -- the one you showed me earlier.

19 Q. Okay. So my question for you is, if you  
20 go back to page 405, there's an e-mail at 2:31 that  
21 says here's the redacted version, and then there is  
22 another e-mail from Dr. Fagan at 3:09 p.m., the same  
23 day, saying here is the final confidential version.  
24 Do you know if there were -- was a different version  
25 sent the same day, so there are two September 15,

1 2020, versions?

2 A. Not completely sure. I believe that is a  
3 question for Dr. Fagan.

4 Q. Okay. You don't recall receiving two  
5 versions of the audit report on September 15?

6 A. I do not recall.

7 Q. And you don't know if -- oh, I'm sorry.

8 A. I was just repeating your question.  
9 Sorry.

10 Q. And you don't -- you don't know or recall  
11 if Ms. Christopher received two audit versions --  
12 audit report versions on 9-15-2020, do you?

13 A. I am not aware that she did.

14 Q. Okay. Now, I believe the subsequent  
15 three pages are the same e-mail chain, so I am going  
16 to turn you to page 898.

17 A. Okay.

18 Q. On the bottom of page 898 is an e-mail  
19 dated Wednesday, September 16, at 9:25 a.m. Do you  
20 see that?

21 A. Yes.

22 Q. And this e-mail it's -- it's from AEP  
23 directed to Dr. Fagan, and you and Ms. Christopher  
24 are copied on the e-mail; is that correct?

25 A. Yes.



1           Q.    And here there is a discussion about the  
2 confidential and public versions not aligning; is  
3 that a fair representation?

4           A.    Yeah.  The e-mail seems to go on to  
5 explain what was meant by that statement.

6           Q.    Okay.  It's saying they can't match up  
7 the documents from the public version versus the  
8 confidential version of the audit reports, correct?

9           A.    Yeah.  It seems like specifically they  
10 were saying here, and I don't know if it was the only  
11 issue, or at least can't recall if it was the only  
12 issue, but the page numbering didn't seem to be  
13 matching up.

14          Q.    Okay.  And then if you look at the top of  
15 page 898 of OMAEG Exhibit 12, it's an e-mail from  
16 Ms. Christopher of the Staff to the auditor, asking  
17 the London Economics to do another proofread and make  
18 sure the public version matches the confidential  
19 version; is that correct?

20          A.    Yes.

21          Q.    And that was 5 minutes after  
22 Mr. Locigno's e-mail from AEP so the -- I am assuming  
23 that she's asking the auditor to do -- to help AEP  
24 match the page numbers of the versions; is that fair?

25          A.    I prefer to use Mahila Christopher's

1 exact words, and she said that she wanted LEI to  
2 proofread and make sure the public version matches  
3 the confidential version of the final report.

4 Q. Okay. And you are copied on this e-mail;  
5 is that correct?

6 A. Yes.

7 Q. And going to the next page, page 899,  
8 this is an e-mail from earlier that morning. It  
9 appears Dr. Fagan is e-mailing a second set of JPEG  
10 files for filing the public report, and you're copied  
11 on that e-mail, correct?

12 A. Yeah. You are talking about the  
13 September 15, 2020, 6:58 p.m. e-mail?

14 Q. I wasn't, but I was talking about the one  
15 on the top. I was going backwards this time in time.

16 A. Okay. So you are talking about the  
17 September 16, 2020, 8:52 a.m. e-mail?

18 Q. Correct.

19 A. Yes. I see it. It said there was a  
20 second set of JPEG files for filing of the public  
21 report sent from Dr. Fagan to AEP, with copies of  
22 Mahila Christopher and myself.

23 Q. Okay. And then there is another e-mail  
24 the night before where Dr. Fagan is sending to you,  
25 Ms. Christopher, and then the AEP representative

1 additional public -- or additional pages --  
2 individual pages for the public file, presumably  
3 answering Ms. Christopher's prior e-mail asking her  
4 to proofread and make sure the page numbers match; is  
5 that fair?

6 A. I believe that would be fair.

7 Q. Okay. So it appears on 9-16 this --  
8 there was another back and forth with different  
9 version and this would likely have the audit report  
10 attached which would be actually dated September 16,  
11 2020, because that's the final version that was  
12 filed; is that correct?

13 A. Sounds correct.

14 Q. Okay. And by my -- through our  
15 discussion, by my calculations, that September 16  
16 version would either be the fifth or sixth depending  
17 if there were multiple versions on September 15; is  
18 that your understanding?

19 A. Yeah. It certainly was being worked on  
20 and as far as this point in time being shared with  
21 Staff, it was somewhere up around that number.

22 Q. Okay. And to be clear, no other parties  
23 besides AEP and Staff reviewed any of the multiple  
24 drafts of the audit report that we just discussed,  
25 right?

1           A.     Correct.

2           Q.     And it would be fair to assume that no  
3 other parties besides AEP and Staff provided redlines  
4 or markup or comments on any of the drafts of the  
5 audit report, correct?

6           A.     Correct.

7           Q.     And can we go back to OMAEG Exhibit 5  
8 quickly?  It's the RFP issued.

9           A.     Okay.

10          Q.     Let's turn to page 9 of that RFP.  Under  
11 the Section D, titled "Draft Report."  Do you see  
12 that?

13          A.     So I am on page 9.

14          Q.     Do you see the Section D, titled "Draft  
15 Report"?

16          A.     Yes.

17          Q.     Okay.  The section 9 of the draft  
18 report -- or, page 9, Section D, titled "Draft  
19 Report," states that "Two copies of a draft of the  
20 final audit report should be sent to the Commission  
21 Staff"; is that correct?

22          A.     Yes.

23          Q.     Nowhere in this section of the RFP does  
24 it say that the auditor should send draft versions of  
25 the audit report to AEP for review, does it?

1 A. No.

2 Q. And also nowhere in this section of the  
3 RFP does it say that AEP should provide redlines or  
4 comments on the draft audit report, does it?

5 A. No.

6 Q. And to your knowledge, all the -- the  
7 five or six versions of the audit report that we've  
8 been discussing today, to your knowledge there are no  
9 other versions of the draft audit report, are there?  
10 Or were there?

11 A. I am not aware of any timestamping  
12 outside of what you've brought up.

13 Q. Okay. And it's your understanding, per  
14 the RFP, that the auditor was to be an independent  
15 auditor; is that correct?

16 A. Yes.

17 Q. And they were supposed to conduct an  
18 independent audit; is that correct?

19 A. Yes.

20 Q. Have you in the past provided substantive  
21 changes or recommendations on findings in an  
22 independent auditor's report?

23 MS. KERN: Can I have the question read  
24 back, please.

25 (Record read.)

1           A.    And I am -- and you're asking have I, Rod  
2 Windle, ever before today did that?

3           Q.    Right.

4           A.    Yes.

5           Q.    Okay.  So you would -- you would -- you  
6 would say in addition to Staff's duties to ensure  
7 that the auditor fulfilled the terms of the contract  
8 and adhered to the scope of the audit, that Staff's  
9 duty also includes making suggestions or  
10 recommendations to modify substantive provisions of  
11 an independent auditor's report?

12          A.    If that's what you are asking me, the  
13 answer is no.

14               MS. BOJKO:  Your Honor, if I may just  
15 have a couple minutes to check my notes and see if  
16 I'm finished?  I wrote a lot of notes in different  
17 places.

18               EXAMINER PARROT:  You may.

19               MS. BOJKO:  Thank you.

20               I'm ready when you are, your Honor.

21               EXAMINER PARROT:  Go ahead.

22               MS. BOJKO:  Your Honor, I have no further  
23 questions for this witness.  Thank you so much,  
24 Mr. Windle, for your time today.

25               EXAMINER PARROT:  All right.  Mr. Nourse.

1 MR. NOURSE: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Nourse:

5 Q. Good afternoon, Mr. Windle. You will be  
6 happy to know I just have a few questions. It  
7 shouldn't take too long.

8 MR. NOURSE: And I will inquire to  
9 Ms. Kern, did you send -- I think Ms. Kern is back on  
10 now. Did you send the exhibit we sent around,  
11 Exhibit 20 -- I'm sorry, 30A to the witness?

12 MS. KERN: I did. Mr. Windle, did you  
13 receive that e-mail? It was quite a while ago from  
14 me.

15 THE WITNESS: Oh, yeah, I saw that  
16 e-mail. I thought it was with regard to the OMAEG  
17 stuff and it was just mislabeled. Okay. Yeah.  
18 Exhibit 30A? Should I open it?

19 MR. NOURSE: Yeah, have that open, but I  
20 will build up to that here in a second.

21 Q. (By Mr. Nourse) So let's start with this.  
22 I believe yesterday in your discussions with  
23 Mr. Finnigan you were discussing OCC Exhibit 27 which  
24 showed some suggestions that AEP Ohio sent to the  
25 auditor. Do you recall that?

1           A.    I recall being shown a document with  
2   redacted things in it.

3           Q.    Right.  And let's just go ahead and open  
4   AEP Ohio Exhibit 30A that your counsel provided.

5           A.    Okay.  And --

6           Q.    Maybe this will refresh.  If you look at  
7   PDF page 13 of 17, this is an e-mail from Ed Locigno,  
8   dated September 15 at 3:43 p.m., to Dr. Fagan.

9           A.    Give me a minute to get there, sir.  The  
10   document I have is labeled page 21 of 1145 as a  
11   starting page.

12          Q.    No.  This is AEP Exhibit 30A.  It's a  
13   17-page PDF.

14          A.    Yeah.  Let me -- yeah, it's got 17 pages.  
15   It's just the top page and the title up at the top of  
16   my screen says AEP Exhibit 30A.  The first page says  
17   page 21 of 1145 at the top where it says Ohio Power  
18   Company Case 18-1759, OCC R -- well, I could read it  
19   all, but --

20          MS. KERN:  Mr. Nourse, that's what mine  
21   says as well.  Is that not correct?

22          MR. NOURSE:  That's correct.

23          MS. KERN:  Okay.  All right.

24          Q.    Okay.  I was trying to save time by  
25   asking you to turn to page 13 of 17 of the PDF.



1           A.    Oh, excuse me. I didn't understand you  
2   were asking about the PDF. I'm turning there now.  
3   Okay.

4                   EXAMINER PARROT: And while he is doing  
5   that, Mr. Nourse, did you wish to mark this for  
6   identification purposes or?

7                   MR. NOURSE: No. Let me explain that,  
8   your Honor.

9                   EXAMINER PARROT: Okay.

10                  MR. NOURSE: This e-mail I am going to  
11   ask him about is the same e-mail that was in OCC  
12   Exhibit 27. That was a public version that was  
13   redacted. This is a confidential version that's not  
14   redacted but without getting into the confidential  
15   version, I want him to look at it and then answer my  
16   questions which don't require any confidential  
17   information --

18                  EXAMINER PARROT: Okay.

19                  MR. NOURSE: -- to be revealed or  
20   discussed on the record.

21                  EXAMINER PARROT: Okay.

22                  MR. FINNIGAN: Your Honor, can I just  
23   explore that? I am just trying to understand if  
24   we're not going to look at any confidential  
25   information and the answer is not going to require

1 any confidential information to be revealed, why  
2 can't we just use the public version?

3 MR. NOURSE: Because you will understand  
4 it later but this is the same thing that's been done  
5 throughout this proceeding, Mr. Finnigan. For  
6 example, with the confidential audit report and the  
7 auditor looked at it but did not reveal and it wasn't  
8 discussed on the record because that's not the  
9 purpose of the question.

10 EXAMINER PARROT: All right. With  
11 that --

12 Q. (By Mr. Nourse) Mr. Windle, do you  
13 understand that explanation?

14 A. Yes. The explanation, as I understand  
15 it, is to not reveal confidential information  
16 directly.

17 Q. That is --

18 MS. BOJKO: Your Honor, may I ask for one  
19 minute to find it? My understanding there was an  
20 e-mail sent by Mr. Schuler yesterday. Can you just  
21 give me one minute to find the attachment? I'm not  
22 locating the attachment.

23 MR. NOURSE: All right. Can we go off  
24 the record, your Honor?

25 EXAMINER PARROT: Yes.

1 (Discussion off the record.)

2 EXAMINER PARROT: All right. Back on the  
3 record.

4 Q. (By Mr. Nourse) All right. Now, with  
5 that, Mr. Windle, do you have page 13 of 17 in the  
6 PDF? And it's an e-mail from Ed Locigno to  
7 Dr. Fagan, September 15, 3:43 p.m. Do you see that?

8 A. Yes.

9 Q. And do you have OCC Exhibit 27 handy to  
10 open?

11 A. Okay.

12 Q. All right. And if you could turn to  
13 page 13 of 17 in that PDF and confirm based on the  
14 timestamp we just discussed we are looking at the  
15 same e-mail, only a redacted version.

16 A. OCC Exhibit 27. And you said it was 13  
17 of 17?

18 Q. Correct.

19 A. And the timestamp is the same.

20 Q. Okay. And examine the contents that you  
21 can see in both e-mails to see if it looks like the  
22 same e-mail to you.

23 A. Yes. It appears to be the same e-mail.

24 Q. And yesterday when you were  
25 cross-examined by Mr. Finnigan, you had discussed

1 this exhibit and this e-mail specifically. Do you  
2 recall that?

3 A. Yes.

4 Q. And that there are three items in this  
5 e-mail that AEP was sending to the auditor, three  
6 comments; is that your understanding?

7 A. Could you -- I'm sorry. There are three  
8 items in this e-mail that AEP was commenting on to  
9 Dr. Fagan. Was the question different than that?

10 Q. That was the question so you confirmed.  
11 And item 1, with Mr. Finnigan you characterized that  
12 as a typo and then -- do you recall that?

13 A. Yes.

14 Q. And then items 2 and 3, you stated you  
15 couldn't definitively answer whether those were  
16 substantive comments or typos, so I want to use the  
17 unredacted version without disclosing the  
18 confidential material so that you can review those to  
19 confirm that they were proposed redactions, and they  
20 were not edits. Can you do that for me?

21 MS. BOJKO: Objection. Your Honor, this  
22 appears to be friendly cross and rehabilitation of a  
23 witness. We had at length discussions and debates  
24 about surprise exhibits and then about -- I guess  
25 this is a new exhibit. It hasn't been introduced.

1 And about the timing of that and whether we could do  
2 it to rehabilitate a witness. And Mr. Nourse  
3 actually strenuously argued against surprise exhibits  
4 for the purpose of rehabilitating a witness. And I  
5 think he was successful on a couple of those  
6 arguments. So I'm going to raise the same objection  
7 here. It appears to be friendly cross, and he's  
8 attempting to rehabilitate the witness and clarify  
9 the record which should be done by Staff's counsel,  
10 not AEP's counsel on redirect.

11 MR. NOURSE: Certainly happy to respond  
12 to that, your Honor. This is not friendly cross.  
13 The witness made an adverse statement in saying he  
14 could not determine whether this was a substantive  
15 comment by AEP. This seems to be a distinction that  
16 Ms. Bojko and others are viewing as an important  
17 distinction in this case, so certainly not friendly.  
18 And we sent this out yesterday a few moments after it  
19 came up in the hearing and after the witness stated  
20 this. So that was the earliest we could have done it  
21 and we explained in the e-mail that's what happened  
22 and that's why we were sending it, so we followed the  
23 procedure. This is not friendly cross.

24 MS. BOJKO: Your Honor, I think his  
25 statement was not adverse. It was he couldn't read a

1 redacted copy. There is no adversary statement that  
2 he's now trying to cross on or oppose. It is a  
3 misrepresentation of what he said. He said he  
4 couldn't read it because it was redacted.

5 MR. NOURSE: Again, your Honor, I did  
6 review the transcript and he did say that he couldn't  
7 determine whether it was a substantive change because  
8 of the redactions. And it is an adverse statement.  
9 And furthermore, it helps clear up the record. So  
10 it's clearly not friendly cross.

11 MS. BOJKO: Your Honor, if the document  
12 is not going to be allowed in the record, it's not  
13 going to clear up the record because nobody is going  
14 to be able to make the determination themselves of  
15 whether this is a substantive change or not because  
16 they are not going to be able to see it.

17 MR. NOURSE: Your Honor, I am happy to  
18 include the exhibit in the record. I don't think  
19 it's necessary. The context of this e-mail I think  
20 already, even the redacted one, already makes it  
21 clear these are redactions, but because of what the  
22 witness said on the stand yesterday, I am entitled to  
23 explore this just like everybody else is entitled to  
24 explore statements made in his testimony.

25 EXAMINER PARROT: And I am going to let

1 you do that, Mr. Nourse, but I think -- I'm backing  
2 off. I asked initially if you were going to identify  
3 it, and you said that wasn't your intention, but I  
4 think we need to do that at this point so let's  
5 formally mark it for identification purposes and go  
6 from there.

7 MR. NOURSE: Sure. So, your Honor, I  
8 would like to mark what's been circulated in advance  
9 and marked as AEP Exhibit 30A for the record and  
10 represent that it's an unredacted confidential  
11 version of OCC Exhibit 27 which was used in the  
12 hearing yesterday with this same witness.

13 EXAMINER PARROT: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. BOJKO: We lost Mr. Nourse.

16 MR. NOURSE: Everybody went dead. You  
17 can't hear me?

18 EXAMINER PARROT: We can hear you, but we  
19 can't see you.

20 MR. NOURSE: Our screen went dead for  
21 video. Can we go off the record?

22 EXAMINER PARROT: Yes. Let's go off the  
23 record.

24 (Discussion off the record.)

25 EXAMINER PARROT: Let's go back on the

1 record.

2 Q. (By Mr. Nourse) Okay. Mr. Windle, you  
3 have those documents in front of you. Can you -- do  
4 you need the question reread?

5 MS. KERN: I actually do. If we could  
6 have it reread, that would be helpful. Thank you.

7 Q. (By Mr. Nourse) All right. Let me go  
8 forward from there. So you have the unredacted  
9 version of this e-mail thread in AEP Exhibit 30A.  
10 And so I want to follow up on your statement  
11 yesterday based on Mr. Finnigan's questions where you  
12 stated that items 2 and 3 in this e-mail from  
13 September 15 at 3:43 p.m., that you couldn't  
14 determine whether these were substantive suggestions  
15 or merely redactions. So my question is whether  
16 you -- looking at Exhibit 30A, can you confirm  
17 whether these were redactions or substantive edits  
18 proposed by AEP?

19 A. So in the document sitting before me and  
20 marked AEP Exhibit 30A, the redactions do not seem to  
21 have any redline strikeout. They just appear to be  
22 suggested redactions that AEP was making to  
23 Dr. Fagan.

24 Q. Okay. Thank you. That took a little  
25 longer than I thought it would take.



1           Okay. So based on your testimony, based  
2 on all the exhibits that have been used so far and  
3 all the e-mails you have reviewed or been party to,  
4 in this case have you any direct knowledge of a  
5 substantive change that AEP Ohio recommended to the  
6 auditor for the draft audit reports?

7           MS. BOJKO: Objection. Calls for  
8 speculation. He's already testified today that he  
9 doesn't -- doesn't recall the redline and what  
10 specific changes were in that redline that AEP sent  
11 and whether it was even a redline or just comments.  
12 He doesn't recall so that would be speculating about  
13 whether those were substantive changes or not. He  
14 already answered he didn't remember.

15           MR. NOURSE: Your Honor, my question was  
16 different. I asked him based on the evidence, based  
17 on his testimony, based on the exhibits used in this  
18 case, and his direct knowledge, whether he can point  
19 to any substantive change recommended by AEP Ohio.

20           EXAMINER PARROT: Go ahead and answer,  
21 Mr. Windle.

22           A. I am not aware of any substantive change  
23 that AEP Ohio may have recommended to our auditor at  
24 LEI.

25           Q. Okay. Thank you.

1           And there's been a lot of talk about the  
2 draft audits that have occurred and were exchanged  
3 with the Company. Can you tell me in your experience  
4 whether that process of sharing nearly-final drafts  
5 with the company being audited is unusual or out of  
6 the ordinary for Commission audit proceedings?

7           A. My understanding is that --

8           MR. FINNIGAN: Your Honor, I apologize.  
9 I wanted to object. I was on mute. I believe the  
10 evidence established that this is the only audit that  
11 Mr. Windle has participated in. There's no  
12 foundation to establish that he is familiar with  
13 other Commission audits, so for that reason, we  
14 object.

15           MR. NOURSE: Your Honor, I asked him  
16 based on his experience and his knowledge, so I think  
17 he can answer that.

18           MR. FINNIGAN: Yeah. My point is he has  
19 no experience and knowledge in this area.

20           EXAMINER PARROT: Overruled. Overruled.  
21 Go ahead, Mr. Windle.

22           A. Of the four audits with OVEC that I have  
23 participated in and just listening to other  
24 Commission Staff talk, it appears to me that we  
25 typically make sure that final versions of public

1 documents that are going out don't have any  
2 confidential information in them that could be  
3 released to the public and the Commission is supposed  
4 to protect.

5 Q. Thank you.

6 And the audits you are directly involved  
7 in, that involved multiple auditors, correct?

8 A. Yes. We've had two auditors in those  
9 four audits.

10 Q. Okay. And there was no difference in  
11 that process for any of the audits you've been  
12 involved in or are aware of, correct?

13 A. Yes. That portion of the process has  
14 been the same.

15 Q. Okay. Thank you.

16 Changing topics. There were questions  
17 earlier today from NRDC counsel about bidding  
18 behavior and the audit review of bidding behavior.  
19 Do you recall that?

20 A. Yes.

21 Q. And do you -- do you know whether AEP  
22 Ohio controls any bids with respect to the output of  
23 OVEC units?

24 A. In the energy market, sir?

25 Q. My question is broader than that. Any --

1 any bids with respect to the output of OVEC.

2 A. So I believe based on my experience, and  
3 I was not an auditor in this case, I simply oversaw  
4 them, but based on energy market knowledge, I  
5 suppose, I believe that some of the companies that  
6 have a stake in OVEC bid into the capacity construct  
7 RPM.

8 Q. Correct. And the capacity costs and  
9 revenues associated with those OVEC outputs flowed  
10 through the PPA Rider during the audit period in this  
11 case, correct?

12 A. I believe so.

13 Q. And, sir, I have one more question, this  
14 could be the most important question I am going to  
15 ask you, but do you think the Cincinnati Bengals are  
16 going to beat -- are going to win the Super Bowl on  
17 Sunday?

18 MS. BOJKO: Objection, calls for  
19 speculation.

20 MR. NOURSE: I'll withdraw. I was hoping  
21 for a Who Dey.

22 MS. KERN: Who Dey. I have to get one in  
23 the record. Sorry.

24 MR. NOURSE: Thank you. Thank you.  
25 Sorry, your Honor. I apologize. Insert a little

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1 levity there.

2 I have no further questions.

3 EXAMINER PARROT: All right. Thank you.

4 All right. I think at this point let's  
5 take our lunch break. We'll come back around 1:50 or  
6 so, I hope. So give you a little longer today.  
7 Let's go off the record.

8 (Thereupon, at 1:09 p.m., a lunch recess  
9 was taken.)

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1 Wednesday Afternoon Session,  
2 February 9, 2022.

3 - - -

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

6 Any redirect, Ms. Kern?

7 MS. KERN: Yes, your Honor, just a few  
8 questions.

9 - - -

10 RODNEY WINDLE  
11 being previously duly sworn, as prescribed by law,  
12 was examined and testified further as follows:

13 - - -

14 REDIRECT EXAMINATION

15 By Ms. Kern:

16 Q. Hello, Mr. Windle. Do you recall a line  
17 of questioning yesterday by Mr. Finnigan regarding  
18 certain Staff and Commission personnel and their  
19 involvement with the draft audit report?

20 A. Yes.

21 Q. Did you -- did Lori Sternisha provide you  
22 with any feedback as to edits to the draft audit  
23 report prepared by LEI?

24 A. No. She had no edits that she  
25 recommended outside of what I was suggesting.

1 Q. Did Tammy Turkenton provide you with any  
2 feedback as to edits to make to the draft audit  
3 report prepared by LEI?

4 MS. BOJKO: Objection, your Honor.  
5 Counsel is leading the witness with names and  
6 specifics about what he does or didn't do.

7 MS. KERN: He was asked these specific  
8 questions about these individuals' involvement, and I  
9 am asking him his -- if these -- if these individuals  
10 provided any feedback to clarify that point.

11 EXAMINER PARROT: Overruled.

12 A. No. Ms. Turkenton did not make any  
13 recommendations for any edits to be made to the -- to  
14 either the draft or the final audit report.

15 Q. Thank you.

16 Did Ms. Kathy Fleck provide you with any  
17 edits to make to the draft audit report prepared by  
18 LEI?

19 MS. BOJKO: Objection, your Honor. I am  
20 just going to make a continuing objection. It's  
21 still -- I don't care your purpose. You still can't  
22 lead the witness and ask him yes and no questions, so  
23 I'm going to object to form.

24 EXAMINER PARROT: Noted.

25 MR. NOURSE: Your Honor, I disagree. I

1 think leading questions are appropriate on redirect  
2 and perfectly admissible.

3 EXAMINER PARROT: Ms. Bojko, your  
4 objection is noted.

5 Go ahead, Mr. Windle.

6 A. No. Kathy Fleck did not make any  
7 recommendations for any edits to be made to the draft  
8 or the final audit reports.

9 Q. Have you had any conversations with  
10 Ms. Fleck regarding the audit for this proceeding?

11 A. I have had no communication whatsoever  
12 with Ms. Fleck regarding the OVEC audits.

13 Q. Did the former Chair, Sam Randazzo,  
14 provide you with any feedback to put into the draft  
15 audit report prepared by LEI?

16 A. No. I had no conversations with the  
17 former Chair regarding the OVEC audits at all,  
18 including any edits.

19 MS. KERN: No further questions, your  
20 Honor.

21 EXAMINER PARROT: Any recross,  
22 Mr. Finnigan?

23 MR. FINNIGAN: No, your Honor.

24 EXAMINER PARROT: Ms. Henry?

25 MS. HENRY: No, your Honor.



1 EXAMINER PARROT: Mr. Dove?

2 MR. DOVE: No, your Honor. Thank you.

3 EXAMINER PARROT: Ms. Whitfield?

4 MS. WHITFIELD: No, your Honor.

5 EXAMINER PARROT: Ms. Cohn?

6 MS. COHN: No, your Honor.

7 EXAMINER PARROT: Mr. McKenney?

8 MR. MCKENNEY: No, your Honor.

9 EXAMINER PARROT: Ms. Bojko?

10 MS. BOJKO: Thank you, your Honor.

11 EXAMINER PARROT: Was that a "No, thank  
12 you"?

13 MS. BOJKO: It was a "No, thank you."

14 EXAMINER PARROT: Okay. And Mr. Nourse?

15 MR. NOURSE: No, thank you, your Honor.

16 EXAMINER PARROT: All right. Any  
17 questions from Examiner See?

18 EXAMINER SEE: I don't have any questions  
19 for Mr. Windle. Thank you.

20 EXAMINER PARROT: All right. Very good.

21 Let's turn to the exhibits for this  
22 witness. I believe some of them, specifically OCC  
23 Exhibits 29, 30, 31, 32, and 28 have already been  
24 proffered by OCC. So let's deal with the rest.

25 MR. FINNIGAN: I'm sorry. Could you give

1 me those again, your Honor?

2 EXAMINER PARROT: 29, 30, 31, 32, and 28.

3 MR. FINNIGAN: Thank you.

4 EXAMINER PARROT: All right. So that  
5 leaves OCC Exhibits 27, 16, 34, and 35. Are you  
6 moving for their admission, Mr. Finnigan?

7 MR. FINNIGAN: Yes, your Honor.

8 EXAMINER PARROT: All right. Are there  
9 any objections?

10 MR. NOURSE: No, your Honor. With  
11 respect to the application for rehearing, I think  
12 that was 16.

13 EXAMINER PARROT: It was.

14 MR. NOURSE: I believe the practice has  
15 been to take administrative notice as opposed to  
16 admitting them.

17 MR. FINNIGAN: That's fine, your Honor.  
18 We will withdraw that one.

19 EXAMINER PARROT: Okay. So you are  
20 asking though, Mr. Finnigan, that we take  
21 administrative notice of OCC Exhibit 16?

22 MR. FINNIGAN: Yes, your Honor. That  
23 would be fine.

24 EXAMINER PARROT: All right.

25 MR. NOURSE: Thank you.

1 EXAMINER PARROT: Okay. So with respect  
2 to OCC Exhibit 16, administrative notice will be  
3 taken.

4 Any objections to any of the others?

5 All right. Hearing none, OCC Exhibit 27,  
6 34, and 35 are admitted into the record.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER PARROT: Ms. Bojko.

9 MS. BOJKO: Yes, your Honor. Just to  
10 confirm, NRDC 2 has already been admitted; is that  
11 correct?

12 MR. FINNIGAN: I wanted to ask about  
13 that, your Honor.

14 EXAMINER PARROT: Yes.

15 MR. FINNIGAN: I was going through the  
16 transcript, and I did not see where that had been  
17 admitted. I know that we've had that labeled and  
18 marked as a couple of different versions. That's one  
19 version that a lot of witnesses were asked about so I  
20 do think it would be helpful to get it into the  
21 record under that number.

22 EXAMINER PARROT: My records indicate  
23 that NRDC Exhibit 2 has already been admitted into  
24 the record.

25 MR. FINNIGAN: Thank you.

1 MS. BOJKO: And then, your Honor, you  
2 stated previously OMAEG Exhibit 5 is a Commission  
3 order so -- in this case so there's no need to move  
4 admission of that one. So that leaves us with OMAEG  
5 9 and 12, I believe. And at this time I will move  
6 admission of OMAEG 9 and 12.

7 MR. NOURSE: And, your Honor, I will note  
8 my continuing objection to OMAEG 12 with respect to I  
9 believe it's two front pages of draft audit reports  
10 for the reasons previously stated.

11 EXAMINER PARROT: Any other objections?

12 MR. FINNIGAN: Your Honor, we support the  
13 admission of this document along with OCC Exhibit 17.  
14 I know your Honor has already ruled on that but there  
15 has been additional testimony from Mr. Windle over  
16 the last couple of days about the communications  
17 around that. It is also referenced in e-mail  
18 communications. I think it would make the record a  
19 lot clearer and there was testimony that  
20 authenticated that document. It does go to the issue  
21 of whether certain people made or contributed to the  
22 findings of the audit report which is one of the  
23 relevant issues in this case.

24 MR. NOURSE: Well, your Honor, I, of  
25 course, object to that. This witness, Mr. Windle,

1 did not reference OCC Exhibit 7 -- 17, excuse me, nor  
2 did any of the attorneys cross-examining the witness.  
3 You already made the ruling on it so there's -- it is  
4 not appropriate to revisit that for any reason at  
5 this time.

6 EXAMINER PARROT: And OCC Exhibit 17,  
7 you're right, has been previously addressed. OCC's  
8 request for admission of that document was denied.  
9 We are going to stand by that ruling as that exhibit  
10 consists of both a cover page and content for a draft  
11 audit report, so we are standing by our ruling there.

12 But with respect to OMAEG Exhibit 12,  
13 being that we have just the cover pages of the draft  
14 audit report, that one we will admit into the record,  
15 along with OMAEG Exhibit No. 9.

16 MS. BOJKO: Thank you, your Honor.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 EXAMINER PARROT: And, finally,  
19 Mr. Nourse.

20 MR. NOURSE: I'm good.

21 EXAMINER PARROT: Okay. Very good.

22 All right. Thank you, Mr. Windle.

23 MS. KERN: Your Honor, I'm not sure if I  
24 moved for the admission of Staff Exhibit 3.

25 EXAMINER PARROT: Okay. Any objections

1 to that one? Very good. Thank you for noting that.  
2 I should have started there, Ms. Kern.

3 Any objections?

4 All right. Hearing none, Staff Exhibit 3  
5 is also admitted into the record.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER PARROT: Thank you very much,  
8 Mr. Windle, for your time. You are excused.

9 And I believe that brings us to the end  
10 of our witness list. Are we ready to proceed to  
11 discuss a briefing schedule?

12 MR. FINNIGAN: Your Honor, another  
13 thing --

14 MR. NOURSE: AEP -- I'm sorry,  
15 Mr. Finnigan.

16 EXAMINER PARROT: One at a time. Go  
17 ahead, Mr. Nourse.

18 MR. NOURSE: AEP Ohio does not plan to  
19 request permission to file rebuttal testimony at this  
20 time.

21 EXAMINER PARROT: Okay. Thank you for  
22 that.

23 Mr. Finnigan.

24 MR. FINNIGAN: Your Honor, earlier in the  
25 hearing there was an issue about Ms. Mahila

1 Christopher being called as a witness. We had  
2 subpoenaed her. The Commission deferred ruling on  
3 that until the hearing, to determine whether  
4 Mr. Windle's testimony would cover the same areas as  
5 Ms. Christopher's would likely cover. We submit that  
6 in large part he has but there are some open areas  
7 where he was unable to do so.

8           One area had to do with just the topic of  
9 other communications that she might have had with  
10 other people at the Staff, with the auditor, with the  
11 Company. He would have no way of knowing whether  
12 those communications took place. He did say that he  
13 had some element of trust based on his experience of  
14 working with her, that his trust told him that it was  
15 likely that such communications didn't take place.  
16 That's not a substitute for bringing her in and  
17 finding out from her whether there were any such  
18 communications.

19           In addition, there was something that  
20 came up today during Ms. Bojko's questioning of  
21 Mr. Windle about an additional draft of the audit  
22 report that came out about three weeks before  
23 September 1 that Mr. Windle didn't know about. So  
24 that does establish that Ms. Christopher did have  
25 other dealings with these other parties to the case

1     that Mr. -- Mr. Windle was not aware.

2                 So for that reason we renew our motion to  
3 subpoena Ms. Christopher to appear and give evidence  
4 at the hearing and to bring her file.

5                 MR. NOURSE: Your Honor, the Company  
6 objects. OCC should have filed an interlocutory  
7 appeal if they disagreed with your prior ruling.

8                 With respect to the -- with the record in  
9 this case, the -- you know, the record shows that AEP  
10 disclosed over a thousand pages of correspondence and  
11 related documents in connection with OCC's discovery  
12 requests, and parties got that months ago.

13                 The record also shows there was public  
14 records requests made and received regarding these  
15 matters and communications.

16                 There have been numerous days of  
17 cross-examination of both the auditor and the Staff  
18 witness about communications including, you know,  
19 non-substantive communications and questions about  
20 any other communications, and there's simply no basis  
21 to extend this hearing to try to determine whether  
22 there is any more -- anything else out there.

23                 And Mr. Windle did testify in his  
24 practice, his years of supervising Ms. Christopher,  
25 that she always copies him on anything significant



1 and, you know, so there is just no reason to think  
2 there is any more information that's relevant or  
3 probative out there, and at this point certainly  
4 subpoenaing a Staff witness, you know, I will leave  
5 that to the AG to talk about but, you know, that just  
6 doesn't happen. It's not permitted under Commission  
7 rules.

8 MR. DONADIO: Your Honor, I just want to  
9 bring to your attention Ms. Bojko appears to be  
10 having technical difficulties. Just before we  
11 proceeded with this conversation, I wanted the Bench  
12 to be aware she is not part of this discussion right  
13 now. Thank you.

14 MS. KERN: Your Honor, I would like to  
15 say something obviously but can wait for Ms. Bojko,  
16 if that's your preference.

17 EXAMINER PARROT: Mr. Donadio, are you  
18 requesting we wait for Ms. Bojko?

19 MR. DONADIO: Yes, your Honor.

20 EXAMINER PARROT: Give it a minute.

21 MS. BOJKO: Your Honor, I'm sorry. My  
22 computer went completely dead. I have no idea what  
23 happened, so I'm just taking over Mr. Donadio's  
24 office.

25 EXAMINER PARROT: Okay. Very good.

1 All right. Ms. Kern, I think you wanted  
2 to weigh in so go ahead.

3 MS. KERN: Yes. We agree with  
4 Mr. Finnigan that Mr. Windle was able to answer the  
5 questions that were posed to him. Mr. Windle was in  
6 the best position to answer these questions. He was  
7 Ms. Christopher's supervisor. He was also  
8 intricately involved in the oversight of the audit.  
9 That came out in his testimony.

10 There is no need to talk to  
11 Ms. Christopher. There were no gaps left by  
12 Mr. Windle's testimony. And there were -- there was  
13 no -- there were no records that it was established  
14 weren't turned over as a result of the public records  
15 request which requests -- requested all the  
16 communications between Ms. Christopher and Dr. Fagan.  
17 Those were produced to OCC.

18 So there's no reason to go down this  
19 path. Mr. Windle provided ample testimony, mere two  
20 days of testimony, and he was able to answer those  
21 questions, again intricately involved. As the  
22 supervisor, he was involved in the decisions that  
23 were made with respect to Staff's oversight of the  
24 audit.

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

1 EXAMINER PARROT: Yes.

2 MS. BOJKO: I apologize. I did not hear  
3 all of Mr. Nourse's comments but what I did hear was  
4 that it was an untimely interlocutory appeal, and I  
5 have to disagree with that. Specifically on page 4  
6 of the entry that was issued January 6, 2022, it  
7 says, "Consistent with past practice in other  
8 Commission proceedings, and in the interest of  
9 furthering administrative efficiency and conserving  
10 limited Staff resources, OCC and the other parties to  
11 theses proceedings should direct their questions on  
12 cross to Staff's designated witness, Mr. Windle."  
13 However, "To the extent that Mr. Windle is unable or  
14 without sufficient knowledge to respond to questions  
15 from the parties seeking information that is relevant  
16 to these proceedings, the attorney examiner may  
17 direct Staff, at that time, to produce another  
18 witness to testify at the hearing."

19 So I didn't believe there was any need to  
20 take an interlocutory appeal of this entry because I  
21 did participate in the PALMco Power cited proceedings  
22 that's cited on page 4 of the entry. And in that  
23 situation, we brought a Staff-designated witness to  
24 the stand. They testified. They weren't able to  
25 answer other questions. And then after that, the

1 Attorney Examiner ordered the next Staff witness to  
2 be called to the stand, and they couldn't answer the  
3 questions. And we went through three or four  
4 witnesses of Staff that wasn't the initial Staff  
5 designee and we went through those witnesses and  
6 that's the reference here on page 4 of the entry.

7 So I don't think an interlocutory appeal  
8 would have been appropriate. If Mr. Windle would  
9 have been able to answer all of the questions, then  
10 we wouldn't need to call Ms. Christopher, but I have  
11 to agree with Mr. Finnigan, I didn't know until today  
12 that there was another draft. I mean, we learned a  
13 couple weeks ago that there were multiple drafts that  
14 we didn't know about before. Now we learned there is  
15 an August draft.

16 We also learned that there might have  
17 been multiple drafts on August 15, and Mr. Windle  
18 couldn't answer the questions about those that I  
19 asked him about, so I think it is very appropriate to  
20 bring her back. He also can't speak to other  
21 conversations that she had with AEP or with the  
22 auditor or with the other Commissioners or with the  
23 other Staff members.

24 So I think it's appropriate at this time  
25 to request that Ms. Christopher be brought to the

1 stand, and the AEs can rule on that per their entry  
2 that was dated January 6, 2022. Thank you.

3 MR. NOURSE: Your Honor, if I could  
4 respond.

5 EXAMINER PARROT: Go ahead.

6 MR. NOURSE: First of all, what I was  
7 reacting to is Mr. Finnigan's statement about e-mails  
8 and communications that, you know, there is no reason  
9 to believe exist, and I went through the litany of  
10 the record that suggests that there are no  
11 communications that exist. So your -- your prior  
12 ruling did rule on the document request portion of  
13 the subpoena. And so challenging that would have  
14 been through an interlocutory appeal.

15 With respect to, you know, the statements  
16 about the PALMco case, I mean, obviously the facts  
17 there are not the facts here. And, you know, as  
18 Ms. Kern noted, as I suggested, Mr. Windle was able  
19 to answer all the questions. He stated he was  
20 responsible for the oversight of the audit and all  
21 fell to him. And he was involved and aware of and  
22 able to answer questions about everything.

23 Regarding the August draft, that was  
24 merely a draft between the auditor and the Staff, and  
25 certainly I don't think that has any bearing on the

1 issues in this case or is, you know, not appropriate  
2 to explore, you know, communications and drafts that  
3 may have been exchanged between the Staff and the  
4 auditor, you know, preliminarily to the final draft  
5 or with the draft that was exchanged with the  
6 Company.

7 So it's not related to the issues that  
8 have been raised here, and it wasn't a draft that was  
9 shared with the Company. Again, we disclosed those  
10 materials and over a thousand pages of e-mails  
11 relating -- and documents, I shouldn't say they are  
12 all e-mails, in that -- in that exhibit that's been  
13 made from our discovery disclosure and discussed  
14 throughout this case.

15 So again, there are no -- there are no  
16 unanswered questions. I think that we've exhausted  
17 every avenue of -- of any relevance and probative  
18 value in this case with what's already happened in --  
19 to date. Thank you.

20 MS. KERN: Your Honor, if Staff may be  
21 heard one more -- once more?

22 This isn't a fishing expedition here and  
23 it's completely inappropriate to turn this proceeding  
24 into some revolving door to access Staff and ask more  
25 questions when Mr. Windle was able to answer those

1 questions.

2           With respect to the draft, I believe he  
3 said Staff did not comment, and it was, I think the  
4 word he used, complimentary, so he was familiar.  
5 There's really just nothing else to explore here.  
6 Mr. Windle was able to answer all the questions posed  
7 to him, and we strongly oppose this turning into some  
8 sort of fishing expedition where every Staff member  
9 can just be subpoenaed to ask who they talked to. We  
10 presented a witness who had intricate knowledge, and  
11 he was able to answer the questions.

12           EXAMINER PARROT: All right. Thank you  
13 all.

14           With that, let's take a short 5-minute  
15 break.

16           (Recess taken.)

17           EXAMINER PARROT: All right. Let's go  
18 back on the record.

19           Thank you for your patience, everyone. I  
20 just wanted to take a moment to confer with my  
21 Co-Examiner.

22           Upon consideration of your arguments as  
23 well as our own reflection on the testimony that was  
24 offered by Mr. Windle, we believe the parties have  
25 been afforded a fair and full opportunity to question

1 Staff's designated witness, Mr. Windle, that he has  
2 responded fully to questions seeking relevant  
3 information in these cases.

4 As Mr. Nourse noted, the Company has also  
5 provided ample discovery responses. It's also my  
6 understanding that Staff has disclosed information  
7 through public records requests. We've had seven  
8 days of hearing now. Parties have had an opportunity  
9 to question both the auditor, Dr. Fagan, and  
10 Mr. Windle. And we feel that at this time the motion  
11 for a subpoena, and I should be clear, the portion  
12 that was reserved for a future ruling in the  
13 January 6 entry, that that remaining portion of the  
14 motion should be denied at this time.

15 With that, I believe we should go back  
16 off the record so that we can discuss a briefing  
17 schedule.

18 MR. FINNIGAN: Your Honor, may I proffer  
19 evidence for the record?

20 EXAMINER PARROT: Go ahead, Mr. Finnigan.

21 MR. FINNIGAN: Your Honor, if  
22 Ms. Christopher were permitted to testify, I believe  
23 that she would be able to testify as to who it was at  
24 the Commission or the Commission Staff that -- that  
25 originated the comment that the tone of the audit



1 report had to be dialed down a little bit.

2 She would also be able to testify who  
3 originated the idea of asking the auditor or  
4 directing the auditor to change her opinion that  
5 running the plants was not in the best interest of  
6 retail ratepayers.

7 And also she would be able to testify as  
8 to who it was, whether this was at the Commission,  
9 the Staff, or AEP, who asked that the change be made  
10 to the second draft of the audit report that was sent  
11 out on September 9, 2020, saying that the OVEC  
12 contracts are not in the best interest of the retail  
13 ratepayers.

14 She would also be able to testify who  
15 was -- she was referring to in PUCO admin because  
16 she's the one who drafted that e-mail. And the fact  
17 that approval had to be obtained from PUCO admin  
18 before the report could be released, she would also  
19 be able to testify to the fact that it was extremely  
20 unusual for her to be assigned to do an audit in the  
21 first place. And the fact that it was placed in the  
22 Federal Energy Advisor's office was extremely  
23 unusual; and, you know, people can draw their own  
24 conclusions from that.

25 So, finally, the other thing that she

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1 would be able to testify to was this additional draft  
2 that Mr. Windle brought up earlier today that he had  
3 no knowledge of, but she apparently was the only  
4 person at Staff involved in the receipt of that and  
5 so for that reason would be the only one who could  
6 shed any light on what the contents of that were,  
7 whether there were any discussion about changing any  
8 conclusions in that draft.

9 And also she would testify that she and  
10 Mr. Windle at their levels of employment at Staff  
11 have no authority to ask an auditor to change the  
12 auditor's ultimate conclusion in a Staff -- in an  
13 audit report. They would have needed authority from  
14 someone at a higher level responsibility to do that.

15 And if permitted to testify,  
16 Ms. Christopher would identify who that was at that  
17 higher level of authority since neither she nor  
18 Mr. Windle had that authority to do so and that would  
19 shed more light on who it really was that made or  
20 contributed to the audit report by asking the auditor  
21 to change her ultimate conclusion that the OVEC --  
22 that running the OVEC plants during 2018 and 2019  
23 because they were at such a higher cost to the market  
24 and because they were imprudently using a must-run  
25 bidding strategy at all times was not in the best

1 interest of retail ratepayers.

2 MR. NOURSE: Your Honor, I object. I  
3 don't think that was a proper proffer. And I am not  
4 going to go into great detail, but I think  
5 Mr. Finnigan's statements fall into two categories,  
6 either they were completely speculative and lack any  
7 basis in the record, or they conflict with what's  
8 actually in the record. Mr. Windle owned the Staff's  
9 feedback to the auditor. The auditor said they made  
10 their own independent decisions and decided what was  
11 in the final report.

12 And so, there again, there is no need for  
13 additional witness, and certainly Mr. Finnigan's  
14 statements were speculative.

15 MS. KERN: Your Honor, Staff would note  
16 its continuing objection to Mr. Finnigan's testimony  
17 and misrepresenting the facts that are in evidence.  
18 And while it's neither here nor there, I believe  
19 Ms. Christopher wouldn't have testified to a single  
20 word of that.

21 And while we are on the topic of  
22 proffers, I wanted to get clarification based on your  
23 clarification yesterday that the proffers are not  
24 part of the record. I understood that. I wanted to  
25 seek clarification as to how the record -- not the

1 record, the transcript will reflect that those  
2 proffers, and I would assume the objections and maybe  
3 the Bench's commentary on those, will be reflected in  
4 the transcript. Will those be removed similarly to  
5 motions to strike that have been granted as they are  
6 not part of the record or will there be some sort of  
7 notation? Because we are concerned, you know, if  
8 those portions are not part of the record, that they  
9 shouldn't be in the transcript or they should at  
10 least be noted in a different way for counsel and for  
11 the public, I guess, that would look at the  
12 transcript in the future to know that that's not part  
13 of the record.

14 EXAMINER PARROT: I think Ms. See can  
15 chime in if she wants to disagree with me, but I  
16 think our past practice is -- well, here, first, let  
17 me start here, the proffer and the objections to it,  
18 I believe, remain in the transcript. The reviewing  
19 body, again, whether that's the Commission or  
20 ultimately a court with jurisdiction over this  
21 matter, you know, needs to have the benefit of that,  
22 so it stays in the transcript. I don't believe that  
23 we do anything special to designate it, to sort of  
24 flag it, I guess, if that's what you are asking,  
25 Ms. Kern, other than as Mr. Finnigan did clearly do

1 with respect to his proffers, he did indicate with  
2 respect to each one that he was proffering it into  
3 the record. I think that magic word "proffer" is  
4 what signals that that is not information that's  
5 been -- and again, when you read the full transcript  
6 in context -- excuse me, context, you see the ruling  
7 that was issued and then after that the proffer is  
8 given. So I think when you read it all in totality,  
9 it should be clear that this is not part officially  
10 of the record.

11 If we get into a situation where  
12 information is -- is mentioned, cited, addressed in  
13 briefs, I think you know what to do with that. I  
14 think, you know, properly from there you can file  
15 motions to strike, of course, any non-record  
16 information.

17 Anything to add, Greta? Do you wish --  
18 do you disagree with any of that?

19 EXAMINER SEE: No, I don't. I think that  
20 about covers it.

21 MS. KERN: Appreciate the clarification.  
22 Thank you very much.

23 EXAMINER PARROT: All right. So the  
24 objections to this last proffer are noted on the  
25 record.

1           MR. FINNIGAN: Your Honor, one other  
2 matter. We would also like to move for a subpoena  
3 for Lori Sternisha to testify at this time. This  
4 came up during the testimony at the hearing that  
5 Ms. Sternisha is the supervisor of Mr. Windle. For  
6 all the reasons I stated as to why Ms. Christopher's  
7 testimony would be relevant to the proceeding, I  
8 think Ms. Sternisha's would be even more relevant.  
9 She could testify to the same matters that I  
10 described earlier plus she would be able to identify  
11 the extent to which she had communications with  
12 others at the Staff or at the Commission level about  
13 making these edits to the audit report.

14           MS. KERN: Your Honor, if Staff may  
15 respond? I really don't think it's for the benefit  
16 of anyone here for me to go through the arguments  
17 that I just made with respect to Ms. Christopher as  
18 they would be redundant with respect to  
19 Ms. Sternisha. I think this establishes OCC's intent  
20 to turn this into a fishing expedition. I assume you  
21 will have more subpoenas after Ms. Sternisha. My  
22 response will be the same.

23           Mr. Windle was the appropriate Staff  
24 witness. He intricately was involved, and he was  
25 able to answer the questions. There's nothing that's

1 outstanding that Ms. Sternisha could shed light on.  
2 In fact, I covered that in redirect. She did not  
3 provide any suggested edits to the draft audit  
4 report. So there is nothing -- nothing further here.

5 MR. NOURSE: And the Company agrees, your  
6 Honor, with those, and I will equally avoid  
7 repetition. Just adding that, you know, this is a  
8 new idea that's even more inappropriate and more  
9 untimely than the prior residual issue with the  
10 subpoena duces tecum. And but for all the reasons  
11 Ms. Kyle -- Kern, excuse me, stated, it should be  
12 denied.

13 EXAMINER PARROT: And for the same  
14 reasons that I noted with respect to the request for  
15 Ms. Christopher to appear, I am going to deny the  
16 motion seeking to require Ms. Sternisha to appear.

17 MR. FINNIGAN: Thank you, your Honor.

18 At this time I would like to make a  
19 proffer. I am just going to incorporate by reference  
20 the same proffer that I made for Ms. Christopher just  
21 with the added note that Ms. Sternisha would be the  
22 only one who could testify to communications that she  
23 had with others at the Staff and at the Commission  
24 about making changes to the auditor's ultimate  
25 conclusion that the plants should not be running

1 during the 2018-2019 time period because that was not  
2 in the best interests of retail ratepayers based on  
3 the actual losses that occurred arising in large part  
4 from the must-run commitment strategy.

5 MS. KERN: Your Honor, Staff would note  
6 its continuing objection, and I would note that if  
7 Ms. Sternisha was given some such directive, then  
8 that directive never got to Mr. Windle. As he  
9 testified, she provided no feedback to be put into  
10 the audit report. So that is just nonsensical.

11 MR. NOURSE: Company joins that  
12 objection. Thank you.

13 EXAMINER PARROT: The objections are  
14 noted.

15 All right. Let's go off the record  
16 (Discussion off the record.)

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

19 While we were off the record, the parties  
20 have discussed a briefing schedule with the  
21 Examiners, and I believe that we have all agreed that  
22 initial briefs in these matters will be due on  
23 March 18. Reply briefs are due on April 8.

24 Is there anything else we need to  
25 discuss?



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1 All right. Hearing none -- hearing  
2 nothing, these matters are submitted to the  
3 Commission on the record.

4 Thank you.

5 (Thereupon, at 2:47 p.m., the hearing was  
6 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 Wednesday, February 9,  
2022, and carefully compared with my original  
stenographic notes.

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-7227)

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**Case No(s). 18-1004-EL-RDR, 18-1759-EL-RDR**

Summary: Transcript in the matter of the Ohio Power Company hearing held on  
02/09/22 - Volume VII electronically filed by Mr. Ken Spencer on behalf of  
Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.